

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1053 OF 2009

Alamelu & Anr.

.. Appellants

VERSUS

State represented by Inspector of Police

..Respondent

WITH

CRIMINAL APPEAL NO.1063 OF 2009

Sekar & Anr.

.. Appellants

VERSUS

State represented by Inspector of Police

..Respondent

WITH

CRIMINAL APPEAL NO.1062 OF 2009

Rangasamy & Anr.

.. Appellants

VERSUS

State represented by Inspector of Police

..Respondent

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. These three appeals are directed against the common judgment of the High Court of Judicature at Madras

dated 6th February, 2008 in Criminal Appeal Nos. 406 and 414 of 2000 confirming the common judgment passed in S.C. No. 255 of 1997 by the learned Assistant Sessions Judge, Namakkal dated 28th April, 2000 whereby the trial court had convicted and sentenced the appellants as under:-

The appellants in Criminal Appeal No. 1053 of 2009 had been convicted under Sections 366 and 376 read with Section 109 IPC and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for a period of three months.

In Criminal Appeal No. 1063 of 2009, Sekar, appellant No.1, had been convicted under Sections 366 and 376 IPC and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.500/- in default of payment of fine to further undergo rigorous imprisonment for a period of three months. Appellant No.2 Kandasamy had been convicted under Sections 366 and 376 read with Section 109 IPC and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for a period of three months.

In Criminal Appeal No.1062 of 2009, both the appellants were convicted under Sections 366 and 376 read with Section 109 IPC and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.500/- in default of payment of fine to further undergo rigorous imprisonment for a period of three months.

2. Briefly stated the prosecution story is that PW2 (hereinafter referred to as the “victim” or “girl” according to context) is the daughter of Chinnathambi, (PW1) who is a teacher and resident of Nedupatti Village, Namakkal District, Tamil Nadu. The victim had failed in the SSLC examination. Therefore, she was admitted in private tutorial college called Seran Tutorial College.

3. It is alleged that on 31st July, 1993 at about 3.00 p.m. when she was walking near Nedupatti on the way to her house from the local bus stop, after attending her tutorial classes, Sekar (A1) told her that he loved her and wanted to marry her. The victim, however, did not agree to such proposal. Thereafter, a car bearing registration No. TTA 1886 came near the victim and she was forcibly pushed into the car by Sekar (A1). Rangaswami (A2), Paramasivam (A4) and Alamelu (A5) were already inside the car. This incident was

informed to the father (PW1) of the victim by one Sugavanam, who had received a call from Sekar (A1). The incident was confirmed by another person called Thangavel (PW3) who informed PW1 about an hour later.

4. Since PW1 is a handicapped person and unable to walk, he sent his relatives in search of his daughter. According to the prosecution case, the car was taken to the residence of Selvi, who is the sister of Sekar (A1) at Pudupatti. Thereafter, Parmasivam (A4), Alamelu (A5) and Subramani (A8) were advising the victim to marry Sekar (A1), however, she refused to do so. At that stage, Kandasamy (A7) declared that it is not necessary to take the consent of PW2 and they should just go to the temple in the morning and perform the marriage ceremony.

5. The next morning, on 1st August, 1993 at 4 'o' clock, they all took the victim to Arapaleeswarar Temple at Kolli Hills. On reaching the temple, Sekar (A1) tied the mangalsutra on the neck of the victim in spite of her resistance. Thereafter, she was taken to Mullukurichi. She was kept in a house and repeatedly raped for three days.

6. On 4th August, 1993, she was taken by Sekar (A1) to Palampatti. Since it was known to Sekar (A1) that the police was searching for the girl (PW2), he took her to Thiruverumbur Police Station. He told the police officials there that they were husband and wife and had been legally married.

7. In the meantime on 3rd August, 1993, PW-10, the Sub-Inspector of Police of Vennandur Police Station on the basis of the complaint dated 2nd August, 1993 went to the place of occurrence and prepared observations mahazar (Ex.P8) and rough sketch (Ex.P7) and recorded the statements of the witnesses.

8. On receipt of a copy of the FIR on 6th August, 1993, the Circle Inspector of Rasipuram Circle (PW11) took over the investigation. On the basis of the information gathered, PW11 arrested Sekar (A1) and rescued the girl (PW2) from door No.86, Thiruverumbur Police colony on 10th August, 1993. In the presence of the witnesses PW11 recovered mangalasutra, the dresses worn by the accused (A1) and the victim under mahazars. He arranged to send the seized properties for chemical analysis. In the morning of 11th

August, 1993, Sekar (A1) and Thangamani were sent to the local Magistrate's Court. Thereafter, he (A1) was remanded to judicial custody.

9. At the same time, the victim was sent for a medical examination. PW13 Dr. Manimegalaikumar examined the victim on 12th August, 1993 at 2.00 p.m. and recorded her findings in report Ex.P13. In the report, she opined that age of the victim was between 17 to 19 years. On the other hand, PW8, Dr. Gunasekaran, the Radiologist had given her age as above 17 years and below 18 years. Dr. Chidambaram (PW14) examined A1 on 11th August, 1993 at 8.00 p.m. In his report (Ex.P15) he stated about the potency of A1.

10. Thereafter, PW12, the successor of PW11, after seizing the vehicle used for abduction and after completing the investigation filed the charge sheet on 19th June, 1996 (Ex.P13) against Sekar (A1) for offences punishable under Sections 366 and 376 IPC and accused Nos. 2 to 8 for offences punishable under Sections 366 and 376 read with Section 109 IPC.

11. In order to establish its case, the prosecution examined PWs.1 to 14. Ex. P1 to P16 have been marked besides M.O.1 to 11. No one was examined on behalf of the accused and no documents were produced on their behalf.

12. When the accused were questioned with regard to incriminating circumstances appearing against them in the evidence of witnesses, the accused had denied the same as false. Sekar (A1) filed a written statement which reads as follows :-

“I am innocent. The charge that I have kidnapped PW2 and married her and raped her is false. On my enquiry I came to know that PW1 and his wife parents of PW2 compelled her to marry her uncle’s son. But PW2 refused and she had left the house voluntarily. To suppress the mistake committed by PW2, at the instance of my enemies after several days a false case has been filed against me. The evidence that PW11 arrested me along with PW2 at Thiruverumbur Police colony is false. I was staying in my village and they took me from my house and foisted the case. PW3 is the sister’s son of PW2 and, therefore, he is deposing falsely. PW4 is the co-brother of PW1 and therefore, he is giving evidence in support of PW1. PW6 is the close relative of PW2 and therefore, is giving false evidence.”

13. On consideration of the oral and documentary evidence, the trial court convicted and sentenced the accused as

noticed in the opening paragraph of the judgment. The conviction as well as the sentence have been maintained in appeals. Hence the present appeals.

14. We have heard the learned counsel for the parties.

15. The learned counsel has submitted that the conclusions reached by both the Courts are perverse. According to him the inconsistencies and contradictions in the evidence of the witnesses which have been ignored by both the courts would destroy the very root and foundation of the prosecution case. The High Court has even failed to take note of the plea raised by the appellant (A1) in the statement under Section 313 of the Criminal Procedure Code. Learned counsel submitted that this is a clear case of false implication. The prosecution is based on an imaginary story. The witnesses of the prosecution are procured. They are all close relatives of PW1. He submits that non appreciation of the evidence by the Courts below has resulted in miscarriage of justice.

16. Elaborating his submissions, the learned counsel then submitted that the complaint was falsely lodged by the

father (PW1) of the girl (PW2) due to old enmity against A1. PW2 had only given evidence under pressure from her father and her relatives. Learned counsel submitted that the prosecution has deliberately suppressed the true story which would clearly show that there was no incidence of abduction. The girl had run away from home as she was being compelled to marry one of her relatives. The entire abduction story is due to enmity because of a dispute over land. According to the learned counsel, the prosecution has deliberately suppressed the material particulars which were duly narrated by the prosecution witnesses themselves. There was no question of any forced marriage between the victim and Sekar (A1) Learned counsel has pointed out that at the time of the alleged marriage, according to the victim (PW2) and Thangavel (PW3), the relatives of the victim were present. In their presence, there could be no forced marriage. He further submitted that had it been a case of abduction PW1, the father of the victim, would not have waited for two days to lodge a complaint. Referring to the evidence of PW1, it is pointed out that he had stated that there was a panchayat held in the house of the local MLA Palaniammal. It was on the

direction of the Panchayat that the victim had decided to go with her father. Since then she has been with her parents.

17. The learned counsel has further pointed out that if Sekar (A1) had taken the victim to the police station, she would have complained. According to the learned counsel, the truth of the matter is, which has been admitted by PW1 in his evidence, that the mother of the girl did not want her daughter to get married to her maternal uncle's son. The entire story has been concocted subsequent to the time when the panchayat was held in the house of the local MLA. At that time, the police was present but PW1 did not demand that any one of the accused be arrested. Learned counsel submitted that a close scrutiny of evidence of the prosecution witnesses would show that deliberate efforts have been made to suppress the true version. In any event, there is no question of any abduction, forcible marriage or rape.

18. The learned counsel for the State submitted that the prosecution version is consistent. The trial court as well as the High Court, upon a thorough scrutiny of the evidence,

have given concurrent conclusions about the abduction as well as rape. Learned counsel further submitted that according to the father (PW1), the girl (PW2) was only 15 years and 2 months old on 31st July, 1993. Therefore, all the accused have rightly been found to be guilty of the offences under Sections 366 and 376 read with Section 109 IPC. He submits that in exercise of the powers under Article 136, this Court would normally not interfere with the concurrent findings recorded by the Courts below. He, therefore, prayed that the appeal be dismissed.

19. We have considered the submissions made by the learned counsel for the parties. Before we embark upon an examination of the evidence, we may point out that even though the powers of this Court under Article 136 of the Constitution are very wide, but in criminal appeals, this Court would not interfere with the concurrent findings of facts, save in very exceptional cases. In an appeal under Article 136 of the Constitution, this Court does not normally appreciate the evidence by itself and go into the question of credibility of witnesses. The assessment of the evidence by the High Court is accepted as final except where the conclusions recorded by the High Court are

manifestly perverse and unsupportable by the evidence on record. Keeping in view the aforesaid principles, we have examined the findings recorded by the Courts below.

20. In our opinion, there is much substance in the submissions of the learned counsel for the appellant. The trial court as well as the High Court have failed to take into consideration the inherent improbabilities in the case sought to be projected by the prosecution. In our opinion, the findings recorded by both the Courts below are perverse and unsupportable by the evidence on record.

21. In our opinion, the prosecution version has been distorted from beginning to the end, in an effort to suppress the actual truth. It was the case of the prosecution that Sugavanam had seen the victim being abducted on 31st July, 1993. This fact was brought to the notice of the father (PW1) of the victim (PW2) immediately. Sugavanam had been told about the abduction on the phone by Sekar (A1) himself. The abduction was further confirmed by Thangavel (PW3) about an hour later. According to PW1, he had sent his relatives, namely, Kuppusami, Athiappan, Velumani and Thangavel (PW3) in

search of his daughter. But he did not go with them. According to this witness, these persons told him that his daughter could not be located. Therefore, on 2nd August, 1993 he lodged a complaint with the police.

22. The subsequent events make the story of abduction wholly improbable. Sugavanam, who had informed the father of the abduction, was not examined in the Court. It would be rather odd that Sekar would himself inform Sugavanam of the abduction, if he was responsible for the same. Further, PW1 admits that Sekar was not on visiting terms with the family of the girl. There is no previous history of any relationship between Sekar and the girl. Even the High Court concluded that there was no familiarity between the two. There was no material placed on the record to show that Sekar was involved with the girl. Even in this court, no explanation was offered as to why Sekar would want to marry the victim; in the absence of any previous familiarity between the two.

23. There is no evidence to prove that the victim was forcibly taken in a car. Neither the owner nor the driver of the car has been examined in the Court. PW3 states that they had

made enquiries and had been told that the car used in abduction had gone towards Senthamangalam. They had also hired a car to go after them. None of these persons have been examined.

24. Proceeding further, we notice that PW1 admits that all the relatives mentioned above are very close blood relations. In fact, Thangavel (PW3) is the son of his elder sister. In other words, PW3 is a cousin of the girl. Athiappan is the son of his coparcener Kailasam. Palanivel is the brother-in-law of Murugesan. Murugesan is the son of Kailasam. Kuppusamy is the elder brother of Velumani who is the son of his senior coparcener. Kumaravel is the grand son of the aunt of Kuppusami. These very close relatives, who were almost family members, had told PW1 that his daughter could not be located. But surprisingly, these very relatives, according to PW2, were present at the temple just before the marriage. Although, the victim (PW2) knew that if she was in trouble they would come forward to help her, she did not raise any alarm. The presence of these blood relatives is also confirmed by Thangavel (PW3). He stated that even though these relatives were present at the marriage, they could not prevent the forced marriage.

Knowing fully well that the victim (PW2), was being compelled to marry Sekar (A1), they did not send someone to the police station with the necessary complaint.

25. The presence of the relatives at the alleged wedding is confirmed by Thangavel (PW3). He has stated that they could not find the girl (PW2) or Sekar (A1) in Rasipuram. But the search party was told on enquiry that Sekar (A1) and the girl (PW2) had gone in a car towards Santhamangalam. Therefore, Thangavel (PW3) and his relatives also hired a car and reached Arapaleeswar Temple. But since none of the accused were present, they decided to stay the night in the temple itself. He further stated that they had suspected that the marriage will take place in the morning, therefore, they had waited till the morning. This witness also stated that he informed his uncle about the marriage on 2nd August, 1993.

26. PW1 admits that he had been told that his daughter (PW2) had been abducted by Sekar (A1). The distance between the house of Sekar (A1) and the house of PW1 was only one kilometer. He also admits that Sekar (A1) is a local boy but is not related to him. He had received the information

about the alleged abduction on 31st July, 1993. He did not go to the house of Sekar (A1) to complain to his mother. He also did not go to the police station. Even the complaint with the police was registered only at 6.00 p.m. on 2nd August, 1993. In his cross-examination, he reiterated that his relatives had gone to the neighbouring village and searched but were not able to locate his daughter. From the evidence of this witness, it becomes quite clear that there was a dispute between the husband and wife i.e. mother and father of the victim (PW2) about the proposed marriage of the girl. Chinnathambi (PW1) states that he did not want his daughter to get married at all till she completes higher studies. He wanted her to get married only after she had become a teacher like himself. On the other hand, his wife had thought that her daughter (PW2) should be married to the son of Kuppusami, her maternal uncle's son. The girl (PW2) did not want to marry her cousin.

27. Taking the aforesaid evidence into consideration, one cannot rule out the possibility that the victim girl had run away from her parental house. This is further apparent from the statement of PW1 himself. He had stated that

soon after the incident a panchayat was held in the house of Rasipuram MLA, Palaniammal. At that meeting, his wife and his daughter were also present. But, in his anxiety to deny that his daughter had agreed to go back home on asking of MLA, he made a very relevant disclosure. He stated that "My daughter was asked to talk with myself and wife separately in a room for one hour. After the lapse of one hour my daughter told me that she will accompany me and we also brought her." This statement itself is indicative of the fact that disappearance of his daughter for few days may not have been the responsibility of the accused persons. Otherwise, it would not have taken over one hour to convince the girl to return home.

28. The testimony of PW1 in fact makes it further clear that the whole prosecution version has been concocted to falsely implicate the accused. This witness had admitted that the police had arrived on 3rd August, 1993. During that time, Sekar (A1) was also present but no demand was made for his arrest at all. He also stated that all the accused were also present, he did not ask for the arrest of those accused also. No complaint was made to the police at

that stage that any of the accused persons were involved in any incident of abduction. In fact he made another startling disclosure where he states that “till date I am not aware as to what happened to Thangamani. On 3rd August, 1993 either myself or any other witness had not furnished any information against the accused to the police.” According to this witness, the victim, has been with her family since 3rd August, 1993. He went on to state that after 3rd August, 1993 the police did not undertake any further enquiry.

29. Even the testimony given by PW2 also seems to be wholly unreliable and contrary to the evidence of PW1. According to her, she was walking towards her house and she was being followed by Sekar (A1). He had told her that he liked her and wanted to marry her. She simply told him to go away and continued to walk towards the house. There was a car parked near the house of Sekar’s mother’s elder sister. She then narrates the story as to how she was pushed into the car. She stated that she had dropped her books on the road but, surprisingly though the car was parked in front of Sekar’s aunt’s house, no one found the books.

30. She then states that when she was being taken to the temple, she saw some known persons standing at a distance. But she did not yell out for help. According to her, Sekar (A1) had raped her on three consecutive days, i.e., 1st, 2nd and 3rd of August at Mullukurichi. On 4th of August she was taken to Palampatti. However, on 5th August, 1993 when Sekar (A1) received the news that the police was looking for her, she was taken to Tiruchy police station. There he had told the police that they were married. She again did not complain; nor did seek help to be returned home. Thereafter, on 10th August, 1993 Rasipuram Circle Inspector (PW11) had arrived and arrested Sekar (A1). It was only after that she was left with her parents. On the other hand, as noticed earlier, father states that she has been at home with her parents since 3rd August, 1993. This in our opinion leads to an inescapable conclusion that the versions of the father and the girl are in sharp contrast, if not contradictory to each other.

31. She had further stated that during the night of 10th August, 1993, she had narrated the entire sequence of events to the police. The police had also given her

alternative clothing to wear and taken her clothes in possession. According to the victim herself, even after she was recovered on the 10th August, 1993, she did not go to the house of her parents, instead she went to the house of her senior paternal uncle situated at Thengalpalayam. Therefore, it becomes increasingly difficult to place reliance on any one of the prosecution witnesses.

32. Talking about her alleged forced stay in the house at Pudupatti, again she was unable to state whether it was thatched house or terraced house. She was also unable to state as to whether the door of the room in which she was kept could be locked only from outside or from inside. In the same breath, she says that she remained in the room by locking it from inside. But again she changed her mind and said that the door was not locked but it was closed. She talks of one Rangasamy being present. But then she says that there were two individuals by that name, one old and one young. But she did not give any of their particulars to the police, as the police did not ask for them. Yet she claims that both the Rangasamy had taken her to the temple. But then she says to the police that only one Rangasamy took her.

33. Now coming to the marriage, she reiterates that some known persons were present at the temple but on seeing them she did not raise any alarm. She admits that Kuppusami, Velumani, Athiappan, Thangavel and Palaniammal are her close relatives. She also admits that if she had told them that she was in trouble they would have helped her. But she did not complain to her relatives. This would be wholly unnatural behaviour from a girl who had been abducted and was being compelled to marry someone, she did not want to marry.

34. The scene after the alleged marriage is equally blurred. The girl denies ever going to the house of MLA on 3rd August, 1993. She was not aware that any panchayat had been held in his house on that day. She also states that she did not go to the house of her father on 3rd August, 1993. She further denies that she had ever narrated the events that had occurred between 31st July, 1993 to 10th August, 1993 to her parents.

35. In our opinion, the trial court as well as the High Court had failed to bestow proper attention on the inherent improbabilities contained in the evidence of the prime

witnesses of the prosecution. Both the courts below had failed to notice that the prosecution did not even care to produce any witness from the temple where the marriage has been allegedly solemnized. No cogent reason has been given as to why the 'Pujari' of the Temple or some other office bearer could not have been summoned.

36. In our opinion, the entire story about the abduction by car and the forced marriage seems to have been concocted to falsely implicate all the accused under Section 366 IPC. There is no reliable evidence to support the conviction of Sekar, or the accused relatives of Sekar, for the offence of abduction under Section 366 IPC. Possibility can not be ruled out of the father, PW1 suspecting that his daughter was romantically involved with Sekar. Therefore, when she disappeared from home, Sekar was presumed to be responsible for it. Hence the false story of abduction. Even in the face of the wholly unreliable evidence, as noticed above, both the Courts have convicted all the accused under Section 366 and 376 IPC. The High Court, in our opinion, committed a grave error in confirming the conviction of the accused/appellants under Section 366 IPC.

37. We may now take up the issue of Sekar's conviction under Section 376 IPC. Whilst upholding the conviction of Sekar under Section 376 IPC, the High Court has held that the girl would not have voluntarily gone with Sekar. It has also been held that she was not a major at the relevant time. In our opinion, both the conclusions recorded by the High Court are contrary to the evidence on record.

38. We will first take up the issue with regard to the age of the girl. The High Court has based its conclusion on the transfer certificate, Ex.P16 and the certificate issued by PW8 Dr. Gunasekaran, Radiologist, Ex.P4 and Ex.P5. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much

evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. We may notice here that PW1 was examined in the Court on 9th August, 1999. In his evidence, he made no reference to the transfer certificate (Ex.P16). He did not mention her age or date of birth. PW2 was also examined on 9th August, 1999. She had also made no reference either to her age or to the transfer certificate. It appears from the record that a petition was filed by the complainant under Section 311 Cr.P.C. seeking permission to produce the transfer certificate and to recall PW2. This petition was allowed. She was actually recalled and her examination was continued on 26th April, 2000. The transfer certificate was marked as Ex.P16 at that stage, i.e., 26th April, 2000. The judgment was delivered on 28th April, 2000. In her cross-examination, she had merely stated that she had signed on the transfer certificate, Ex.P16 issued by the School and accordingly her date of birth noticed as 15th June, 1977. She also stated that the certificate has been

signed by the father as well as the Headmaster. But the Headmaster has not been examined. Therefore, in our opinion, there was no reliable evidence to vouchsafe for the truth of the facts stated in the transfer certificate.

39. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of **Birad Mal Singhvi Vs. Anand Purohit**¹, observed as follows:-

“The date of birth mentioned in the scholars’ register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined.....

.....
Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. *The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue.* No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. *In the circumstances the dates of birth as mentioned in the aforesaid documents*

¹ 1988 (Supp) SCC 604

have no probative value and the dates of birth as mentioned therein could not be accepted.”

The same proposition of law is reiterated by this Court in the case of **Narbada Devi Gupta Vs. Birendra Kumar Jaiswal**², where this Court observed as follows:-

“The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the “evidence of those persons who can vouchsafe for the truth of the facts in issue”.”

40. In our opinion, the aforesaid burden of proof has not been discharged by the prosecution. The father says nothing about the transfer certificate in his evidence. The Headmaster has not been examined at all. Therefore, the entry in the transfer certificate can not be relied upon to definitely fix the age of the girl.

41. In fixing the age of the girl as below 18 years, the High Court relied solely on the certificate issued by PW8 Dr. Gunasekaran. However, the High Court failed to notice that in his evidence before the Court, PW8, the X-ray Expert had clearly stated in the cross-examination that on the basis of the medical evidence, generally, the age of an

² (2003) 8 SCC 745

individual could be fixed **approximately**. He had also stated that it is likely that the age **may vary from individual to individual**. The doctor had also stated that in view of the possible variations in age, the certificate mentioned the possible age between one specific age to another specific age. On the basis of the above, it would not be possible to give a firm opinion that the girl was definitely below 18 years of age. In addition, the High Court failed to consider the expert evidence given by PW13 Dr. Manimegalaikumar, who had medically examined the victim. In his cross-examination, he had clearly stated that a medical examination would only point out the age approximately with a variation of two years. He had stated that in this case, the age of the girl could be from 17 to 19 years. This margin of error in age has been judicially recognized by this Court in the case of **Jaya Mala Vs.**

Home Secretary, Government of Jammu & Kashmir & Ors.³, In the aforesaid judgment, it is observed as follows:-

“.....However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side.”

³ (1982) 2 SCC 538

42. We are of the opinion, in the facts of this case, the age of the girl could not have been fixed on the basis of the transfer certificate. There was no reliable evidence to vouchsafe the correctness of the date of birth as recorded in the transfer certificate. The expert evidence does not rule out the possibility of the girl being a major. In our opinion, the prosecution has failed to prove that the girl was a minor, at the relevant date.

43. We may further notice that even with reference to Section 35 of the Indian Evidence Act, a public document has to be tested by applying the same standard in civil as well as criminal proceedings. In this context, it would be appropriate to notice the observations made by this Court in the case of **Ravinder Singh Gorkhi** Vs. **State of U.P.**⁴ held as follows:-

“The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. *A court of law for the purpose of determining the age of a*

⁴ (2006) 5 SCC 584

party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.”

44. In such circumstances, we are constrained to hold that the High Court without examining the factual and legal issues has unnecessarily rushed to the conclusion that the girl was a minor at the time of the alleged abduction. There is no satisfactory evidence to indicate that she was a minor.

45. The High Court concluded that even if one was to exclude the evidence given by PW3, the conviction for abduction and rape by Sekar could be recorded on the sole evidence of PW2. Undoubtedly, the testimony of victim of sexual assault stands at par with testimony of an injured witness, and is entitled to great weight. Therefore, corroboration for the testimony of the victim would not be insisted upon provided the evidence does not suffer from any basic infirmities and the probability factors do not render it unworthy of credence. This Court in **Rameshwar** Vs.

State of Rajasthan⁵ declared that corroboration is not the sine qua non for a conviction in a rape case. In the aforesaid case, Vivian Bose, J. speaking for the Court observed as follows:-

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, ... The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.”

The aforesaid proposition of law has been reiterated by this Court in numerous judgments subsequently. These observations leave no manner of doubt that a conviction can be recorded on the sole, uncorroborated testimony of a victim provided it does not suffer from any basic infirmities or improbabilities which render it unworthy of credence.

46. In our opinion, the evidence of PW2 does not satisfy the aforesaid test. The High Court erroneously concluded that the girl had not willingly gone with Sekar. The conclusion

⁵ (1952) SCR 377

could only be recorded by ignoring the entire evidence with regard to the conduct of the girl from the time of the alleged abduction till the time of the alleged recovery. We have noticed earlier that she did not make any complaint on so many occasions when she had the opportunity to do so. We may, however, notice that even after the alleged marriage, the girl continued to be a willing partner in the entire episode. Even if the prosecution version is accepted in its totality, it would be established that the girl was staying with Sekar (A1) from 31st July, 1993 till 10th August, 1993. Even PW5, Thiru Thirunavukarasu stated that Sekar (A1) had brought the girl with him to his house and told him that he had married her. They had come to see Trichy and requested a house to stay. This witness categorically stated that he thought that they were newly married couple. He had made them stay in door no. 86 of the Police Colony, which was under his responsibility. On 10th August, 1993, the police inspector, who arrived there at 10.00 p.m. told this witness that Sekar (A1) had married the girl by threatening her and “spoiled her”. The girl, according to the prosecution, was recovered from the aforesaid premises. Therefore, for six days, this girl was

staying with Sekar (A1). She did not raise any protest. She did not even complain to this witness or any other residents in the locality. Her behavior of not complaining to anybody at any of the stages after being allegedly abducted would be wholly unnatural. Earlier also, she had many opportunities to complain or to run away, but she made no such effort. It is noteworthy that she made no protest on seeing some known persons near the car, after her alleged abduction. She did not make any complaint at the residence of Selvi, sister of Sekar (A1) at Pudupatti. Again, there was no complaint on seeing her relatives allegedly assembled at the temple. Her relatives apparently took no steps at the time when mangalsutra was forcibly tied around her neck by Sekar (A1). No one sent for police help even though a car was available. She made no complaint when she was taken to the house of PW5, Thiru Thirunavukarasu and stayed at his place. Again, there was no protest when Sekar (A1) took her to the police station on 5th day of the alleged abduction and told at the Tiruchi Police Station that they had already been married. The above behaviour would not be natural for a girl who had been compelled to marry and subjected to illicit sexual

intercourse.

47. In view of the aforesaid, we are of the considered opinion that the prosecution has failed to prove beyond reasonable doubt any of the offences with which the appellants had been charged. It appears that the entire prosecution story has been concocted for reasons best known to the prosecution.

48. In our opinion, the conclusions recorded by both the courts below are wholly perverse. The appellants are clearly entitled to the benefit of doubt. In view of the above, the appeals are allowed. All the appellants are acquitted. They are directed to be released forthwith.

.....J.
[B.Sudershan Reddy]

.....J.
[Surinder Singh Nijjar]

New Delhi
January 18, 2011.