



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 34/2007

Raisuddin S/o Umardeen Khan, Resident of Inside Sojati Gate,
Kaviraj Ka Bada, Jodhpur

-----Petitioner

Versus

- 1. State of Rajasthan
- 2. Nadeem S/o Sale Mohd. Resident of Balodi Fatehpur, Sikar

-----Respondent

Connected With

S.B. Criminal Appeal No. 422/2007

State of Rajasthan

-----Petitioner

Versus

Nadeem S/o Sale Mohammad. Resident of Balodi Fatehpur, Sikar

-----Respondent

For Petitioner(s)	:	Mr. Anand Purohit, Sr. Advocate with Mr. Vikram Singh
For Respondent(s)	:	Mr. Shrawan Singh Rathore, Dy.G.A. Mr. HM Saraswat

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

ORDER RESERVED ON ::: 22/05/2025

ORDER PRONOUNCED ON ::: 29/07/2025

BY THE COURT:-

1. These two matters have arrived out of a single judgment dated 15.11.2006 passed by learned Additional Session Judge (Fast Track) No.1, Jodhpur, whereby the accused respondent was acquitted from the charges under Section 363, 366 and 376 of IPC. S.B. Criminal Revision Petition No.34/2007 has been preferred on behalf of the complainant whereas S.B. Criminal



Appeal No.422/2007 has been preferred on behalf of the State of Rajasthan, but both the matters have challenged to the finding of acquittal arrived at by the learned trial court.

2. Bereft of the elaborate details, briefly stated facts of the case would be that on 13.04.2005, a report Exhibit P-2 came to be lodged at the instance of PW-1, Raissudin, who is the petitioner in S.B. Criminal Revision Petition No.34/2007 alleging inter alia taking away of his daughter "S" by the accused respondent Nadeem for the purpose of marrying her. Based upon the report Exhibit P-2, an FIR was lodged and during investigation, the victim was recovered, the accused was arrested and after investigation, the charge-sheet for committing offences mentioned above was submitted. After taking cognizance of the offence, the matter was committed to Court of Sessions and where charges were framed and as many as 12 witnesses were examined and 20 documents were tendered into evidence to substantiate the charge. The accused was examined under Section 313 Cr.P.C. wherein he claimed innocence, but no defence evidence was placed. The point of determination before learned trial court was that (a) whether the victim was a minor (b) whether she was subjected to rape, and if yes, then what should be the punishment.

3. I have heard learned counsel for the parties and gone through the judgment under challenge as well as record of the case and my observations are as under.



4. At first, this Court has to examine and to make reappreciation of the evidence to ascertain whether the victim was a minor at the relevant point of time.

5. To convict the accused under section 363 IPC, two things are to be established beyond reasonable doubt, one that she was below the age of 18 years and other would be that she was taken away from her lawful guardianship without consent of the guardians. If we examine the statement of witnesses PW-1 Raisuddin, PW-3 "S" and PW-8 Mohd. Rafiq, it would come to fore that Exhibit P-9 was tendered into evidence to show the date of birth of victim. As per Exhibit P-9, a certificate issued by Anjuman Muslim Girls Secondary School, Sikar, the date of birth of victim was 04.06.1992. PW-1 when subjected to cross examination had revealed that he was not in acquaintance with or known to date of birth of his daughter before lodging of the police report because neither in the FIR nor in his statement recorded during investigation, the date of birth was mentioned by him. Exhibit P-9 was never ever produced before investigating officer so that investigation can be done with regard to genuineness of the document. The admission of PW-1, that the date of birth of his daughter was mentioned in the school at the instance of her mother is putting a significant dent in the case of prosecution because the prime witness who mentioned the date was not produced by the prosecution. The admission of PW-1 to the effect that he never went to school to get education and therefore, he was not able to understand all the circumstances that the document Exhibit P-9 was issued or whether admission record was



endorsed in the school or not further casting a serious doubt in the veracity of the document. The prosecution has failed to produce any document or the evidence of the school staff, headmaster of the school or school register admission form, etc., based upon which Exhibit P-9 was issued further casting suspicion over the genuineness of the document. Ostensibly, a certificate of the school can only be issued based on the entries made in scholar register maintained by the school and entries in scholar register are to be made on the basis of the entry mentioned in admission form filled by parents or guardian of the student. Here in this case, neither the admission form nor the scholar register or any mark-sheet has been brought on record nor any officer of the School has been examined to establish the above fact. As per section 35 of the Indian Evidence Act, only the register maintained by a public school is a relevant fact and thus admissible for the evidence. A certificate, veracity of which is not known as to who issued it, cannot be made basis to determine the age of any incumbent. This Court is of the view that Exhibit P-9 cannot be made a basis for determining the age of victim and thus the learned trial court has rightly discarded it.

6. The prosecution case relies upon the document Exhibit P-6 which is prepared by a medical officer of SN Medical College and MG Hospital, Jodhpur and as per which the victim was above the age of 15 years and below 17 years at the relevant point of time. The ossification test report are based upon an opinion given by a radiologist based on the appearance of epiphysis and fusion of margins of the bones. A radiologist or medical jurist based on his



experience and the formula given in the test of medical jurisprudence makes an idea regarding the estimate age of a person, however, it always remains an estimate. It is an opinion of a radiologist or a medical jurist and its nature is always opinionative, so no definite age can be given by a medical officer and in this case it was given.



7. The law in this regard is no more res-integra that there would be always variation of two years in the estimation of age reached on the basis of ossification test. In the given circumstances, learned trial court has rightly observed that no material of impeccable quality or clinching evidence was there on record to establish the fact with certainty that the girl was below age of 18 years at relevant of time. The finding in this regard is well reasoned and therefore does not require interference. Since the victim was not taken away forcibly rather as it is revealed from Exhibit P-1, she left the company of her parents clandestinely and joined the association of the appellant at her free will, therefore the offence under Section 363 of IPC is not made out. The possibility that she went with the appellant at her own will and volition cannot be ruled out, therefore Section 366 of IPC is also not made out.

8. As far as question whether the victim was subjected to rape, this Court feels that appreciation of the evidence made by learned trial court is very perfect and in consonance with law. The victim was first examined by PW-12, Pujraj Singh and her statement was tendered into evidence as Exhibit D-1 and a perusal of which is



revealing negation in allegation of rape. Why did document Exhibit D-1 be not believed and why her first in story should be disbelieved are the questions having no satisfactory explanation. The significant incongruence and contradiction in between Exhibit P-8, the statement under section 164 of the Cr.P.C. and the statement given during trial making it abundantly clear that the victim was all over a consenting party and she was neither coxed nor forced to perform fornication. The evidence brought on record, particularly PW-3, victim does not inspire confidence to hold the accused guilty for an offence of rape. The material brought on record has been very prudently discussed and examined by learned trial court and after going through them again, this Court feels that indeed no error has been committed in acquitting the accused from the charges under section 376 of IPC.

9. The approach of the court of appeal in hearing appeal against judgment of acquittal should be all together different than to hearing of an appeal against conviction. The appellate court should be slow or show reluctance and circumspect any interference in a judgment of acquittal unless it is felt that judgment is a product of total non-consideration of the material brought on record. If there is mis-appreciation of the evidence and based on which a strange conclusion is turned, than also the court of appeal should make interference and in certain cases, finding based on erroneous interpretation of law can also be made to challenge, however, this Court finds nothing, as stated, in this case. Even when two views are possible, a view favorable to the accused ought to have been expected. Honorable the Supreme



Court in recent judgment in the case of Mallappa and Ors. Vs. State of Karnataka, (2024)3SCC544 has made elaborate enunciation in this regard and this Court has taken guidance from the above. In conclusion, this Court finds no merit in both the matters being devoid of merit.

10. Accordingly, the revision petition as well as the appeal is dismissed. The finding of acquittal by the learned trial court is affirmed. The bail bonds if not furnished by the respondent are discharged.

11. Record be sent back forthwith.

(FARJAND ALI),J

1-chhavi/-