

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 09.04.2026

Pronounced on: 24.04.2026

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*Whether the operative part
or full judgment is
pronounced: **Full***

CrlA(S) No.03/2025

YAWAR AHMAD BHAGAT

...APPELLANT(S)

Through: - Mr. Zahid Hussain, Advocate, with
M/S: Bhat Shafi, Zahid Afzal and Naveed
Bukhtiyar, Advocates.

Vs.

UT OF J&K THROUGH P/S YARIPORA

...RESPONDENT(S)

Through: - Mr. Zahid Qais Noor, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellant has challenged judgment dated 12.03.2025 passed by learned Additional Sessions Judge (Fast Track Court), Kulgam (hereinafter referred to as "the trial court"), whereby he has been convicted for offence under Section 376 RPC. Challenge has also been thrown to order dated 14.03.2025, passed by the trial court, whereby the appellant has been sentenced to undergo imprisonment for a period of eight years and to pay a fine of Rs.10,000/ for commission of offence under Section 376 RPC. In default of payment of fine, the appellant has been directed to undergo further rigorous imprisonment for a period of six months.

2) Briefly stated, the prosecution case is that on 07.12.2018, Police Station, Yaripora received a written report from PW-1 Abdul Aziz Dar, alleging therein that his daughter, Ms. X, had left home at about 5 p.m. on the previous day in connection with making purchases from the market but in the meanwhile she was kidnapped by the appellant/accused. It was further reported that despite making strenuous efforts to locate the prosecutrix, her whereabouts could not be traced.

3) On the basis of aforesaid report of PW-1, FIR No.92/2018 for offences under Section 363, 109 RPC came to be registered at Police Station, Yaripora, and investigation was set into motion. During the course of investigation, the police recovered the prosecutrix from custody of the appellant from a place named Shirpora Dal. The prosecutrix was subjected to medical checkup and after obtaining the medical opinion, offence under Section 376 was added. The statement of the prosecutrix under Section 161 of Cr. P. C and under Section 164A of Cr. P. C was recorded during the course of investigation and the statements of other witnesses acquainted with the facts and circumstances of the case were also recorded. It was found that co-accused Shabir Ahmad Bhagat and Ghulam Mohi-ud-din Bhagat had aided and assisted the appellant in commission of the crime. The

date of birth certificate of the prosecutrix was obtained from the school where she had studied and her age was found to be less than 18 years. It was also found that the prosecutrix was pregnant carrying a foetus of 36 weeks. After investigation of the case, offences under Section 363/376 RPC were found established against the appellant and the challan against him as well as against co-accused was laid before the trial court.

4) On 23.07.2019, charges for offences under Section 363, 376 RPC were framed against the appellant and his plea was recorded. The appellant denied the charges and claimed to be tried. Accordingly, the prosecution was directed to adduce evidence in support of its case.

5) In order to prove its case, the prosecution examined as many as 11 out of 12 witnesses cited in the challan. Besides examining the prosecutrix, the other material witnesses who were examined by the prosecution included father of the prosecutrix, PW-1 Abdul Aziz Dar, PW-2 Mohammad Ayoub Allie, PW-3 Mohammad Yousuf Dar, PW-4 Lali Jan (elder sister of the prosecutrix), PW-5 Constable Zahoor Ahmad, PW-6 Constable Irshad Ahmad, PW-7 Muzaffar Ahmad Paul, Teacher Govt. High School Kujjar, PW-8 Mst. Rani Mehak, PW-9 Dr. Shabeena Medical Officer, PW-10 Dr. Rafia Medical

Officer and PW-12 Inspector Ather Samad, the Investigating Officer.

6) After completion of the prosecution evidence, the statement of the appellant and co-accused under Section 342 of J&K Cr. P. C were recorded on 03.02.2024. In his statement the appellant denied having kidnapped the prosecutrix and he further denied having committed sexual intercourse with her. He also denied having any knowledge about the pregnancy of the prosecutrix. He, however, claimed that father of the prosecutrix got her pregnancy terminated at Jaipur Rajasthan, regarding which a case has been registered against the prosecutrix and her father which is pending before the Magistrate. The appellant did not opt to lead any evidence in defence. Accordingly, the case was set down for final hearing.

7) Vide the impugned judgment dated 12.03.2025, the learned trial court has convicted the appellant of the charge for offence under Section 376 RPC but he has been acquitted of the charge for offence under Section 363 RPC. Two co-accused, namely, Shabir Ahmad Bhagat and Ghulam Mohi-ud-din Bhagat have been acquitted of all the charges. The learned trial court, while passing the impugned judgment, has held that the prosecutrix had accompanied the appellant out of her own free will and volition and that she had not

been enticed or taken away by the appellant and, therefore, the charge for offence under Section 363 RPC is not proved against him. The learned trial court has further recorded a finding that the prosecutrix was less than 18 years of age at the time of the occurrence, as such, her consent with regard to commission of sexual intercourse with the appellant is immaterial and that he is guilty of having committed statutory rape upon the prosecutrix.

8) The appellant has challenged the impugned judgment of conviction and the order of sentence on the grounds that the observations and findings recorded by the learned trial court are contrary to the evidence led by the prosecution. It has been contended that there are contradictions in the statements of the prosecutrix recorded under Section 164A of Cr.P.C. and her statement recorded before the trial court, inasmuch as, in her statement recorded under Section 164A of Cr. P. C, the prosecutrix has denied having been subjected to sexual intercourse by the appellant but while making her statement before the Court, she has stated that she was subjected to sexual intercourse by the appellant. It has been further contended that there is no cogent and convincing evidence on record to show that the prosecutrix was below 18 years of age at the time of the alleged occurrence. It has been contended that the school certificate, on the basis of

which the learned trial court has recorded a finding that the prosecutrix was less than 18 years of age, does not have any probative value. It has been further contended that the statement of the prosecutrix is not trustworthy and could not have been relied upon for returning the finding of conviction against the appellant.

9) I have heard learned counsel for the parties and perused the grounds of appeal, the impugned judgment and the trial court record including the evidence led by the prosecution before the trial court.

10) As already noted, the charge against the appellant is that he has committed sexual intercourse upon the prosecutrix at a time when she was minor. The prosecution goes on to allege that as a result of sexual intercourse committed by the appellant upon prosecutrix, she became pregnant and her pregnancy had to be terminated afterwards.

11) In a case relating to sexual assault, the survivor happens to be the most material witness. Therefore, it would be necessary to analyze the statement of the prosecutrix made by her before the trial court as well as the statement made by her before the Magistrate under Section 164A of the Cr. P. C during the course of investigation.

12) In her statement recorded under Section 164A of the Cr. P. C on 02.01.2019, the prosecutrix has stated that she is a student of B.Sc. 1st year; that she knows the appellant for the last three years because he is reading in the same school; that the appellant did not force himself upon her nor did he kidnap her; that she wanted to enter into wedlock with him; that on 6th December, she called the appellant on phone and asked him to accompany her to Jammu but he refused to do so; that she threatened to commit suicide because her family members were preventing her from meeting the appellant; that thereafter the appellant was compelled to meet her reluctantly at Khudwani; that when the appellant did not come to meet her at the agreed place, she called him on phone and threatened that if he would not come, she would commit suicide and thereafter the appellant came there and they proceeded to Jammu where they stayed in a hotel for two days; that they came to know that the police is harassing the family members and friends of the appellant and they decided to come back; that on 8th December, they came back and because of traffic jam at Udhampur, they had to spend one night midway; that on 10th December in the evening, they reached Frisal and presented themselves before the police whereafter she was handed over to her parents; that during the period she

remained with the appellant, he did not commit any rape upon her; that the appellant is innocent and even his family members are innocent and it is she who compelled the appellant to accompany her to Jammu.

13) In her statement recorded during trial of the case, the prosecutrix deposed that the occurrence is of the year 2018; that she was in love with the appellant and at that time she was studying in 12th class; that at the time of the occurrence, she was studying in B.A. 1st year; that she got pregnant as the appellant had developed physical relations with her at Frisal; that thereafter the appellant took her away to Jammu where they stayed at Nagrota for two days; that she was brought back by the appellant from Jammu and thereafter she wanted to enter into wedlock with him but her family members did not agree to the marriage; that her father had already lodged a report against the appellant and thereafter the child was born but the appellant refused to accept the child.

14) In her cross-examination, the prosecutrix admitted that she had, during the course of investigation, deposed before the Magistrate that she had compelled the appellant to take her to Jammu by threatening to commit suicide. She admitted that she went with the appellant to Jammu out of her own will. She also admitted that she had developed

physical relations with the appellant out of her own free will; that at the time when she terminated the pregnancy, the appellant was in custody; that a case is registered against her in connection with termination of pregnancy in which her father has also been impleaded as an accused; that she was minor at the time of the occurrence.

15) What comes to the fore from the statement of the prosecutrix is that she had accompanied the appellant to Jammu out of her own free will and volition and that she had developed physical relations with him out of her free will. Though in her examination-in-chief recorded during trial of the case, she had stated that the appellant made her to flee with him, yet in her cross-examination she has clarified that it was she who compelled the appellant to accompany her to Jammu as she had threatened to commit suicide in case he did not accompany her. She has categorically stated that she developed physical relations with the appellant out of her own free will.

16) The answer to the question as to whether the learned trial court is right in concluding that the appellant has committed statutory rape upon the prosecutrix, depends upon determination of the fact relating to her age. If it is found from the evidence on record that the prosecutrix was less than 18 years of age at the time of the occurrence, then,

of course, no interference can be made with the impugned judgment of conviction recorded against the appellant because it has been sufficiently established from the statement of the prosecutrix that she had physical relations with the appellant with her free consent. However, if, from the evidence on record, it is not established that the prosecutrix was less than 18 years of age at the relevant time, then in the face of statement of the prosecutrix that she had gone with the appellant out of her own will and that she had developed physical relations with him out of her own free will and volition, it cannot be a case of rape.

17) The learned trial court, while recording the judgment of conviction, has properly rightly crystalized the issues for determination. One of these issues is with regard to age of the prosecutrix. While deciding Point No.1, which relates to age of the prosecutrix, the learned trial court has placed reliance upon school leaving certificate of the prosecutrix, according to which her date of birth was 14.01.2001. The trial court has relied upon the statement of PW-7, Muzaffar Ahmad Paul, who has proved the school leaving certificate, EXTPW-7 by producing the relevant record. The learned trial court has also relied upon the statements of PWs 1, 2, 4 and 9 in addition to the school record and held that the prosecution was minor on the date of the occurrence.

18) If we have a look at the date of birth certificate dated 08.12.2018 issued by the Government High School, Kujjar Kulgam, EXTPW-7, the date of birth of the prosecutrix has been mentioned as 14.01.2001. The said certificate has been proved by PW-7, Muzaffar Ahmad Paul (Teacher), who, on the basis of the record produced by him before the trial court, stated that the date of birth of the prosecutrix reflected in EXTPW-7 corresponds to the entry in the record.

19) The question that arises for determination is whether on the basis of the entry in the school record about date of birth of a person, it can be stated that age of such person is established beyond any reasonable doubt. Legal position in this regard is well settled. The entries regarding date of birth contained in the scholar's register and secondary school examination certificates have no probative value. Such entries may be admissible in evidence but the same cannot be taken as conclusive proof with regard to the age of a person. Reliance in this regard may be placed upon the judgment of the Supreme Court in the case of **Birad Mal Singhvi v. Anand Purohit**, (1988) Supp. SCC 604.

20) Calcutta High Court has, in the case of **Raju Mitra v. State of West Bengal**, 2007 SCC OnLine Cal. 72, while dealing with a case where the Court was seized of a matter

relating to the plea of juvenility of an accused, made the following observations relating to the manner in which the date of birth recorded in the school admission register has to be established:

“.....Besides that, if there is a school certificate showing age of the accused, a reasonable person of the said school should be examined before the Court to show what was the age that was recorded in the School Admission Register and what type of information was made before the school when the said accused as student was admitted into the school and what was the age that was recorded in the School Admission Register. The Court may also call for records from the concerned office of the Registrar of Births and Deaths for ascertaining whether any information relating to the birth of the said person was registered and what were the date, month and year of such birth and who was the person who gave such information for registration of birth and how competent the said man was to register the Information and if required the Court may examine any persons of such office. If the accused was born either in any Matrisadan Hospital or Nursing Home, any responsible person of such Institution may be called for by the Court for examination along with relevant papers for verification relating to the date, month, year as well as the sex of the child who was born in such Institution. After such enquiry on the basis of such oral and documentary evidence, the Court would arrive at a decision as to the age of the accused petitioner on the date of the incident. The leaned Court would also take into consideration the age reflected in the ossification test and after consideration of all such papers the Court would arrive at a decision relating to the age of the accused petitioner on the date of incident. The School Admission Register has evidentiary value but cannot be regarded as a conclusive proof to establish the age of the accused petitioner.”

(emphasis supplied)

21) From the foregoing analysis of the legal position, it is clear that on the basis of mere entry regarding date of birth in the school Admission Register or the certificate issued by the school on the basis of such Register, it cannot be conclusively established that the particulars regarding date of birth of such person are correct. The correctness or otherwise of the particulars recorded in the school Register would all depend upon as to on what basis such entry has been made.

22) Turning to the facts of the present case. If we have a look at the statement of PW-7, Muzaffar Ahmad Paul, particularly his cross-examination, he has stated that the prosecutrix had got admitted to the said school in 9th standard. He has further clarified that he does not know as to on what basis date of birth of the prosecutrix has been recorded in the admission register. He further went on to state that there is no record of the Chowkidar or Municipal Committee with regard to date of birth of the prosecutrix available with the school and that he was not himself posted in the school at the relevant time, as such, he cannot state anything about it.

23) Aforesaid statement of PW-7 makes it clear that the prosecutrix was not studying in the concerned school from the very beginning but she has taken admission in the said

school after attending some other school upto 8th standard. The date of birth certificate issued by the school where the prosecutrix had initially studied is not forthcoming nor any other document on the basis of which the date of birth of the prosecutrix has been recorded in the document EXTPW-7 has been seized by the Investigating Agency during the course of investigation. In these circumstances, the particulars of date of birth recorded in EXTPW-7 may be admissible in evidence but they have no probative value in the absence of evidence relating to the basis on which such particulars have been recorded.

24) That takes us to the statement of father of the prosecutrix as regards her age. PW-1 Abdul Aziz Dar, during his examination-in-chief has stated that the prosecutrix was aged about 16 years but in his cross-examination, he has stated that he does not remember when his marriage had taken place. He has further stated that he does not remember the date of birth of his eldest child nor does he remember the date of birth of his second child and he also does not remember the date of birth of his third child. He has further stated that the prosecutrix was born after the birth of his daughter PW Lali Jan and that he does not even remember the date of birth of the prosecutrix.

25) Another witness, PW-2 Mohammad Ayoub Allie has stated that the prosecutrix is 16 years of age and he is stating so because his daughter was studying with the prosecutrix and she was also 16 years of age at the relevant time. He, however, does not have knowledge about the date of birth of the prosecutrix.

26) PW-4 Lali Jan, the elder sister of the prosecutrix, in her examination-in-chief has stated that the prosecutrix is minor. In her cross-examination she has stated that her own date of birth is 01.01.1999 but she has no knowledge about the date of birth of the prosecutrix. She has admitted that for ascertaining whether prosecutrix is minor, it is necessary to know her date of birth but because she is younger to her, therefore, she is minor.

27) PW-9 Dr. Shabeena has described age of the prosecutrix as 17 years on the basis of matriculation certificate. She has not conducted any medical tests upon the prosecutrix for ascertaining her age.

28) From the aforesaid evidence on record, it is clear that age of the prosecutrix has not been proved conclusively. None of the aforementioned witnesses has any knowledge about either exact date of birth of the prosecutrix or even about her year of birth. Therefore, the statements of these witnesses as

regards the age of the prosecutrix are not of any help. The date of birth certificate, EXTPW-7 cannot be relied upon because the basis of recording particulars in the said certificate is not known. It is not a case where father of the prosecutrix has made a statement that it is he who has got the date of birth of the prosecutrix recorded in her admission Register but it is a case where even the father does not remember the date of birth of the prosecutrix. The sister of the prosecutrix is also unaware about her date of birth. It can, thus, safely be stated that the prosecution has failed to establish that the prosecutrix was minor as on the date of the occurrence.

29) It is a settled law that burden is upon the prosecution to prove that the prosecutrix was minor at the time of the occurrence. Like any other ingredient of the offence for which an accused is charged, the ingredient with regard to age of the prosecutrix has also to be established by the prosecution beyond reasonable doubt. In the present case, the prosecution has not been able to prove beyond reasonable doubt that the prosecutrix was less than 18 years of age at the time of alleged occurrence.

30) The learned trial court has grossly erred in relying upon the certificate, EXPW-7, without realizing that there is no basis for recording of particulars in the said certificate and

even the father and elder sister of the prosecutrix have been unable to make any cogent and convincing statement with regard to age of the prosecutrix. The finding of the learned trial court that the prosecutrix was minor at the relevant time is, therefore, not sustainable in law.

31) Once it is held that the prosecution has failed to prove that the prosecutrix was minor at the time of the occurrence, the established fact that she had accompanied the appellant out of her own will and that she had developed physical relations with him out of her free will and volition, goes on to show that it was a case of love affair between the two young persons which culminated in physical relations between the parties out of their own will and volition. Thus, it cannot be termed as a case of statutory rape.

32) It seems that because of adamant attitude of the family of the prosecutrix, the love affair between the two young persons culminated in a criminal prosecution against the appellant. The Supreme Court in the case of **State of Uttar Pradesh vs. Anurudh & anr.** 2026 LiveLaw (SC) 29, has, in the context of misuse of POCSO Act, highlighted the grim societal chasm. In this context the Court took note of the several instances of application of POCSO Act, working harshly on consenting adolescence teenagers when it comes to consensual relationship between teenagers. The Supreme

Court has noted that Allahabad High Court has in the case of **Satish alias Chand vs. State of UP** (Crl. Mis. Bail Application No.18596 of 2024) highlighted the factors required to be considered by the Courts while dealing with cases relating to relationship between teenagers. The same are reproduced as under:

- A. Assess the Context: Each case should be evaluated on its individual facts and circumstances. The nature of the relationship and the intentions of both parties should be carefully examined.*
- B. Consider Victim's Statement: The statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution.*
- C. Avoid Perversity of Justice: Ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts. Here the age comes out to be an important factor.*
- D. Judicial Discretion: Courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect.*

33) When we test the established facts of the instant case on the touchstone of afore-quoted factors, it becomes clear that the victim has admitted having entered into physical relationship with the appellant with her free consent. It is also clear that there was a love affair between the two and they were studying in the same school. Thus, even if it is assumed, though not proved, that the victim was less than

eighteen years of age, still then in the facts and circumstances of the case the appellant cannot be convicted of offence of rape and imprison him as the same would be unjust. Considering the closeness of age of the victim and the appellant and the fact that she had accompanied him out of her own accord because of her affection for him, putting the appellant behind the bars would be perversity of justice. The conviction recorded by the learned trial court, in the aforesaid circumstances, is not sustainable in law. The same, therefore, deserves to be set aside.

34) Accordingly, the appeal is allowed and the impugned judgment of conviction and the order of sentence are set aside. The bail bonds and surety bonds of the appellant are discharged. The appellant, who is in custody, is directed to be released from custody forthwith, if not involved in any other case.

35) The trial court record along a copy of this judgment be sent back to the learned trial court for information.

**(Sanjay Dhar)
Judge**

SRINAGAR

24.04.2026

“Bhat Altaf-Szeg”

Whether the **Judgement** is speaking: **YES**

Whether the **Judgement** is reportable: **YES**