

**IN THE COURT OF SH. DHARMESH SHARMA,  
ASJ-01, NEW DELHI DISTRICT, PATIALA HOUSE  
COURTS, NEW DELHI.**

**ID No. 02403R0104412013**

**Date of filing of charge sheet : 14.08.2013  
Date of framing of charge : 16.09.2012  
Date of final arguments : 07.10.2013  
Date of judgment : 08.10.2013**

**SC No. 113/13  
FIR NO. 15/13  
PS Inder Puri  
U/s 363/366/376 of IPC & Sec. 8 of POCSO Act**

**In re:**

**STATE**

**Vs.**

**SURESH KUMAR  
S/O SH. ASHOK KUMAR  
CN-102, JHUGGI GAS GAUDAM, TODAPUR,  
NEW DELHI.**

**APPEARANCES**

**Present : Mr. Mukul Kumar, Ld. APP for the State.  
Sh. Suresh Chand Sisodia, Advocate for the accused  
nominated by New Delhi Legal Services Authority.  
Ms. Kalpana, Ld. counsel from CWC.**

**08.10.2013**

**JUDGMENT**

1. The instant case racks up a perennial problem being faced by all of us on the judicial side: What should be the judicial response to elopement cases like the instant one in the face of stringent provisions of the POCSO Act, 2013. This life drama is enacted, played and repeated everyday in the Police Stations and Courts: Boy meets a girl, the stupid cupid strikes, they fall in love,

the Mother Nature responds and biological urges are arisen and they become physical against all societal norms in a sexually repressive or regressive society like ours. Some decide to elope to find solace away from their families as to them their over protective parents can not understand their feelings. They think of living in a dream world where there will always be happiness, joy, fun, musti and no one else to bother them. The exposure to films, T.V, Internet, porn, love songs, literature etc. is highly explosive creating a demonstrative effect on their imaginative but immature minds. The whole scenario is getting out of control.

2. Of course WE, the so called mature people, (who have made this country highly volatile) speak from experience that teens should not do this or should not do that. We can preach all words of wisdoms to these teenagers/adolescent: that the teens/adolescents are not mature enough to rationally understand that there is a huge difference between love, infatuation and a truly pious commitment to a relation; that they do not understand what kind of responsibilities shall fall on their shoulders; that unsafe sex and teenage pregnancies are fraught with dangerous consequences; that it shall have adverse consequence upon their mental, physical, psychological health and upbringing besides educational and economic well being. Yet the teens/adolescent takes such risks at enormous personal costs. It is an insurmountable task to stop them from experimenting with such kind of relationship. Above all, the Justice System works in a way that is plainly unjust, inhuman and insensitive. Words of wisdom to the teens/adolescent are more often than not fall to their deaf ears because 'Laws of Attraction" works in mysterious ways.

### **FACTS**

3. This case is a teenage love drama where our dysfunctional cruel society and the justice system have separated

the two love birds and have taught them a bitter lesson. PW1 is a minor girl, her date of birth is 05.10.1996, as per her School record, where she studied till sixth standard and thus hardly sixteen and three months old at the relevant time. She hails from a poor background from a village in District Muzaffarpur, State of Bihar and came to Delhi with her elder brother PW2 in Delhi to reside with their maternal uncle and aunt. Accused, about 19 years of age became friendly with their family and PW1 fell in love with him. PW1 in her statement u/s 164 Cr. P.C Ex. PW1/B and also in her evidence before the Court testified that the relation was resented by the maternal uncle and aunt and at their instance her brother used to scold, abuse and committed physical cruelty.

4. PW-I took up the matter with accused and they got married on 19.01.2013 in Hanuman Temple at Punchkuyian Road and eloped together to the native Village of accused in District Samastipur, State of Bihar where they cohabited as husband and wife for about four months. However, their life got disturbed since PW2 had filed a complaint Ex. PW2/A with the police on 19.01.2013 about his missing sister and alleging that the accused had taken her away as they were adamant to get married despite the objections of his family members.
5. On being informed that an FIR has been registered and the Police has been looking for them, accused and PW1 were compelled to arrive back in Delhi. Accused was immediately arrested on 06/05/2013 vide memo Ex. PW2/B and remained in judicial custody till 26.07.2013. PW1 was subjected to medical examination and as per MLC Ex. PW1/A was found to be in her second month of pregnancy. In her statement u/s 164 Cr. P.C Ex. PW1/B she reiterated her love for the accused, stated that they got married and rather alleged that her elder brother, maternal uncle and Aunt threatened to burn her face with acid in case she had

anything to do with Accused.

**CHARGE**

6. As usual, the Police was the State villain and after conclusion of the investigation filed the charge sheet and the accused has been arraigned for trial on the charge of kidnapping the girl child with the intention to confine/detain and marry her u/s 363 and 366 of the I.P.C besides for committing offence of “penetrative sexual assault” u/s 4 of the POCSO Act. Needless to state, the accused pleaded not guilty and claimed trial.

**PROSECUTION EVIDENCE**

7. The Prosecution in order to prove its case examined the girl child as PW1 and her brother PW2 who lodged the missing report on 19.01.2013 Ex. PW2/A.
8. Having regard to the evidence led by the two witnesses, the admitted position as regards the findings in the medical examination of the accused as also the girl child PW1, this Court closed the evidence of the prosecution as examination of formal witnesses viz., constable and IO to my mind would not have yielded any result and would have been wastage of time. The statement of the accused under section 313 Cr. P.C was also dispensed with as I am unable to persuade myself to find any incriminating evidence against him on the record.
9. I have heard the Ld APP for the State and Ld. defence counsel for the accused. I have gone through the oral and documentary evidence brought on the record.

**APPRECIATION OF EVIDENCE**

10. Without much ado, I find the accused not guilty of any of the charges. Indeed the girl child was less than 17 years of age at the time she decided to elope, marry and cohabit with the accused. Accused did not kidnap her as she willingly accompanied him and the ratio of the case **Varadarajan v. State of Madras, 1965 (2) CRI.**

**L. J. 33 (Vol. 71, C. N. 7)**, wherein the law on kidnapping was explained in somewhat similar contextual circumstances is as under:

The fact of her accompanying the accused all along is quite consistent with her own desire to be the wife of the accused in which the desire of accompanying him wherever he went is of course implicit. Under these circumstances no inference can be drawn that the accused is guilty of taking away the girl out of the keeping of her father. She has willingly accompanied him and the law does not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. (Para 7)

There is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though it cannot be laid down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of S. 361. Where the minor leaves her father's protection knowing and having capacity to know the full import of what she is doing, voluntarily joins the accused person, the accused cannot be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him. In the formation of the intention of the minor to leave the house of the guardian. (Para 8)

11. At the cost of repetition, the said observations are squarely applicable in the instant case except that here is a case where PW1 left the protective custody of her brother. Similarly, the case under section 366 of I.P.C is also not made out since there is no evidence that the girl child was compelled to marry with someone against her will or forced or seduced to illicit sexual intercourse. I may hasten to add that at the time she decided to elope with the accused on 19.01.2013, she had the capacity to give consent for sexual intercourse as she was above 16 years of age and accused was protected by virtue of clause sixthly to Section 375 of I.P.C.
12. Now Section 3 of POCSO Act is quite a stringent and exhaustive provision that provides as under:

**3. Penetrative sexual assault-** A person is said to commit “penetrative sexual assault” if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

13. It may be seen that the word “assault” is not defined under the POCSO Act but it is defined u/s 351 of IPC to mean “*any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person*” Offence of “criminal force” is defined u/s 350 of IPC to mean “*intentional use of force to any person, without that person's consent, in order to committing of any offence, or intending by the use of such force to cause or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance*”.

14. It may be stated that while interpreting any provision of a Statute we must have regard to the fact that every part of the statute is meaningful and effective, which is expressed in the legal maxim *ut res magis valeat quam pereat*. Further, plain words should be read having due regard to their normal import, statutory setting, professional object and insistence on standards. The genesis of the present enactment lies in India being signatory to the **Convention on the Rights of the Child** adopted by the General Assembly of the

United Nations dated 11<sup>th</sup> December, 1992 whereby it was resolved that the State Parties to the Convention are required to undertake all appropriate national, bilateral and multilateral measures to prevent-

- a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- b) the exploitative use of children in prostitution or other unlawful sexual practices;
- c) the exploitative use of children in pornographic performances and materials;

15. Further, a meaning perusal of the objects and reasons of the POCSO Act would show that the present enactment aims to curb such acts of sexual assault or harassment that are likely to bring an irreparable impact on the mental, physical and psychological health, freedom and dignity of a child. Thus, bare perusal of the said provision provides that sexual intercourse with a child is punishable u/s 4 of the POCSO Act provided it is in the nature of an 'assault'. Suffice to state that the girl child PW1 in her evidence categorically testified that accused did not subject her to any kind of cruelty, fear, coercion, undue influence nor he intimidated her in any manner and it is nobody's case that she was exploited in any manner.

16. It must be stated that in case of critical age between 16 years to 18 years, Section 4 of the POCSO Act has to be interpreted distinguishing between an act which is *per se* criminal for being in the nature of coercion, fear, inducement or exploitation committed upon a child from an act which would otherwise criminalize a person for having done something which is without any malice, ill will or ulterior motives.

17. However, Ld APP has raised a pertinent issue and rightly so that the parties had not married as per customary rites or ceremonies and no 'satpadi i.e Satpheras' were performed. Indeed

PW 1 testified that accused had merely applied sindoor on her forehead and they got married in the temple. Well there was no pandit or pujari nor were any ceremonies performed.

18. There is no law that mandates that poor and ignorant persons can not fall in love and/or can not join in a matrimony or communion. I read somewhere a meaningful quote that *“Love knows no reason, no boundaries, no distance. It has a sole intention of bringing people together to a time called forever”*. In the said contextual background, their relationship or communion is not without some legal recognition and protection as the Protection of Women from Domestic Violence Act, 2005, even recognizes live-in-relationship under the head “domestic relationship” within the meaning of section 2(f) of the Act. . Given the fact that PW1 is in a family way arising out of continuous cohabitation with the accused, there are available certain reciprocal rights and duties to them that are enforceable in law. **Whether this “zaleem society” recognizes or not, for all practical purposes they are a married couple.**

19. What amazed me including the legal functionaries during this trial is that while the family of PW1 has disowned her, the accused has been meeting the girl child in Nirmal Chhaya dutifully as per the report of the Chairperson, CWC. PW1 too in her testimony before the Court categorically stated that she wants to go back with her husband.

**FINAL ORDER**

20. In the said view of the discussion, I find that the prosecution miserably fails to prove the guilt of accused Suresh Kumar. Accused Suresh Kumar is hereby acquitted of all the charges in the present case. His Personal Bonds is cancelled and Sureties is discharged.

21. Before parting, the road ahead shall be difficult for the girl and the accused boy and all the legal functionaries preached

words of wisdom to both the girl and the boy. There is no guaranty that their relation shall be a success. Rather, there can never be such a guaranty even in cases of mature adults too. It is their belief that they will make it a success that matters.

22. In view of decision by the High Court of Delhi in the case of **Jitender Kumar Sharma v. State, WP (Cri) No. 1003/2010** dated 11.08.2010 as the girl child has been disowned by her family members, the welfare of the child girl demands that she should allow to join with her husband/ accused who falls in the category of a lawful guardian. Thus, PW-1 girl child is ordered to be set at liberty from the Nirmal Chhaya forthwith to join her husband.
23. File be consigned to Record Room.

**ANNOUNCED IN THE OPEN COURT  
TODAY i.e 08.10.2013**

**(DHARMESH SHARMA)  
ASJ-01/PHC/NEW DELHI  
08.10.2013**

**SC No. 113/13**

**STATE Vs. SURESH KUMAR**

08.10.2013

Present : Mr. Mukul Kumar, Ld. APP for the State.  
Mr. Asim Ali, Legal Aid Counsel representing Sh. Suresh Chand Sisodia, Advocate for the accused nominated by New Delhi Legal Services Authority.  
Ms. Kalpana, Ld. counsel from CWC.

Vide separate judgment of even date, I find that the prosecution miserably fails to prove the guilt of accused Suresh Kumar. Accused Suresh Kumar is hereby acquitted of all the charges in the present case. His Personal Bonds is cancelled and Sureties is discharged.

In view of decision by the High Court of Delhi in the case of **Jitender Kumar Sharma v. State, WP (Cri) No. 1003/2010** dated 11.08.2010 as the girl child has been disowned by her family members, the welfare of the child girl demands that she should allow to join with her husband/ accused who falls in the category of a lawful guardian. Thus, PW-1 girl child is ordered to be set at liberty from the Nirmal Chhaya forthwith to join her husband.

A copy of this order be sent to the Superintendent/ Chairperson, Nirmal Chhaya for information and necessary compliance.

File be consigned to Record Room.

**(DHARMESH SHARMA)**  
**ASJ-01/PHC/NEW DELHI**  
**08.10.2013**