

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Judgment Reserved on 9.7.2025

Judgment Delivered on 4.8.2025

Court No. - 78

Case :- CRIMINAL APPEAL No. - 608 of 1983

Appellant :- Dharam Pal

Respondent :- State of U.P.

Counsel for Appellant :- Keshav Sahai, Santosh Kumar Dubey

Counsel for Respondent :- Govt. Advocate

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Santosh Kumar Dubey, learned Amicus Curiae for the appellant and Sri S.K.Ojha, learned AGA for the State.

2. The instant criminal appeal has been filed by the appellant- Dharam Pal against the judgment and order dated 28.02.1983 passed by the VIII Additional District and Sessions Judge, Ghaziabad in Session Trial No. 190 of 1982 (State vs. Dharam Pal) whereby the appellant herein was convicted for the offence under Section 376 IPC and was sentenced to undergo seven years rigorous imprisonment with a fine of Rs. 2,500/- and in default of payment of fine, he was further directed to undergo for rigorous imprisonment for a period of one year.

3. Briefly stated the prosecution story is that in the evening of 16.12.1981, the victim, P.W.1 along with her elder brother Sushil had gone to the fields of Village Kotla for chewing sugar cane and also to ask Sardar (person who was operating the tube well) for providing water in their field. After chewing the sugar cane the victim went for easing in the field of her uncle. Thereafter, while she was washing her hands, the accused Dharam Pal arrived there and dragged her to the nearby field of sugar cane and lay her down on the ground and committed rape on her. At the time when the accused has taken away the victim in the sugar cane field, her brother was

also present who has witnessed that the accused was taking her towards the sugar cane field for commission of rape. When he objected this act of the accused, he kicked him and threatened that if he would raise any alarm, he would be killed. After committing rape on the victim, the accused ran away from the spot. The P.W.1 was soaked with blood and the blood started oozing out from her vagina. The P.W.2, brother of the victim carried her from the field to the village where the victim had fallen unconscious. The entire story was narrated by P.W.2 to his mother and in the night when P.W.3 the father of victim came around 9:00 -10:00 P.M., P.W.2 narrated the entire story to his father as well. The P.W.3 having seen his daughter lying unconscious in the house and found her underwear soaked with blood, he approached the Pradhan of the village and some other persons of the village and went to the house of the accused who was absent from his house. Thereafter, the P.W.3 father of the victim along with other villagers took her to the police station along with P.W.2 and reported to the Head Constable Madan Pal Singh P.W.5. Looking at her condition, the victim was sent to the hospital for medical examination and treatment. P.W.3 was asked by the Head Constable Madan Pal Singh to give a written report. Therefore, the P.W.3 prepared the written report on the narration of P.w.2 Sushil and on the basis of which the FIR was registered.

4. The medical examination of the victim was conducted by P.W.4 Dr. S.M. Tandon, Medical Officer, Female Hospital, Ghaziabad. Thereafter the investigation was assigned to P.W.6, S.I. Sri Rajendra Verma, who recorded the statement of P.Ws. 2 and 3 in the hospital where the victim was admitted. The statement of victim was not taken on the said date as the doctor advised not to pressurise her for recording her statement as she was under shock. Thereafter he searched for the accused and arrested him on 18.12.1981 at 5:00 P.M. and subsequently on 20.12.1981, the statement of victim was recorded. The P.W.3 had also taken away the Investigating Officer to

the village and police station and provided blood stained underwear of the victim to the Investigating Officer. The spot was inspected and the site plan was prepared.

5. After receiving the report of medical examination, the Investigating Officer concluded the investigation and submitted the charge sheet for the offence under Section 376 IPC against the appelllant herein.

6. Thereafter the case was committed to the Sessions Court and the charges were framed against the appellant. He denied the charges and framed trial stating that he has been falsely implicated on account of enmity of the father of victim with his father Beli Ram. The reason for enmity has been explained by the appellant is that his father had entered into an agreement of sale of an immovable property with the father of the victim for a sum of Rs. 6,000/-, out of which a sum of Rs. 3,000/- was paid by the father of the victim as earnest money. Subsequently, his father got a sum of Rs 12,000/- for the same land and sold the said property to some other person. Being annoyed by the same, the instant case has been lodged by the father of the victim against the appellant herein. In support of the prosecution case, the following documents were produced namely:

- (a) Written report of the occurrence,
- (b) The memo of recovery of blood stained underwear of the victim,
- (c) Medical examination report dated 16.12.1981,
- (d) Supplementary medical report of victim dated 23.12.1981,
- (e) The FIR dated 17.12.1981,
- (f) GD extracts regarding the FIR,
- (g) Site plan with regard to the place of occurrence and
- (h) The charge sheet dated 01.01.1981

7. Further, in support of the prosecution case, the prosecution examined victim as P.W.1, P.W.2 who is the elder brother of the victim, P.W.3 informant and the father of the victim, the P.W.4 Dr. S.M. Tandon, Medical Officer of Women's Hospital, Ghaziabad, P.W.5 Head Constable Madan Pal Singh and P.W.6 S.I. Rajendra Verma. In defence, no documents were produced by the defence. However, D.W.1 Sri Sewa Nand Varma, Headmaster of primary pathshala, Maharauli was examined as defence witness. P.W.1, P.W.2 and P.W.3 have supported the averments as made in the FIR, which are corroborated by the medical examination report, which is proved by Dr. S.M. Tandon, P.W.4. From the medical examination report, Dr. Tandon found a half an inch long tear upon fourchette and posterior commissure and fresh bleeding was oozing from that tear. Dr. Tandon also found that the hymen of the victim was freshly torn. Redness and swelling was also present over the labia minora and majora. The clotted blood was present upon both thighs, posteriorly labia minora and majora. As per the further examination, it was observed in the medical report that the vagina of the victim with great difficulty and pain admitted only tip of little finger. The x-ray of the victim was also conducted to determine the age of victim and as per the x-ray examination report, the age of the victim was found to be below nine years. The medical examination report further confirmed that the injuries in her vagina were inflicted by some soft and blunt object and rape like act had been committed against her. The medical examination of the victim was conducted within six hours from the rape committed against her.

8. The trial court after completing the trial, has convicted the appellant herein for the offence under Section 376 IPC and sentenced him to undergo seven years rigorous imprisonment with a fine of Rs. 2,500/- and in default of payment of fine, he was further directed to undergo for rigorous imprisonment for a period of one year.

9. Learned counsel for the appellant submits that at the time of commission of offence as alleged against the victim, the appellant was aged about 13 years, which has been confirmed by D.W.1, the Headmaster of the primary school. Learned counsel for the appellant submits that the appellant was entitled for benefit of Protection of U.P.Children Act, 1951. In view thereof, as per Section 27 of the said Act, the sentence of imprisonment cannot be passed against him. It is further submitted by learned counsel for the appellant that as per the prosecution, P.W.2 the brother of the victim was present and he had not raised any alarm, which appears to be unnatural. It is further submitted that the appellant herein was falsely implicated in the instant case due to the dispute between the father of the victim as well as the father of the appellant with regard to property transaction between them. It is further submitted that as per the medical examination report the victim has not sustained any injury on any other part of the body. Therefore, it cannot be said that it was an act of forcible rape upon the victim. Thus, learned counsel for the appellant submits that the conviction and sentence of the appellant is unsustainable, therefore, the appeal deserves to be allowed and the appellant deserves to be acquitted in the instant case.

10. Per contra, learned AGA submits that from medical evidence available on record, the prosecution case is fully supported. At the time of admission in the hospital, the victim was unconscious and after regaining the consciousness next day, her statement was recorded by the Investigating Officer. There was no occasion for any tutoring of the victim and looking at the age of the victim, on tutoring she could not have narrated the story in detail as she had done in her deposition, therefore, the deposition of the victim inspires confidence, which is duly corroborated by the medical evidence. Therefore, it was the appellant and none else who has raped upon the victim. So far as non-intervention of the P.W.2 who is the brother of the victim is concerned, the same has been

explained in the depositions of P.W.1 and P.W.2. The age of P.W.2 at the time of incident was 11 years and he was also a minor child who was threatened and kicked by the appellant when he tried to make a noise and resist the appellant taking away her sister. Looking at his tender age and threat perception, it cannot be said that he was not present on the spot or he had not seen the appellant taking away his sister. As per the observation as recorded by the trial court, the age of the appellant at the time of commission of rape was 18 years. Therefore, there was no illegality in his trial by the Sessions Court and sentencing him to the imprisonment as per the U.P. Children Act, 1951. As per Section 2(4) of the said Act, the “child” means a person under the age of sixteen years, therefore since the appellant was more than 16 years at the time of commission of offence of rape, no protection as provided under Section 27 of the said Act was available to the appellant herein. Therefore, there is no illegality in the conviction and sentence of the appellant and the appeal deserves to be dismissed.

11. P.W. 1, the victim has stated in her deposition that she has two brothers. Name of elder brother is Kamal and younger brother is Sushil along with whom, she had gone to sugar cane field for chewing the sugar cane and after chewing the sugar cane, she had gone for easing out to the corn field of her uncle. After defecation, she was washing her hand and at that time, the appellant herein came there and pulled her towards the sugar cane field and laid her on the ground, pull out her underwear and by pushing his penis on her vagina committed rape. While he was pulling her towards the field, then her brother resisted and protested him, whereupon the appellant had kicked him also and threatened him to kill. Her underwear was stained with blood and blood was oozing out from her vagina. Her brother Sushil had taken her on his back to the village and she had become unconscious in the house and she regained consciousness in the hospital. The incident was told by his brother to his parents. Her

mother had instructed her to go to the field for supply of water. She often goes to the fields sometimes alone and sometimes with her brother. When she proceeded to the field, it was evening and the sun was about to set. When she reached the field, it was a dark, they were chewing the sugar cane, it has become darker, the appellant pulled her in the sugar cane field and the accused laid her in the field where the crops were standing. While committing rape, he also closed her mouth. The accused had committed rape about two minutes and thereafter went away, then her brother came there and he took her on his back. When she came to the house, she became unconscious. She could not tell anything to anyone. She regained consciousness in the hospital next day. When she became conscious, her father and the Police Inspector were present there. The father of victim told her to narrate the entire story to the Police Inspector and the incident, which took place with her. She denied the suggestion that she sustained injury on her vagina by the stem of corn in the field. In her deposition, she had also stated that her underwear was removed by the accused and when her brother has taken her to home, he had taken the underwear in his hand. Thus, she has supported the entire prosecution story in great detail.

12. So far as the carrying of underwear is concerned, the P.W.2 deposed that though the accused has removed the underwear of the victim, however the same was hanging on the leg of her sister and while carrying her sister to home, he had put on the underwear of her sister. He also stated that the accused had kicked him while he was protesting the accused taking away her sister and due to fear he stopped near the drain. On query P.W.2 stated that he had gone only when the accused asked him to go home as he would kill him. Her sister was unconscious while taking home. After knowing everything the father of victim went to police station where the report was lodged.

13. Similarly P.W.3 has also supported the incident as narrated by P.W.1 and P.W.2. The P.W.3, father of the victim has denied any transaction with regard to the property or deal of property with the father of the accused. Though he admitted that a land which was situated between the house of the deponent and the house of the father of the appellant, the same was sold after six months of the incident to some other person. Therefore, since there was no deal with regard to any property with the father of the appellant, there was no occasion for P.W.3 to falsely implicate the appellant herein.

14. P.W. 4 is Dr. S.N. Tandon who has duly supported the medical report, as has already been narrated herein above and as per the opinion of the doctor, the injury caused to the victim was caused due to the rape committed upon her. Her age was less than nine years. The medical examination of the victim was conducted on the date of incident itself in the night.

15. P.W. 5 is the formal witness with regard to the recording of the FIR and the entries made in the GD.

16. P.W. 6 is the Investigating Officer who has supported the case of the prosecution as already recorded herein above.

17. After completion of the prosecution witnesses, the statement of the accused-appellant was recorded under Section 313 Cr.P.C., in which he has denied the charges and stated false implication due to a deal with regard to the land transaction between the father of the applicant and the father of the victim.

18. D.W. 1 Sewa Nand Sharma is the Headmaster of a primary school who has submitted that he had brought the admission register of Primary Pathshalasince 1971 to 1980 and as per the said register, the entry of admission of appellant is made at serial no. 1299. According to the said register, the date of birth of the appellant was recorded as 10.01.1968. In the cross – examination, he admits that page no. 9 of the said register is blank. Page-4 to 99 was also blank.

When the S.D.I. signed against serial no. 1 to 99, he could not tell anything in page no.6, last four lines are blank at page-7, after serial no. 1184, serial no.1188 is mentioned and thereafter again at page no. 8 serial no. 1188 is mentioned. Below the signatures of Principal and S.D.I., no stamp was fixed. Page no.11 urges that after serial no. 1231, two lines are blank and thereafter serial no. 1436 is mentioned at page no.12. After serial no. 1254, serial no. 1250 is mentioned and after serial no. 1251 serial no.1249 is mentioned and thereafter serial no.1259 and 1257 has been mentioned. Thereafter serial no.1255 is mentioned. The entry no. 1298 is made with the purple ink whereas entry no. 1200 to 1300 are also made with the purple ink and page no. 1299 is with the blue ink. He further stated that he was the Headmaster and he was having knowledge of making entry in the admission register and giving T.C. However, in the register, which has been produced by the witness, no such entries were found.

19. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the Case. From the record of the case, it is apparent that at the time of the offence the age of the victim was nine years as per the medical examination report of the victim on the basis of x-ray. She has deposed before this Court in detail with regard to the manner in which the incident was committed by the appellant against the victim and nothing has come in his cross examination. The testimony of victim is duly supported by P.W.2, the brother of the victim and further the story of prosecution is supported by P.W.3 and the prosecution story is duly corroborated by the medical examination report and deposition of P.W.4 Dr. S.M.Tandon.

20. Thus from the aforesaid evidence available on record, it is undisputedly proved that the rape was committed upon the victim, which has been duly stated by the victim who was aged about nine years and her statement was recorded by the Investigating Officer

immediately after she regained consciousness. Therefore, there was no occasion of anybody tutoring her. Therefore, her testimony is a reliable testimony, which cannot be doubted and she has categorically implicated the appellant herein and has narrated the entire incident in detail that how and when the appellant had committed rape upon her. The allegations as made by the victim are duly supported by the medical evidence and the injuries sustained by her during the incident of rape. Therefore, it is undoubtedly clear that the rape was committed by the appellant upon her and none else upon the victim.

21. So far as the age of the appellant is concerned for which the D.W.1 was examined on behalf of the defence and he had brought the admission register on the basis of which he has stated that the age of the appellant at the time of commission of rape was 10.01.1968 meaning thereby at the time of incident on 16.12.1981, the age of the appellant was alleged to be 13 years. The said admission register has been disbelieved by the trial court looking at the discrepancies which have been brought on record in the statement of D.W.1 itself during the cross-examination and it shows that the said register was not being maintained properly in due process and was being selectively made and the various blanks were left in the register and entries were made selectively afterwards. Therefore, no reliance can be placed on the admission register as contended on behalf of the appellant. No evidence has been led other than this to prove the age of the appellant. However, the trial court has concluded that the appellant appears to be aged about 18-19 years. Therefore, the benefit of U.P. Children Act, 1951 is not available to him.

22. The appellant has failed to bring on record any other evidence to prove that he was less than 16 years of age at the time of incident. The admission register, which was placed on record has been rightly

disbelieved by the trial court. In the absence of any evidence available on record with regard to the age of the appellant, it cannot be concluded that he was less than 16 years of age. Therefore, he is not entitled for any benefit under the provisions of U.P. Children Act, 1951.

23. In view thereof, this Court does not find any illegality in conviction of the appellant. The sentence awarded to the appellant, which is a minimum sentence, which was applicable on the date of incident for the offence under Section 376 IPC for which the appellant has been convicted.

24. In view thereof, this Court do not find any illegality in the conviction as well as the sentence awarded to the appellant herein.

25. In view thereof, the instant appeal is **dismissed**.

17. The bail bonds of the appellant are cancelled.

18. The appellant **Dharam Pal** is on bail. C.J.M. Ghaziabad is directed to take him into custody in the aforesaid case and send him to jail to serve out the remaining sentence as was awarded by the trial court and is being affirmed by this Court.

19. Office is directed to send a copy of this order to the court concerned within a week for compliance along with the Lower Court Record. The compliance report shall be sent by the court concerned to this court within a further period of fifteen days.

Order Date :- 4.8.2025

Ashish Pd.

(Anish Kumar Gupta, J.)