

Neutral Citation No. - 2025:AHC:70762-DB

Judgement Reserved on 28.04.2025

Judgement Delivered on 05.05.2025

Court No. - 45

Case :- CRIMINAL APPEAL No. - 106 of 2002

Appellant :- Saiyad Irshad Ali

Respondent :- State of U.P.

Counsel for Appellant :- Tej Pal, Azad Khan, J.P.

Tripathi, M.C. Chaturvedi, N.C. Nishad, S.C. Dwivedi, Sukhendru Pal Singh

Counsel for Respondent :- D.G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Sandeep Jain, J.

1. Heard Sri Azad Khan, learned counsel for the appellant and Sri Vikas Goswami, learned AGA for the State.
2. Present criminal appeal arises from the judgment and order dated 05.12.2001 passed by Sri K.K. Sharma, learned Special Judge (SC & ST Act)/Additional Sessions Judge, Jalaun at Orai in Sessions Trial No. 49 of 1999 (State Vs. Saiyad Irshad Ali), under Sections 376 IPC and Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station – Kotwali Orai, District – Jalaun. By that order the learned trial court has convicted the appellant and sentenced him to undergo life imprisonment for the offence under Section 376 I.P.C. read with Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
3. The prosecution story emerged on the strength of a Written Report dated 02.04.1999 submitted by 'O', the father of the victim 'X' at Police Station – Kotwali Orai, District - Jalaun. In that, 'O' (P.W.-1 at the trial) narrated that the appellant was an acquaintance of his tenant 'P'. Both worked at a 'Gutka' factory. On 01.04.1999 when 'P' was not present at his rented accommodation, the present appellant who was present in the

room called 'X' inside the room at about 6-7 p.m. and offered her, toffee and committed rape on her. On hearing her cries for help, the wife of 'O' namely 'A' (P.W.-2 at the trial) rushed to the room of 'P' and saw the occurrence. However, the appellant escaped. 'A' rushed to the place of work of 'O', namely a textile shop. On reaching home, 'O' took 'X' to the government hospital but was asked to return the next morning for treatment to be offered to 'X'. The Written Report is Ex.Ka-1 at the trial. On that Written Report, the F.I.R. was registered as Case Crime No. 159 of 1999 at Police Station – Kotwali Orai, District - Jalaun on 02.04.1999 at about 11:15 a.m. The F.I.R. is Ex.Ka-5A at the trial. On 02.04.1999, the undergarment of 'X' was recovered. That Recovery Memo is Ex.Ka-8 at the trial. That undergarment of 'X' was sent for forensic examination to the Forensic Science Laboratory. Also, on 02.04.1999, 'X' was subjected to medical examination by Dr. Sushila Verma (P.W.-6 at the trial). In that, the following internal injuries were noted :

***"Internal Examination** – Blood clots seen surrounding vaginal opening. Fresh blood oozing from vagina. Vaginal smear taken sent to pathologist for the presence of spermatozoa. Vaginal opening red in colour & oedematous MI. A brownish black mole present on the right side of neck about 3 cm above the collar bone."*

The said injury report is Ex.Ka-4 at the trial.

4. On 03.04.1999, the vaginal smear report was submitted by the pathologist Dr. Mohini Saxena (P.W.-5 at the trial). She expressed opinion in the negative as to presence of spermatozoa. That report is Ex.Ka-3 at the trial. On 06.04.1999, X-ray report was prepared by Dr. M.C. Mittal (P.W.-4 at the trial) to determine the radiological age of 'X'. He opined her age to be about 5 years. That report is Ex.Ka-2 at the trial.

5. The Investigating Officer, Sri Rajendra Singh Malik (P.W.-9 at the trial) started the investigation. On completion of investigation, A.K. Hingwasiya (P.W.-7 at the trial) submitted the charge-sheet, which is Ex. Ka-5 at the trial.

6. Upon the case being committed to the trial by the Court of

Sessions, the following charge was framed against the appellant :

"यह कि दिनांक 01.04.99 को समय लगभग 6-7 बजे शाम बहद मुहल्ला बघौरा कस्बा व कोतवाली उरई जिला जलौन में स्थित वादी मुकदमा 'O' के मकान में आपने वादी मुकदमा की 5-6 वर्षीय अबोध पुत्री 'X' के साथ बलात्संग किया और यह कार्य यह जानते हुए किया कि उक्त 'X' अनुसूचित जाति की है और इसके द्वारा आपने ऐसा अपराध किया जो अंतर्गत धारा 376 भा०दं०सं० सपठित धारा 3(2)(5) अनुसूचित जाति एवं अनुसूचित जन जाति (उत्पीड़न निवारण) अधिनियम 1989 दण्डनीय है और इस न्यायालय के संज्ञान में है। और एतद्वारा आपको निदेशित किया जाता है कि उक्त आरोप में आपका परीक्षण इस न्यायालय द्वारा किया जाएगा।"

7. At the trial, besides the above documentary evidence, the prosecution led oral evidence through nine witnesses.

8. First, 'O' was examined as P.W.-1. He proved the F.I.R. and the fact that he was informed about the occurrence by his wife 'A'. He ran to his residence and found 'X' lying nude on a bed in the room where the appellant had caused the occurrence. He took 'X' to one Dr. Shiv Kumar Gaur (not examined at the trial). He also proved, from there he took 'X' to a Women's Hospital at Orai. There, the doctors advised him to first get the F.I.R. registered before treatment could be offered, as 'X' had suffered rape. In such circumstances, he first got the F.I.R. lodged, the next day by reaching the Police Station at about 7:30 - 8:00 a.m. Thereafter he took 'X' to the hospital for treatment. In that he further disclosed that he was accompanied by a women constable. He described that the offence was discovered by 'A' on hearing 'X' cry out for help. He also stated that the occurrence had been seen by others namely Hariom, Sushil Kumar and other neighbours (not examined at the trial). However, it is true that 'O' is not an eye-witness of the occurrence. During his cross-examination, he maintained his stand as proven during his examination-in-chief.

9. Thereafter, 'A' was examined as P.W.-2. She proved that the occurrence took place around sunset, when she was preparing meal for the family. She heard 'X' cry out for help. Hearing the cry she reached

the place of occurrence and found the appellant committing rape on 'X'. On her calling for help, Sushil and Om Prakash (not examined at the trial) reached the place of occurrence. On being thus caught, the appellant fled from the spot holding his pant and underwear in his hand. Thereafter, 'A' informed her husband 'O' who worked at a shop. During her cross-examination, no material substance emerged. As to the occurrence, she reiterated that 'X' cried for help when 'A' was preparing meal for her family.

10. Thereafter, 'X' was examined as P.W.-3. She identified the appellant as '*Chacha*', clearly indicating to the Court that she knew the appellant from before. As to the occurrence, she gave a clear description of penetrative sexual assault committed on her. She further established that on her crying for help, her mother 'A' as also another person described as '*Chakki wale Chacha*' arrived. During her cross-examination, to a query put, she stated '*Papa mummy ne jo bataya tha wahi keh rahi hoon*'. At the same time, she specifically denied that she had received injuries on suffering a fall. She also denied the suggestion that no wrong had been committed on her.

11. Thereafter, Dr. M.C. Mittal was examined as P.W.-4. He proved the radiological age of the victim 'X' to be about five years on the date of occurrence. Next, Dr. Mohini Saxena was examined as P.W.-5. She proved the vaginal smear report. Dr. Sushila Verma was examined as P.W.-6. She proved the internal injury report of 'X'. She also proved that attempt had been made to penetrate the vagina of 'X'. During her cross-examination, she further proved that the medical examination was conducted upon 'X' being brought to her in the company of a police constable. She confirmed, during the medical examination of 'X', she found blood was oozing but it was not flowing. She specifically denied that the injury noted by her could have been caused by fall on a pointed or hard object.

12. Sri A.K. Hingwasiya, the second Investigating Officer, who concluded the investigation and submitted charge sheet, was examined as P.W.-7. He proved the investigation. Constable Abdul Sattar was examined as P.W.-8. He proved the registration of the case and preparation of check F.I.R. etc. Lastly, Rajendra Singh Malik, the initial Investigating Officer was examined as P.W.-9. He proved the initial investigation.

13. Thereafter, statement of the appellant was recorded under Section 313 Cr.P.C. Besides offering general denial to the adverse circumstances pointed out to him, he suggested that he had been falsely framed for reason of a parking dispute with 'O'. He has also denied that he was a tenant in 'O's' house. However, no defence evidence was led.

14. Submission of learned counsel for the appellant is, there is unexplained delay in lodging the F.I.R. Second, although the prosecution claims 'X' had suffered bleeding from her private part, there is unexplained delay in medical help being offered to her. Third, it has been submitted, a wholly improbable story has been set up by the prosecution inasmuch as the appellant is described to have committed rape on the daughter of 'O' and 'A' at their house i.e. in the portion rented out by them, that too without bolting the door from inside. There being more tenants (eight in all) in the premises, the narration of the prosecution story is inherently false. Fourth, alternatively it has been submitted, no evidence was led to establish the occurrence of offence under Section 3(2)(v) of SC/ST Act and no case was made out for award of maximum punishment of life imprisonment. The appellant has remained confined for almost nineteen years. He may be released on sentence undergone.

15. On the other hand, learned AGA would submit, charge has been proved beyond reasonable doubt. Inasmuch as aggravated penetrative sexual assault has been suffered by 'X', who was barely five years of age and is a member of Scheduled Caste, no interference is warranted in the

present facts. Specifically, it has been submitted, there is no delay in lodging the F.I.R. In any case, it does not create any doubt as to the occurrence of the prosecution story. Medical treatment was promptly sought by 'O'. The reason for such treatment not made available to 'X' till next morning of the occurrence, was wholly explained and proved at the trial. In face of strong ocular evidence led by 'A' and 'X', to prove the occurrence, the submission based on general probabilities, is of no avail. On the issue of sentence, it has been submitted that the minimum sentence that may be awarded is imprisonment for life.

16. Having heard learned counsel for the parties and having perused the record, insofar as the issue of delay in lodging the F.I.R. is concerned, it may be noted that the occurrence took place at about 6:00 p.m. on 01.04.1999. The key prosecution witnesses namely 'O' and 'A' have clearly proved that about half an hour was consumed in information reaching 'O', the father of 'X', about the occurrence. Since 'X' was injured, and was bleeding from her private parts, 'O' first rushed her to Dr. Shiv Kumar Gaur, a private doctor. He advised 'O' to take 'X' to a government facility. During his examination-in-chief itself, 'O' further proved that he then took 'X' to the District Womens' Hospital but the doctors refused to offer treatment and advised 'O' to first get the F.I.R. registered as it appeared to them to be a case of rape committed on 'X'. By that time, night fell. He therefore returned home and could not lodge the report on 01.04.1999. The next day he reached the Police Station early morning, between 7:30 a.m. to 8:00 a.m. He waited there for about one and a half hour, since police Sub-Inspector was not present. It took him further about half hour to lodge the F.I.R. After the F.I.R. was lodged, he was sent to the District Hospital along with a lady constable, for the purpose of medical examination of 'X'. No doubt emerged as to the above facts, during the cross-examination of 'O', 'A' and 'X', on the above facts.

17. Dr. Sushila Verma not only proved the medical examination report dated 02.04.1999 (Ex.Ka-4 at the trial) but during her cross-examination she also specifically stated that 'X' was brought to her by a woman constable accompanied by police letter for preparation of injury report.

18. In such circumstances, we may not hesitate to record our unequivocal satisfaction that the F.I.R. was lodged promptly. In face of specific proof of time consumed by 'O' on 01.04.1999 to first make available medical help to 'X' and further in face of fact proven that such medical help was denied at the District Government Hospital for reason of prior F.I.R. not lodged till night of 01.04.1999, no doubt arises or survives as to why F.I.R. could not be lodged by 01.04.1999. Clearly in the context of occurrence suffered by 'X', a minor aged about five years and further in face of proven facts [both on the strength of ocular evidence led by 'O' and 'A' and medical evidence led by Dr. Sushila Verma (P.W.-6)] that as a result of the occurrence 'X' was suffering from internal injuries and was bleeding from her private parts, it is wholly explained by that circumstance itself that priority of 'O' and 'A' (the parents of 'X'), would have remained to first try and get medical help for 'X'. Though such help could not be fully made available to 'X' on 01.04.1999 as the doctors wanted the FIR to be registered first, in absence of any doubt that 'X' was first rushed to a private doctor Shiv Kumar Gaur and from there to the Womens' Hospital by which time it had become dark, the prosecution story appears truthful.

19. The very next morning i.e. 02.04.1999, 'O' made efforts to lodge the F.I.R. at the earliest. He reached the police station around 7:30 to 8:00 a.m. There is nothing to doubt the same. The F.I.R. was lodged in the morning hours of 02.04.1999. Thereafter, 'X' was medically examined at the Womens' Hospital by Dr. Sushila Verma at about 12:30 p.m. on the Injury Memo issued by the police authorities. She reached there with a lady constable. She was treated for the injury suffered by her

to her private parts. Those injuries have also been duly proven. Once the prosecution witnesses proved the efforts made by them to get medical help for 'X' in the evening hours of the occurrence itself, on 01.04.1999 and since it was also proved that such medical help was denied for reason of prior F.I.R. not lodged, prosecution witnesses namely 'O' and 'A' have fully proved that they acted with due diligence, by ensuring that the F.I.R. was first lodged in the morning of 02.04.1999. Thereafter, 'X' was examined for the proven injuries suffered by her on her private parts. Dr. Sushila Verma (P.W.-6) also proved that in her opinion such injuries may have been caused by penetrative sexual assault and not by fall on a pointed or hard object. In view of the above, we find no merit in the submission being advanced by learned counsel for the appellant that the F.I.R. and/or the medical treatment was delayed.

20. Even otherwise, as to the delay in lodging the F.I.R. involving rape, the law is clear. In **Lalai @ Dindoo and Another Vs. State of U.P., (1975) 3 SCC 273**, a three judge bench of the Supreme Court considered the issue and observed as below:

“6. The only other ground on which Radhey Shyam's evidence was challenged is that though the incident took place at about 10.30 p.m. on the 24th it was not until 11 a.m. on the 25th that Radhey Shyam lodged the first information report. This undoubtedly is an important circumstance but the Sessions Court and the High Court have given a reasonable explanation of the delay. The night was dark, the road was rough and the assault so fierce that Radhey Shyam could not have collected his wits to proceed straightway to the police station. There is no indication in the evidence that the names of the appellants were incorporated in the first information report as a result of any confabulation.”

(emphasis supplied)

21. Recently, in **State of U.P. Vs. Pushpendra @ Gabbar S/O Brahamdutt, 2025:AHC:62014-DB**, one of us (Sandeep Jain, J.) in concurring opinion has considered the issue and observed as below :

*“3. The Hon'ble Apex Court in the Case of **Satyapal Vs. State Of Haryana, (2009) 6 SCC 635** has held that delay in lodging the first information report in a rape case is a normal phenomenon. Ordinarily the family of the 'X' would not intend to get a stigma attached to the 'X'.*

4. The Hon'ble Apex Court in the Case of **State of Himachal Pradesh Vs. Prem Singh, (2009) 1 SCC 420** has held that the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the F.I.R.

5. The Hon'ble Apex Court in the Case of **Satpal Singh Vs. State of Haryana, (2010) 8 SCC 714** has held that delay in lodging F.I.R. in sexual offences has to be considered with a different yardstick. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the Court or not. In such a fact situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur.

22. Coming to the issue of probabilities, the same also carries no merit in face of strong ocular evidence existing in the shape of testimony of 'X'. She clearly proved that the appellant was known to her from before and that he committed the occurrence involving penetrative sexual assault. She denied the suggestion that she had sustained injuries upon a fall. Though not required by way of law, wholesome corroboration exists in the shape of medical evidence. We are not inclined to discard that testimony merely for one sentence spoken by her that she was making statement as tutored by her parents. The Court may not forget that the victim was about five years of age on the date of occurrence and 6 years of age on the date of her statement. Innocent minors are not aware of facts involving penetrative sexual assault. They are neither supposed to know nor they are equipped to understand the occurrence or the implications of a penetrative sexual assault. Specific proof was furnished by 'X' during her examination-in-chief, clearly describing the act of penetrative sexual assault committed by the appellant. Upon her further denial that she suffered the injury upon fall, one single statement made by 'X' (being relied by the learned counsel for the appellant), only suggests that before making statement to the Court she had spoken to her parents. That is wholly natural and expected. Wherever a child suffers penetrative sexual assault, they would be a traumatised. They

would not only have to be given medical attention and consolation but also would require psychological and emotional counselling to help restore their spirit and personality. For a child aged about 6 years to appear in Court and to make a statement about such a traumatic occurrence, as may be read in evidence by a Trial Court, the child would necessarily have to be spoken to by their parents. Unless it is explained to a child (by their parents), why they are required to be present in Court and make statement, the victim child may be completely befuddled and confused and even traumatised upon appearance before the Court. They may clam up and not speak or cry and not speak or offer conduct that may not be found trustworthy. To the extent, the learned court below allowed for the necessary statement to arise and also necessary cross-examination to be done, we find no fault.

23. 'X' specifically proved the occurrence to the extent it was warranted for the trial of the appellant for the charge framed against him. That fact was clearly proven. As to the testimony of child witness, it may be noted, as to the reliance that may be placed on the statement or deposition of child witness, in **Dattu Ramrao Sakhare Vs. State of Maharashtra, (1997) 5 SCC 341**, it was clearly observed that though a child witness is a competent witness and their statement may be relied even in absence of oath administered yet, the credibility of such evidence would depend upon circumstances of each case.

24. In **Suryanarayana Vs. State of Karnataka, (2001) 9 SCC 129**, the Supreme Court held as below :

“...The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. ...If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material

particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.”

25. Later, in **Alagupandi Vs. State of T.N., (2012) 10 SCC 451**, the Supreme Court observed as under :

“36. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable.”

26. Here the child witness is the unfortunate victim of rape. As to occurrence of rape suffered by her, there is no doubt. That is wholly corroborated by medical evidence. As to the guilt of the appellant in causing that occurrence, strong ocular evidence led by 'A' and 'X' exists. Therefore, in the present facts, there is no reason to doubt the statement of 'X'.

27. The doubt if any though arising on the statement of 'X', that has been wholly corroborated by the testimony of 'A', her mother. She clearly corroborated the statement of 'X' that on the occurrence being caused 'X' let out cries for help. Upon hearing the same, 'A' ran to her help and discovered the appellant committing rape on 'X' in the tenanted accommodation. Being thus caught, the appellant escaped holding his pant and underwear in his hand, after pushing 'A' out of his way. No

doubt emerged during her cross-examination as may allow the Court to entertain any reason to doubt the occurrence. That nature of occurrence proven by the victim 'X', on her ocular evidence does not suffer from any reasonable doubt. It has been wholly supported by 'A' (mother of 'X'), who first reached the place of occurrence and saw the appellant commit rape on 'X'. Neither any doubt emerged on her testimony nor we may ignore the wholesome support/corroboation found proven on the strength of medical evidence led by Dr. Sushila Verma (P.W.-6) who proved the internal injuries suffered by 'X' to be such as may have been caused upon rape committed on her, nor we may ignore the corroboration offered by the recovery of the blood stained undergarment of 'X', duly proven to be stained with blood of 'X' on the strength of the report of the Forensic Science Laboratory dated 25.08.1999, Ex. Ka-9 at the trial.

28. Clearly the occurrence had been proven beyond reasonable doubt. At the same time, no evidence was led to establish that the occurrence had been caused by the appellant on the ground that 'X' belonged to a member of Scheduled Caste. To that extent, the offence alleged under Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (as it existed) in the statute book upto 26.01.2016 was not proven. Consequently the conviction and sentence imposed on the appellant under Section 3(2)(v) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act by the trial Court is set aside.

29. Accordingly, the appeal is **partly allowed**. The remaining part of the impugned order dated 05.12.2001 relating to conviction under Section 376 I.P.C. is maintained. However, the sentence of life imprisonment is modified to sentence undergone. The appellant has remained confined for almost 15 ½ years (actual). He is on bail, as such his sureties and bail bonds shall stand discharged subject to compliance of Section 437A Cr.P.C.

30. Lower court record may be returned forthwith alongwith a copy of this order. A copy of this order may also be communicated to the jail authorities concerned.

Order Date :- 5.5.2025
Abhilash/Faraz/Salman

(Sandeep Jain, J.) (S. D. Singh, J.)