



2025:AHC:174537-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL U/S 413 BNSS No. - 549 of 2025

Ashok
.....Appellant(s)
Versus
State of U.P. and others
.....Respondent(s)

Counsel for Appellant(s)	:	Lalit Prakash
Counsel for Respondent(s)	:	G.A.

Court No. - 42 _____ Reserved

HON'BLE J.J. MUNIR, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

1. This is a motion to admit the present appeal against acquittal under Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS') preferred against the judgment and order of Mr. Ram Gopal Singh, Special Judge (POCSO Act), Rampur dated 11.08.2025 in Special Case No.9 of 2021 (arising out of Crime No.225 of 2020), under Sections 341, 120-B, 376 of the Indian Penal Code (for short, 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act'), Police Station Kemri, District Rampur. By the said judgment and order, the learned Trial Judge has acquitted respondent No.2 of charges for the offences above detailed.
2. According to the information lodged at Police Station Kemri on 21.11.2020, on 20.11.2020, the informant's mother and his sister, aged 17 years, the prosecutrix, had gone to Village Manauna to a doctor there. They were returning home on foot, when in the evening hours at about 5.45 p.m., between Villages Manauna and Udaipur Patti, near a mango grove, Ankush son of Hoob Karan, along with two unknown offenders, came across the informant's mother and the prosecutrix. All three of them were riding a motorcycle. Ankush's two unknown companions restrained the informant's mother, whereas Ankush dragged his sister to a sugarcane field and ravished her by force. He threatened the prosecutrix with death in the event she disclosed the fact to anyone. The three of them rode off on their motorcycle. After the informant came home, he was informed by his mother and sister, whereupon a First Information Report (for short,

'FIR') was lodged on 21.11.2020. The FIR nominates Ankush Gangwar and two other unknown offenders. The FIR was registered under Sections 341, 120-B, 376 IPC and Section 3/4 of the POCSO Act. The statement of the prosecutrix and the informant, besides their mother, was taken down by the Police during investigation. The prosecutrix was sent for her medical examination. The prosecutrix also underwent a medical examination for determination of her age and a vaginal smear was taken for ascertaining the presence of spermatozoa. The prosecutrix's statement under Section 164 Cr.P.C. was recorded before a Judicial Magistrate.

3. The informant testified in support of the prosecution as PW-1, whereas the prosecutrix testified as PW-3, the prosecutrix's and the informant's mother testified as PW-4. The Doctor, who examined the prosecutrix, testified as PW-2. PW-5 is the Head Constable, who registered the FIR and drew up the *check* FIR. PW-6 is the Station House Officer of the Station and the Investigating Officer as well. PW-7 is the Principal of S.J.S. Inter College, Bilaspur, Rampur, where the prosecutrix had read and passed her Class-XII Examination.

4. The learned Trial Judge has taken note of many relevant facts and evidence to come to his conclusion. Apparently, PW-1, the first informant, is not a witness of the occurrence of any kind and his testimony has, therefore, not rightly been paid much attention to. It has been noticed, amongst other things in the Doctor's evidence by the Trial Judge, that upon an external examination of the prosecutrix, no injury was found on her body. There is also a remark about the Doctor's evidence, where it is noticed that the Doctor said that there was no internal or external injury sustained by the prosecutrix.

5. The most important testimony is that of the prosecutrix, to which the Trial Judge has devoted necessary attention. It was noticed that the prosecutrix had earlier brought a prosecution against the accused, Ankush on a charge of rape, which was still pending trial. It is then noticed that Ankush is said to have dragged the prosecutrix to the sugarcane field across 20-25 steps. The prosecutrix also said that she had suffered abrasions because of being dragged across a distance forcibly to the place of occurrence. The Trial Court has remarked that the prosecutrix did not offer necessary resistance and also did not raise alarm or call help. The

Trial Court has regarded this behaviour as particularly odd because the prosecutrix's mother did likewise, where she was being held by two of the accused's associates. It has been noticed that the place where the prosecutrix's mother was being held and restrained, is a busy road, connecting several villages. There does seem no reason for the prosecutrix's mother not raising alarm or calling attention of passersby, who are said to be there in abundant number. The prosecutrix was also subjected to the crime, in a nearby field, and she too could call attention. Though the prosecutrix was threatened, but it is not said that the threat was one at the end of a gun or a weapon of the dangerous kind. It is also noticeable that the accused is not a stranger to the prosecutrix. He is a resident of the same village as the prosecutrix's sister and known to her.

6. In all these circumstances, the Trial Judge has taken the view that for the mother and daughter both, being close to a village road, frequented by passersby, their action in not calling help or raising alarm, raises a strong suspicion about the prosecution. Likewise, the absence of any external injury on the prosecutrix's body, as found by the Doctor, PW-2, has led the Trial Court to disbelieve the prosecution.

7. We notice that the prosecutrix has said that she sustained injury on account of being dragged across a distance to the sugarcane field and the injury was of the abraded kind. But, the Doctor did not find any external injury on her body. This indeed makes the prosecution case rather unreliable.

8. Upon an overall view of the matter, the Trial Court has not accepted the prosecution version and we do not think that the Trial Court's view of the evidence is so outrageously wrong and perverse that it should lead to the acquittal being reopened.

9. It is a settled principle of the law that in appeals against acquittal, if two views of evidence are possible and the one in favour of the accused has been taken by the Trial Court, it should not be disturbed merely because the other view is more plausible in the Appellate Court's opinion. Interference with a judgment of acquittal is permissible in the event alone, if the Trial Court's conclusions on the available evidence are perverse, that is to say, so utterly wrong that no reasonable person could ever have

subscribed to those inferences. That is certainly not the case with the judgment impugned.

10. In the totality of circumstances, we do not find this to be a fit case, where this appeal should be admitted to hearing and the accused summoned to Court again.

11. In the result, this appeal is **dismissed in *limine***.

(Pramod Kumar Srivastava,J.) (J.J. Munir,J.)

September 26, 2025

Anoop