

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 160 of 2014.

Reserved on: 10.09.2026.

Decided on: 23.09.2026.

Uploaded on: 23.09.2026.

State of Himachal Pradesh

...Appellant.

Versus

Des Raj

...Respondent.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting? ¹ Yes

For the Appellant.

Mr. J.S. Guleria, Deputy Advocate General.

For the Respondent:

*Ms. Sheetal Vyas and Ms. Tejasvi Thakur,
Advocates.*

Vivek Singh Thakur, Judge

Present appeal has been preferred by the State against the judgment of acquittal dated 31.12.2013, passed by Additional Sessions Judge, Chamba, in Sessions Trial No. 10/2003/01, titled *State of Himachal Pradesh vs. Des Raj*, in Case FIR No. 46/2000, dated 24.02.2000, registered at Police Station Sadar, Chamba, District Chamba, H.P., under Section 376 of IPC, whereby respondent has been acquitted of charge, framed against him.

¹ *Whether the reporters of the local papers may be allowed to see the judgment?*

2. It is also apt to record that the incident pertains to the year 1999, FIR was lodged in February 2000, and after a full-fledged trial, Trial Court, i.e., Additional Sessions Judge, Fast Track Court, Chamba, H.P. had acquitted the respondent vide judgment dated 16.12.2004. The said judgment was assailed by the State by filing Criminal appeal No. 133/2005, which was allowed by this High Court, vide judgment dated 06.08.2013, setting aside the said judgment and allowing the application filed by the State under Section 391, Cr.P.C. for placing on record additional evidence to prove birth certificate of the victim. In sequel to the aforesaid order, Trial Court recorded statement of PW-23 Kanchan Bala, to prove date of birth of the victim as 02.07.1983, as additional evidence and, thereafter, evidence of prosecution was closed.

3. After appreciating evidence on record, respondent has been again acquitted in the present matter, vide impugned judgment dated 31.12.2013, referred supra.

4. The incident in reference, as per the prosecution case, occurred in the month of June-July 1999, when respondent was serving as Junior Engineer in HPSEB, Chamba, and was residing in his own house along with his family. At that time, age of discretion provided under Section 375 of the IPC was 16 years.

5. Date of birth of the victim has been proved by placing on record extract of Admission and Withdrawal Register, Ext. PT/1, wherein date of birth of victim has been recorded as 02.07.1983. To substantiate the date of birth of victim as 02.07.1983, a certificate issued by Head Teacher of Government Primary School, Obri, Ext. PT, has also been proved by the prosecution on record.

6. It is well settled that in determining the age on the basis of radiology, there is a scope of error of 1 to 2 years on either side. The prosecution had also proved on record report of Radiologist, Ext. PR, wherein, it has been reported by Radiologist that approximate age of victim was found between 15-16½ years, and further that it was between 15 to 17 years. With respect to certain other parameters, he has reported age of the victim ranging from 12 to 14 ½ years. From the evidence on record, in previous round of litigation, it was concluded by the Trial Court that prosecution had not been able to prove that date of birth of the victim as 02.07.1983.

7. In previous round, in the judgment dated 16.12.2004, it was held by the Trial Court that evidence related to birth of the victim was not a primary piece of evidence and, therefore, in the absence of any admissible evidence, it was observed by the Court that evidence of date of birth produced on record had no evidentiary value. Further, it was also

observed that, on determination of age on the basis of radiology, victim was found to be 15 to 17 years old and, by considering a margin of error of up to 2 years on either side, it was not possible to hold that victim was minor.

8. In the appeal preferred by the State, the case was remanded back to the Trial Court, allowing the State to lead additional evidence to prove date of birth of the victim.

9. For proving date of birth, the State has examined PW-23 Kanchan Bala, Data Entry Operator, CMO Office, Chamba, District Chamba, H.P., who brought the original Birth and Death Register to the Court and proved the same on record as Ext. PW23/A, but with statement that she had seen the birth certificate issued by Registrar, Birth and Death, which did not bear the name of female, whose date of birth had been shown as 02.07.1983. In her examination-in-chief, she had placed nothing on record to connect birth certificate and date of birth mentioned therein with the victim. It is a fact that she had produced the record of the office of CMO, but in cross-examination, she had stated that entry was made in Panchayat and she could not say on which date this birth report was made by the father in Panchayat, nor could she say that on which date it was entered in Birth and Death Register. She also expressed her ignorance about the author of entry in original Birth and Death Register.

She had further admitted that it was correct that there was no mention of any serial number in Birth and Death Register and that there was no certificate appended to the register as to how many pages were there. There were no signatures of person or name who made the entry with regard to daughter of Dharmo Arya, and there was no entry of Birth and Death in register after 17.02.1973 till 01.04.1976. There are no signatures of Registrar, Birth and Death, of Gram Panchayat Mangla in Birth and Death Register brought by her to the Court, nor there was any stamp in that behalf. She had further admitted that there was no stamp or signature of Chief Medical Officer in Birth and Death Register brought by her, except against the column relating to daughter of Dharmo Arya, with voluntary statement that Chief Medical Officer used to sign only that column, wherein issuance of Birth and Death Certificate was sought.

10. In view of the above nature of evidence brought on record, the status of proof of date of birth of victim remains the same as it was at the time of passing of the judgment dated 16.12.2004. Therefore, the prosecution has failed to prove the age of victim by leading cogent, reliable, convincing and confidence-inspiring evidence.

11. In absence of any admissible evidence of date of birth of victim, she could not be treated as minor and, therefore, existence or non-existence of her consent in entire episode would be material to determine

as to whether any offence has been committed or not by the respondent, and evidence on record, including her acts, conduct and deposition, is required to be assessed and evaluated accordingly.

12. The FIR in present case was registered on 24.02.2000, whereas incident of violation of person, had been claimed to happen 8-10 months prior to the registration of FIR.

13. It is prosecution case that as a result of violation of the person of the victim, she gave birth to a male child in the month of February, about 15-16 days prior to 24.02.2000, which means on 08.02.2000. According to the victim, child was born dead and, therefore, he was buried. The body of child was exhumed from the burial ground and subjected to postmortem examination. The postmortem report has been produced on record as Ext. PU. Entire case of the prosecution hinges upon the statement of victim and the evidence related to probable date of birth of the victim.

14. In the statement of victim recorded under Section 154 Cr.P.C. on 24.02.2000, victim had stated that about 7-8 months ago, a child was delivered by wife of respondent Des Raj. The aforesaid statement was made by the victim on 24.02.2000 and, therefore, 7-8 months prior to that comes around June-July 1999. According to her, the respondent was god-brother of her mother, and she, after doing domestic

help in the house of respondent, used to return to her home and when child of Des Raj was 4-5 days old, the wife of the respondent asked the victim to stay at her home as her husband (the respondent) had gone to appear in some examination and she (wife of respondent) was alone in the house.

15. Further, that she stayed in the house of respondent Des Raj in a separate room, and another 4-year-old child of Des Raj was also sleeping with her in the same room. However, door was closed, but it was not bolted. At about 3:00-4:00 A.M., respondent entered her room under the influence of liquor and against her will, he put off her salwar, and when she tried to raise alarm, her mouth was closed by him, and after putting off his pants, he raped her. Considering the incident as an insult to her, she did not disclose the incident to anyone, and thereafter, till the date of recording her statement, respondent Des Raj did not repeat such wrong act with her. 16 days ago, she felt pain in her stomach and did not have food in the night. At about 8:00-8:30 PM, she slept in separate room. At about 10:00-11:00 PM, she felt pain in her stomach. At about 12:00 midnight, the pain increased and she gave birth to a child who had died, and she cut off the umbilical cord herself. Thereafter, she wrapped the child in a sheet (chaddar) and put him in the bed box (diwan), after which she slept and she continuously felt pain in her stomach.

16. Victim had further stated that in the morning, she prepared tea, and after having tea, she slept, but did not disclose about the stomach pain to anyone. In the evening, her father came from his place of livelihood, who was a laborer and the victim told him about the pain in her stomach. Her father took her to Hospital at Chamba, and in the Emergency Ward, the doctor checked her and asked to get the victim admitted in the hospital. At that time, she told her mother that she had to attend the call of nature and went to attend the call of nature. Immediately after sitting for passing stool, something was discharged from her urinary passage and there was no pain. She remained admitted in the hospital for two days, and she did not disclose the incident on account of the insult felt by her. When she reached home, she had food, and as it was raining throughout the day, she took out the dead body of child from bed box (diwan) and buried it in the *Khad*. When her mother inquired with command, she disclosed the entire incident to her. Lastly, she had stated that she had given birth to a child because of rape committed by the respondent and she was innocent girl and Des Raj had spoiled her life by raping her.

17. The statement of victim is of utmost importance, and in case her version is found reliable, other evidence would be necessary to be assessed for adjudication of the matter. However, in case her statement

is not found to be trustworthy, there shall be no requirement to discuss the other evidence on record because the entire prosecution case depends upon the version proved on record in the statement of victim.

18. The victim has been examined as PW-1. Her mother Pholo Devi has been examined as PW-4, whereas her father Dharam Chand has been examined as PW-5. Naib Tehsilder-cum-Executive Magistrate, PW-3 Des Raj Rana is a witness to the recovery of dead body of child from the burial place.

19. In the Court, PW-1 has stated that she did not remember her date of birth. She has reiterated the most of the version recorded in her statement under Section 154 Cr.P.C. According to her, the incident had taken place about 8-9 months prior to the recording of her statement by the police. As per her, at that time, a child was born to the wife of respondent, and she was deputed by her mother (victim's mother) to look after the work in the house of the accused. In defence to aforesaid, a certificate has been produced on record on behalf of the respondent, Ex. DA, to prove on record that wife of respondent had given birth to a child on 17.07.2000, whereas according to victim, wife of the respondent had given birth to a child in June 1999. This document has not been rebutted or disputed by the prosecution. Exact date of the incident is not on record. Even if it is calculated on the basis of time frame referred to by the victim

in her statement, then the incident can be stated to have taken place in June-July 1999. In absence of exact date of the incident, it is not possible to ascertain, and it is not clear whether the incident took place before 02.07.1999 or after the said date.

20. Post-mortem report of the child has been proved on record as Ext. PU, wherein it has been recorded that dead body of the child was examined on 28.02.2000, who had died approximately on 12th-13th February 2000. As per the opinion recorded in the postmortem report, the baby died of asphyxia due to suffocation, and it was a female child of approximately 9-10 months, 50 cm long and 33 cm head circumference, and the child born was alive and had matured completely, i.e., 9-10 months.

21. The aforesaid opinion falsifies the version of the victim that the child was born dead and, therefore, she wrapped him in *Chadar*, put him in the bed box, and took out dead body during the night after returning from the hospital and buried. As per the postmortem report, the child died due to suffocation.

22. Even if the date of birth of victim is considered as 02.07.1983, then also exact date of incident is not known. The statement of victim under Section 154 Cr.P.C. as well as her deposition in the Court clearly indicates that at the time of the incident, 4-year-old son of the

respondent was also sleeping in the same room, and after the incident, the victim did not disclose the incident to anyone. It is also apt to record that she was residing with her parents, normally she was returning home, and she gave birth to the child after 9 months. A pregnancy of 9 months cannot remain unnoticed, especially to the mother of victim, though the victim has tried to claim that her pregnancy was not known to anybody and she concealed it by wearing clothes of her mother as well as getting 2-3 suits stitched by her from one Lata by saying that she was gaining weight on account of good diet. But it does not appear to be plausible because it is impossible to conceal a 9 months' pregnancy.

23. It is also relevant to notice that even after giving birth to the child, victim did not disclose it to anybody including her parents, hid the child in the box, and buried the same during the night.

24. At this stage, it is also relevant to refer to the statement of PW-2 Paras Ram, who is a witness to the recovery of the dead body of child on 25.02.2000. He has signed the memo, Ext. PF, in this regard. In memo Ext. PF, it has been stated that Manoj Kumar, son of Dharam Chand (brother of the victim), identified the place where newly born child was buried. After removing the stones put above the burial place, the dead body of the deceased child was recovered in presence of Executive

Magistrate. In his deposition in the Court also, PW-2 Paras Ram has reiterated the same.

25. It is not the case of victim that the dead body was buried by her with the help of Manoj Kumar or other family members. She has only stated that she stealthily buried the child, but identification of the burial place by Manoj Kumar, who is brother of the victim, clearly indicates that entire family was well aware about the pregnancy of the victim, but they did not lodge any FIR till February 2000. FIR has been lodged about 14-16 days after the birth of the child. How Manoj Kumar came to know about the place of burial is again a mystery. Manoj Kumar has not been examined as a witness. This fact also creates doubt about the veracity of the prosecution case and the version of the victim.

26. Victim also remained admitted in the hospital from 09.02.2000 to 11.02.2000, and at that time also, she did not report or disclose the incident to anyone. According to evidence on record, Doctor had informed the mother of victim that victim had delivered a child while admitted in the hospital between 09.02.2000 to 11.02.2000. However, despite disclosure of the said fact by the Doctor to the parents of the victim, from 11.02.2000 to 24.02.2000, the victim and/or her parents did not choose to report the matter to the police, and the report was lodged after 10-12 days of discharge of the victim from the hospital.

27. The conduct of victim, during the entire episode, is suspicious. Her version in the statement recorded under Section 154 Cr.P.C. as well as in her deposition in the Court is not inspiring confidence. Her statement does not appear to be the correct version of the entire episode. In absence of any concrete evidence on record with respect to the date of the alleged incident, it is not possible to return finding that at the time of violation of person of the victim, she was below 16 years of age.

28. By taking 9 months prior to giving birth to the child, the time of incident comes to be in May-June 1999. At that time, acceding to date of birth as 02.07.1983, there is a difference of 1-2 months before attaining the age of discretion by the victim.

29. The prosecution has failed to prove that victim was below 16 years of age, i.e., the age of discretion, prescribed at the relevant point of time, i.e., the alleged date of incident.

30. By considering the entire evidence on record and the nature of evidence in deposition of PW-1-victim and her parents, Phulo Devi (PW-4) and Dharam Chand (PW-5), and other surrounding circumstances including the documents placed on record, no cogent, reliable and convincing evidence is on record, so as to return finding that respondent had violated the victim against her will. Therefore, there is no reasonable

ground or material on record, warranting interference of this Court in the judgment of acquittal passed by Trial Court.

31. Learned Deputy Advocate General has not been able to point out any cogent, reliable, and convincing evidence on record to substantiate the prosecution case.

32. In view of aforesaid discussion above, we are of the considered opinion that no cogent, reliable, convincing or confidence inspiring material has been placed on record to accept the prosecution version, rather depositions of victim (PW-1) and her parents, appear to be of doubtful credibility.

33. As we have not found the testimonies of victim and her parents to be reliable and trustworthy, therefore, the basic foundation of the prosecution case set up against respondent stands shattered and, therefore, there is no necessity to discuss other evidence on record, as the version brought on record by the prosecution stands discredited on the basis of the untrustworthy statement of the victim and other witnesses.

34. Respondent is also having advantage of being acquitted by the Trial Court, fortifying the presumption of innocence in his favour.

35. In view of the aforesaid discussion, we are of the considered opinion that there is no merit in the appeal and accordingly, appeal is dismissed.

36. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023), the appellant is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of learned Registrar (Judicial) within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the appellants on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

37. Pending miscellaneous application(s), if any, are also disposed in the same terms.

Bail bonds furnished in this appeal, stand discharged and record of Trial Court be sent back forthwith.

**(Vivek Singh Thakur),
Judge.**

**(Bhupesh Sharma),
Judge.**

23rd September, 2026
(Susheel)