



2026:AHC:209270

RESERVED ON: 11.09.2026

DELIVERED ON: 07.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2442 of 1988

Subhash

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Neeharika Singh, S.P.S. Ragahav
Counsel for Respondent(s)	:	A.G.A.

Court No. - 88

HON'BLE ABDUL SHAHID, J.

1. Heard Sri Udit Singh, learned Amicus Curiae for the appellant, and the learned A.G.A. for the State.

2. The present criminal appeal has been filed against the judgment and order dated 26.09.1988 passed by the learned Vth Additional Sessions Judge, Meerut, in Sessions Trial No. 238 of 1987, under Sections 363, 366, and 376 I.P.C., Police Station Transport Nagar, District Meerut.

3. Learned counsel for the appellant submitted that the incident occurred on 25.02.1986, whereas the F.I.R. was lodged with delay on 26.02.1986. The recovery of the victim took place on 11.03.1986, and her medical examination was conducted on 12.03.1986. He further submitted that although the F.I.R. was registered under Sections 363 and 366 I.P.C., the medical/ossification test determined the victim's age to be above 19 years. It was further submitted that no injuries were found on her body during the medical examination, nor was there any specific evidence of rape. The medical examination also indicated that she was used to sexual intercourse.

4. Learned counsel for the appellant further submitted that the victim appeared to be a consenting party, as she travelled to several districts without raising an alarm or attempting to lodge a complaint. Furthermore, there were no independent witnesses present at the time of her recovery. It

is submitted that the findings recorded by the learned trial court are illegal and perverse. Consequently, the impugned judgment and order dated 26.09.1988 is liable to be set aside, and the criminal appeal deserves to be allowed.

5. The co-accused, Shera, was not found guilty by the learned trial court and has been acquitted.

6. The learned A.G.A. opposed the criminal appeal, submitting that the victim was an aggrieved party who duly contested the sessions trial and that she is a sterling witness whose testimony alone is sufficient for the conviction and sentence of the appellant. Therefore, the criminal appeal is liable to be dismissed.

7. As per the contents of the F.I.R., the written complaint (Ext. Ka-2) appears to have been written on 25.02.1986 and was subsequently submitted on 26.02.1986 at Police Station Transport Nagar, District Meerut, by Basant Lal. The scribe of the F.I.R. was Pramod Kumar Jain. In his complaint, the complainant stated that his brother, Leela, resides in Mohalla Chandralok with his children and earns a living transporting goods via a bullock cart. The complainant resides at Mata Ka Bagh. He further stated that on the previous evening, his brother had gone to work while his brother's wife had gone to the fields. His brother's brother-in-law, Shera, a resident of Haibatpur, along with his son, Subhash, had come to the house as guests and enticed away the 15-year-old victim under the pretext that her married sister, Kiran is ill.

8. The incident occurred at about 11:00 A.M. on the previous day, i.e., 25.02.1986. When my brother and his wife returned home, the victim was missing. Upon inquiry, they approached the wife of Satish, with whom my brother's jewellery had been kept. She informed them that their daughter had taken all the jewellery from her. Upon checking the house, they found that Rs. 3000/- was also missing. The victim was aware of where the money was kept and had taken that as well. On further inquiry, a tea vendor in the neighborhood stated that she had seen the victim leaving with Subhash and Shera. After searching, we reached their village in another district, but neither Shera nor Subhash was found. The other family members were present at the residence and, upon inquiry, stated

that no one had come there. They enticed and took away my brother's daughter.

9. On the basis of this written complaint (Ext. Ka-2), the check F.I.R. (Ext. Ka-13) was registered at Police Station Transport Nagar, District Meerut, under Sections 363 and 366 I.P.C. The incident is alleged to have occurred on 25.02.1986 at 11:00 A.M., whereas the report was lodged at the police station on 26.02.1986 at 8:20 A.M.

10. The victim was recovered on 11.03.1986. As per her medical examination report (Ext. Ka-4), prepared by Dr. M. Agarwal, it was concluded that no definite opinion regarding rape could be given, as the victim was habitual to sexual intercourse.

11. In the supplementary report of the victim (Ext. Ka-5), based on her radiological report, it was concluded that, according to the X-ray report, her age was above 19 years. Thus, the victim was determined to be over 19 years of age.

12. Regarding her medical examination, the supplementary report bears the date 12.03.1986, which was inadvertently written as 12.03.1985. The same has been later clarified by the examining doctor who prepared the report. Dr. Manju Agarwal (P.W.-6) testified that the medical report was dated 12.03.1986 and had been mistakenly dated 12.03.1985. She further verified that the report was in her handwriting and contained her signature, marking it as Ext. Ka-4. This was a bona fide human error that can occur, which was duly rectified by the doctor herself.

13. The examination-in-chief of the victim was recorded on 23.06.1988, wherein she stated that her age was about 25 years. It is pertinent to mention here that while the incident occurred on 25.02.1986, she herself stated her age to be approximately 25 years on 23.06.1988.

14. The victim stated in her examination-in-chief that she was unmarried at the time of the incident and that her mother had already passed away. She stated that the incident occurred approximately two and a half years ago, at around 11:00 or 12:00 in the morning. The accused, Subhash, who was present in court, came and informed her that her sister is ill and had

called for her. Her sister is married. Upon hearing of her sister's illness, she accompanied Subhash, who led her away through inducement.

15. Firstly, the accused took her to Kankarkheda. When she asked why he had brought her there, he retorted, "What do you mean by asking this?" and threatened to kill her if she asked any further questions. From Kankarkheda, he took her to Delhi by train, where he kept her for 2–3 days and committed sexual intercourse with her without her consent. However, as she stated that he used contraceptives. She further stated that during her 3–4 days in Delhi, the accused repeatedly committed sexual intercourse with her without her consent and threatened her.

16. Thereafter, he took her to Ghaziabad, where he forcibly took photographs with her without her consent and obtained her thumb impressions on certain papers. Subhash then took her from Ghaziabad to Garhi Ahmadpur, where his younger brother and sister were present. They resided there for the next 3–4 days, during which he again committed sexual intercourse with her without her consent. Subsequently, they returned to Ghaziabad, and while travelling from Ghaziabad, they were arrested by the police outside the city.

17. The victim consistently travelled to several places with the appellant. She is a major who travelled by train and other modes of transport, had photographs taken with the appellant, and placed her thumb impressions on various papers. Given these actions by a major, the possibility that she was a consenting party who was fully aware of the nature of her acts cannot be ruled out.

18. Thereafter, she twisted her statement, claiming that they came to Kankarkheda in Meerut, and while heading toward the city, they were arrested by the police. She admitted knowing Subhash prior to the incident, as he is the nephew of her brother-in-law's father (son of her brother-in-law's uncle) and frequently visited her home. She accompanied him on the basis of this acquaintance. She stated that her sister had been married 8–9 years prior to the incident.

19. She further stated that she told the investigating officer that she was in a relationship with Subhash, and if the officer failed to record this in her

statement, she is unable to give any reasonable explanation to it. She could not recall the exact date on which she left with Subhash. She noted that Subhash stayed at her house for about half an hour on that day, while her sister was away. At the time of the incident, the weather was neither cold nor hot. She did not serve tea to Subhash that day. She stated that Subhash came alone, accompanied only by his maternal uncle, and added that she told the investigating officer that Subhash arrived with his maternal uncle; if this was not recorded, she could offer no explanation. She returned to her father's house approximately 15 days after the incident, having left without informing anyone. She specifically admitted to residing with Subhash during this period across Delhi, Ghaziabad, Garhi Ahmadpur, and Bulandshahr. She stayed in Bulandshahr for 1–2 days and at Kankarkheda for two nights with the accused. She asserted that she narrated all these facts to the investigating officer and could offer no reason if they were omitted from her recorded statement. She also stated that she stayed in a sugarcane field in Bulandshahr with Subhash and informed the investigating officer of this fact, again offering no explanation if it was not recorded. Finally, she stated that she told a tea vendor that her sister is ill and she was going to visit her, after which she proceeded to the Hapur Adda.

20. The said tea vendor, Krishna Devi, deposed as P.W.-3. She stated that she did not know the accused, Subhash, who was present in court, nor did she know his father or the victim. Consequently, she was declared hostile. In her cross-examination by the prosecution, she denied making any statement under Section 161 Cr.P.C. and expressed complete ignorance regarding the victim's father or the alleged incident, failing to support the prosecution's case at any stage.

21. The victim specifically stated that she went from Hapur Adda to Hapur and then reached Bulandshahr. She noted that several persons were present at both the Hapur Adda and Bulandshahr bus stands. She stated that her father's home is situated near the Meerut–Ghaziabad road, where she resided. She further stated that her sister whose alleged illness was conveyed to her resides in a village approximately 2 to 3 miles from Garhi Ahmadpur, District Ghaziabad, located toward the rural/fields (*jungal*) side. She was unable to specify the exact road. She stated that she

did not know anyone at the Bulandshahr bus stand and therefore did not inform anyone. She mentioned seeing police personnel along the route and claimed that when she attempted to approach them, the accused threatened to kill her. However, she could not identify the relevant police station. She denied visiting any fair or exhibition in Bulandshahr, stating that if the investigating officer recorded any such detail in her statement, she could offer no explanation for it.

22. She stated that when she left her home, she was wearing a blue *salwar-suit*, but when she returned, she was wearing a *saree* that had been provided to her, though she had not requested one. She stated that the accused, Subhash, did not commit any sexual intercourse with her in the sugarcane field. She further stated that during the alleged acts of sexual intercourse, the lights were kept on, and she could not turn them off in Delhi because he acted without her consent. She mentioned that one day Subhash brought food to the sugarcane field, but she did not eat, sitting alone in the field instead. She added that they went separately to answer the call of nature at a distance. She noted that there was water in the field and during two days and nights in the sugarcane field, Subhash slept while she remained awake.

23. It is evident that she had ample opportunity to escape or cry out for help, as she specifically admitted that during those two days and nights, the appellant slept and that both went separately to answer the call of nature at a distance. Throughout her travels to various places including passing through crowded locations such as bus stands and railway stations before returning home she neither sought assistance nor raised an alarm. Furthermore, while she left her home in a *salwar-suit*, she returned wearing a *saree* provided to her. All these circumstances reflect her consent.

24. In her cross-examination, she specifically clarified that no one other than Subhash committed any act upon her, stating that if her recorded statement mentioned the involvement of other persons, it was incorrect. She stated that the police arrested them at Ghaziabad, rather than at Kankarkheda or Meerut city. She stated that Subhash purchased the *saree* with someone else while she waited at a road crossing. This further

demonstrates her consent, as she remained standing at the crossing in the absence of the appellant without raising an alarm, complaining to anyone, or fleeing the spot, claiming no police personnel were present at the crossing. She was unable to specify whether her photographs were taken at Ghaziabad or Bulandshahr. However, the taking of photographs invariably occurs in the presence of a third party (the photographer), yet she neither sought help nor raised an alarm at that time, which further establishes her consent.

25. The statement of the victim cannot be categorized as that of a "sterling witness" under the law. She appeared to be fully aware of the nature of her acts and emerged as a consenting party.

26. The father of the victim deposed as P.W.-4. He stated that his elder daughter, Kiran, is married to Murari. The accused present in court, Subhash, is the son of Murari's uncle. On account of this relationship, Subhash and his father frequently visited his house. The name of Subhash's father is Shera. At the time of the incident, his wife had already passed away. On the date of the incident, when he returned home at around 10:00 or 11:00 A.M., the victim was not there. His younger daughter informed him that Subhash and his father had taken the victim with them under the pretext that her sister was ill. Thereafter, he went to his elder brother's residence at Mata Ka Bagh, and together they searched for the victim. They went to his son-in-law's house but did not find her there. Upon returning on the next day, he lodged a report at the police station. He noted that the incident occurred more than two and a half years prior to his testimony.

27. In his cross-examination, he admitted that he came to know on the very same day that his daughter had eloped, yet he did not lodge a report immediately. Upon receiving the information, they first searched for her independently. It is belied to state that he had falsely implicated Subhash and Shera in the case. Despite obtaining knowledge regarding the elopement of his daughter immediately after the incident, he failed to lodge an F.I.R. or seek police assistance promptly.

28. There is force in the submission of the learned counsel for the appellant that the appellant and his father were falsely implicated in the

case. Indeed, after the conclusion of the trial, co-accused Shera was not found guilty of the alleged offence and was acquitted.

29. Basant Lal deposed as P.W.-5. He stated that his younger brother resides at Chandralok and the incident occurred approximately two and a half years prior to his testimony. He stated that guests had come to his brother's house, namely Subhash (present in court) and his father. His brother informed him that the victim was missing from the house because Subhash and Shera had taken her under the false pretext that her sister, Kiran, was ill. He stated that this information was conveyed to him by his brother. He verified the written complaint as Ext. Ka-2.

30. In his cross-examination, he stated that his brother came to him on the very same day to inform him that the victim was missing from home. On that date, they searched for the victim but did not visit the police station. He further stated that the victim was recovered 10 to 12 days after the incident and was handed over to his custody under a recovery memo. He verified the recovery memo as Ext. Ka-3. He clarified that he is not an educated person and is only capable of signing his name. Upon inspecting the document, he stated that he could not read its contents regarding the victim's recovery due to his illiteracy. He explained that the investigating officer informed him that the document was the recovery memo, whereupon he appended his signature. He added that the investigating officer did not record his statement regarding this matter.

31. Dr. Manju Agarwal deposed as P.W.-6. She medically examined the victim on 12.03.1986 at Lady Dufferin Hospital, Meerut, while posted there as a Medical Officer. She stated that Constable Raj Pal Singh brought the victim before her. Upon external examination, no marks of injury were found on her body. Upon internal examination, the hymen was found torn with old healed tears present. The vagina easily admitted three fingers, with no active discharge or bleeding, and no spermatozoa were detected. It was concluded that no definite opinion regarding rape could be given, as the victim was used to sexual intercourse.

32. Thereafter, a supplementary report was prepared on 17.03.1986, which noted that no spermatozoa were found in the vaginal smears and according to the radiological report (X-ray report), the victim's age was

above 19 years. Dr. Agarwal clarified that the medical report was mistakenly dated 12.03.1985, whereas the correct date was 12.03.1986. She verified that the report was in her handwriting, bore her signature, and marked it as Ext. Ka-4.

33. The explanation regarding the human error is acceptable. As per the medical examination, the age of the victim was above 19 years on the date of the alleged incident. Furthermore, when her statement was recorded as P.W.-1 on 23.06.1988 just over two years after the incident she herself stated her age to be 25 years. There is no doubt regarding her majority. Her conduct, including her travelling and residing with the appellant at various places as narrated by her, does not rule out her specific consent. She fully understood the nature and consequences of her acts.

34. Pratap Singh (Investigating Officer) deposed as P.W.-7. His statement was recorded on 08.09.1988. He stated that he was posted as a Sub-Inspector at Police Station Transport Nagar on 26.02.1986, when Case Crime No. 54 of 1986 was registered and entrusted to him for investigation. On the very same day, he recorded the statement of Head Moharrir Dhan Pal Singh, as well as the statements of the complainant, Basant Lal, and Leela, and subsequently proceeded to Ghaziabad in search of the victim. He arrested the co-accused, Shera, on 27.02.1986, as recorded in G.D. Entry No. 30 at 17:15 hours, and verified the G.D. entry as Ext. Ka-6. He further stated that he recorded the statement of Smt. Raj on 03.03.1986 and inspected the place of the incident on the same day, preparing the site plan of the scene from where the victim was alleged to have gone missing, which he verified as Ext. Ka-7. Thereafter, he arrested Subhash along with the victim on 11.03.1986 at Delhi Road, Mohkampur, and prepared the site plan of the recovery location, verified as Ext. Ka-8. After summoning the family members of the victim to the police station, he handed over the victim to her paternal uncle, Basant Lal (who is also the complainant in the case), and verified the entrustment memo (*fard supurdgi*) as Ext. Ka-9. He seized the petticoat (Ext. 1) and prepared its seizure memo, verified as Ext. Ka-10. The medical examination of the victim was conducted on 12.03.1986. He verified the supplementary report as Ext. Ka-11 and the charge-sheet as Ext. Ka-12. He also verified the check F.I.R. as Ext. Ka-13 and the relevant G.D. entry as Ext. Ka-14.

35. He stated in his cross-examination that the place of recovery of the victim was Mohkampur, which falls within the jurisdiction of Police Station Transport Nagar, District Meerut. He noted that he could not recall the exact time when he recovered the victim along with Subhash on 11.03.1986. After seeing the case diary, he stated that he arrested Subhash along with the victim at 7:30 P.M. He further stated that he could not remember the exact time he recorded the victim's statement at the police station, though the exact date and time were noted in the case diary. He acknowledged that he did not record the place of recovery in the recovery memo, explaining that because he had already entered the location in the case diary, he omitted it from the recovery memo. Similarly, he did not mention the time of recovery in the recovery memo. It is belied to state that the recovery memo was not prepared on the spot but was instead manufactured at the police station. He admitted that he did not obtain the signature of any local resident of the area on the recovery memo. It is belied to state that he had fabricated the recovery of the victim along with Subhash.

36. He further testified that the victim had stated to him that Subhash forcibly committed sexual intercourse with her and that he also made her submit to sexual acts with his associates. However, in her testimony before the learned trial court, the victim specifically denied making any such statement to the investigating officer.

37. The statement of the accused-appellant, Subhash, was recorded under Section 313 Cr.P.C., wherein he denied all the evidence adduced against him, stating that false and fabricated evidence had been recorded and that he was falsely implicated due to enmity. The F.I.R. was lodged with an unexplained delay. As per the medical examination and radiological report submitted by the examining doctor, the victim was determined to be above 19 years of age at the time of the incident. Furthermore, when the victim recorded her statement as P.W.-1 over two years after the incident, she herself stated her age to be approximately 25 years.

38. During the entire evidence, the victim admitted to visiting various places across several districts, including crowded locations such as railway stations and bus stands. Yet, at no point did she raise an alarm,

seek assistance, or attempt to escape. She testified that when the appellant left her alone at a road crossing to purchase a *saree* for her, she remained standing alone at the crossing, awaiting his return. She further testified that she stayed in a sugarcane field for two days and two nights, during which the appellant slept while she remained awake. Despite this, she neither sought help, raised an alarm, nor attempted to flee from the sugarcane field. She also admitted that in the sugarcane field, both went separately to answer the call of nature at a distance; even then, she made no effort to escape or call for help.

39. Regarding the independent witness, Krishna Devi (P.W.-3), a tea vendor, to whom the victim claimed to have disclosed that she was leaving with the appellant, Krishna Devi failed to recognize either the accused or the victim during her deposition. She did not support the prosecution's case, and was declared hostile. Furthermore, the recovery of the victim is highly doubtful and disputed, as the investigating officer failed to show any independent witness at the time of the alleged recovery.

40. During the medical examination of the victim, neither external nor internal injuries were found. The evidence has been appreciated in detail and discussed hereinabove. The entire prosecution story fails to inspire confidence, as there are glaring inconsistencies throughout the prosecution's case. It is neither supported by nor corroborated by the medical evidence, nor is it corroborated by the oral evidence on record. The entire conduct of the victim who was over 19 years of age at the time of the incident it cannot be ruled out that she was fully aware of her actions, understood the nature and consequences of her conduct, and was a consenting party.

41. Hence, in view of the above, the prosecution has failed to prove its case beyond reasonable doubt against the appellant, Subhash. The findings recorded by the learned trial court appear to be perverse. Consequently, the judgment and order dated 26.09.1988 passed by the learned Vth Additional Sessions Judge, Meerut, in Sessions Trial No. 238 of 1987 (under Sections 363, 366, and 376 I.P.C., Police Station Transport Nagar, District Meerut) is liable to be set aside, and is

accordingly set aside.

42. The criminal appeal is, accordingly, allowed.

43. The appellant is on bail and need not surrender. His bail bonds and sureties are hereby cancelled, and his sureties are discharged.

44. A copy of this order along with the trial court record shall be sent to the learned trial court immediately for necessary compliance.

(Abdul Shahid,J.)

October 7, 2026
K.K. Maurya