



2026:AHC:206540

Reserved on : 02.07.2026

Delivered on : 01.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 680 of 1984

Desh Pal

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Suresh Kumar Maurya, Virendra Saran
Counsel for Respondent(s)	:	A.G.A.

Court No. - 68

HON'BLE HARVIR SINGH, J.

1. Heard learned counsel for the appellant, learned AGA for the state and perused the material available on record.
2. The instant Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the judgment and order dated 17.01.1984, passed by the learned Additional Sessions Judge, Court No. 5, Budaun in Sessions Trial No. 171 of 1983 (State vs. Desh Pal), under Section 376 of the Indian Penal Code, 1860, Police Station Faizganj Behta, District Budaun. By the impugned judgment, the sole appellant, Desh Pal, was convicted under Section 376 I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of four years.
3. From, the perusal of records, it is evident that a non bailable warrants were issued against the appellant-Desh Pal vide order dated 02.12.2021 by this court. The same has been executed upon the appellant and he was sent to jail, vide order dated 23.03.2022.
4. The genesis of the prosecution story, as emerging from the First Information Report (Ext. Ka-1), is that on 23.03.1983 at around 11:00 A.M., the prosecutrix, aged about 10–11 years, along with another minor girl namely, Shakuntala, had gone to the nearby jungle to collect cow dung. When they reached near a tri-crossing, the accused/appellant Desh Pal met them with his rickshaw and offered them a ride.
5. It is alleged that when the rickshaw reached near an old, abundant

building known as "*Sharab Wali Kothi*," the appellant forcibly took Km. Jasodha inside the building and committed rape upon her. Upon hearing her cries, witnesses Ram Prasad (P.W.-3) and Dwarki arrived at the scene, whereupon the appellant fled away. The witnesses found Km. Jasodha lying naked and bleeding was oozing from her private part. She was taken home, and thereafter her mother, Smt. Bhu Devi (P.W.-1), lodged a written report at Police Station Faizganj Behta, situated about 10 km from the place of occurrence in village Asafpur at 1:20 P.M. on the same day.

6. Upon lodging of the FIR, Head Constable Harpal Singh (P.W.-5) prepared the check FIR (Ext. Ka-1) and made the corresponding entry in the General Diary (Ext. Ka-4). The Investigation of the case was assigned to Ghanshyam Singh, the Investigating Officer (P.W.-6), who visited the spot, prepared the site plan, which is marked as Ext. Ka-5, and collected plain and blood-stained soil vide recovery memo (Ext. Ka-6). On 24.03.1983, the appellant was arrested, and his underwear was seized, vide recovery memo Ext. Ka-8. The prosecutrix was medically examined by Dr. Sunita Gupta (P.W.-4).

7. Upon completion of the investigation, a charge-sheet (Ext. Ka-9) was filed against the appellant under Section 376 I.P.C before learned Magistrate and the learned Magistrate after taking cognizance upon the same, committed the case to the Court of Session, vide order dated 01.05.1983. The learned Sessions Judge framed charges under Section 376 I.P.C. against the appellant, who pleaded not guilty and claimed to be tried.

8. In order to prove its case, the prosecution has examined six witnesses:

- (i) P.W.-1 (Smt. Bhu Devi) mother of the prosecutrix/informant
- (ii) P.W.-2 (Km. Jasodha), the victim/prosecutrix
- (iii) P.W.-3 (Ram Prasad), the independent witness
- (iv) P.W.-4 (Dr. Sunita Gupta), who conducted the medical examination of the victim.
- (v) P.W.-5 (H.C. Harpal Singh), who prepared the chik FIR.
- (vi) P.W.-6 (Ghansham Singh), the Investigating Officer.

9. P.W.-1 (Smt. Bhu Devi), who is the complainant and the victim's mother, stated in her testimony that her daughter had gone to collect cow

dung, returned in a blood-soaked condition accompanied by Ram Prasad and Dwarki, and she lodged an FIR at the police station.

10. P.W.-2 (Km. Jasodha), the prosecutrix. She detailed the incident, stating that the appellant lured her into his rickshaw, took her inside "*Sharab Wali Kothi*," and committed rape with her. She further deposed that Shakuntala was with her. She is younger than her. She had gone with Shakuntala to the 'Dar' to collect cow dung. The accused took her alone and left Shakuntala behind. She further stated that, when she raised an alarm, Dwarika and Ram Prasad, residents of her village, arrived at the scene. Seeing Dwarika and Ram Prasad, the accused fled away from the spot. They tried to chase them but could not succeed. She further stated that Dwarika and Ram Prasad took her home, where she told her mother the entire story, after which her mother took her to the police station and filed a report. She subsequently underwent a medical examination in Badaun. The clothes she was wearing were seized by the police. She further stated that she knew the accused well. In her cross-examination, the victim has deposed that the accused was her neighbour. He used to drive a rickshaw. His father was a laborer. There was no enmity between her parents and the accused, nor had there ever been any quarrel between them. He further stated that the applicant is an unmarried person, who lives with his mother. He further stated that Dwarika and Ram Prasad were returning from the station and arrived at the scene upon hearing the alarm raised by the victim. She further deposed that, it is incorrect to say, that the accused had not molested/committed rape her and she was giving false testimony at the behest of her mother.

11. In her examination-in-chief, the victim (PW-2) deposed that the accused made her sit in the rickshaw, saying, "Come, let me take you for a ride." The accused had never taken her in the rickshaw, prior to that day. The accused had been driving a rickshaw for a long time. The accused forced her into the rickshaw; she did not sit in it of her own free will. When she shouted, the accused threatened to kill her, if she cried. The accused forced her into the rickshaw at a crossroads; that location is quite far from her home. When the accused made her sit in the rickshaw, he was wearing blue trousers and a brown shirt. The accused also forced a little younger girl, who was with her into the rickshaw; she was 3-4 years younger than her. The victim was carrying a 'pallu', which the accused

also placed inside the rickshaw. The place where the accused committed the wrongful act against her is quite far from the crossroads. The accused parked the rickshaw outside the house, where he committed the wrongful act. He also forced her to get out of the rickshaw in front of that house. There was no person present, when the accused forced her out of the rickshaw. The accused did not allow the younger girl who was in the rickshaw with her to get out; she cannot say where she left. The door through which the accused took him inside was broken, when the accused committed the wrongful act/rape upon her. PW-2 further stated that, when the accused removed his trousers, he was wearing nothing underneath. I was wearing a red 'salwar' and a white 'kurta'. When the witnesses arrived, the accused was on top of me and fled upon seeing them. The accused ran away on his own upon seeing the witnesses, they did not pull him off me. I noticed the witnesses only when they entered the room, I had not seen them then earlier. I went home with the witnesses and then proceeded to the police station wearing the same clothes I had on at the time of the incident. PW-2 further deposed that, it is incorrect to say, that my family had a dispute with the accused, Deshpal, and I am framing him in a false case. It is also incorrect to claim, that I was injured by colliding with 'kande', I had sustained an injury on my elbow, and there were nail marks on it.

12. PW-3 (Ram Prasad), the alleged eyewitness, stated in his testimony that, while returning from the railway station, he heard screams, he entered the building, saw the appellant fleeing, and found the victim bleeding. He also deposed, that the other eye witness, Dwarki, had passed away prior to the trial. PW-3 Ram Prasad stated in his testimony that about 8-9 months ago, at around 11:00 A.M., he was returning to the village from the station. On the way, he reached an old, vacant house, a liquor distillery used to operate there previously. Upon reaching the doorway, he heard a child screaming. A rickshaw was parked outside. He and Dwarka entered the house. The witness saw named 'victim' and asked, "Who is this?" The accused, who was present in court, was holding her. He further stated that, he saw the accused fleeing the scene after releasing the girl. The girl was lying naked on the ground, she was bleeding from her private part, and there was blood on the ground as well. He chased the accused for some distance, but could not catch him. When asked, the girl revealed that the accused had forcibly committed a sexual

act upon her. He was already acquainted with both the accused and the victim. He then took the girl home, brought her to Dwarika, and informed the girl's mother about the entire incident.

13. During cross-examination, PW-3 stated that, it would be incorrect to say, that he did not pursue the accused, Deshpal. His house is located 10–15 houses away from that of the accused. He further deposed that he was a washerman by profession and works in a hospital. Dwarika was also coming from the station, and now he is no more. Where the accused raped the victim, there were no doors; they were broken. The police inspector came to the village that evening and recorded our statements. When the police inspector arrived that evening, the rickshaw was not at the place, where we had seen it parked earlier. We showed him the blood. The accused works as a rickshaw puller in the village. He also deposed that, to the best of his knowledge, the accused has never committed any wrongdoing act earlier. I had not seen victim sitting in a rickshaw prior to instant incident. It is incorrect to say, that we did not pursue the accused, and it is also incorrect to claim that, I am giving false testimony in collusion with Madiya.

14. PW-3 in his examination-in-chief stated that the train was scheduled to arrive at 3:00 or 4:00 P.M., but he had dropped a guest off at the station. The station is at the same distance from the scene of the incident, as the old courthouse. The old courthouse is about 50–60 paces away. There is no residential area between the station and the scene of the incident. The house, where the incident occurred belongs to Ram Sovaran Singh. There are no other houses nearby; the residential area is about one or one-and-a-half km. away. This house is situated on the road leading from the village to the station. The area surrounding the house is open land and is not cultivated. The house was in dilapidated condition and was lying vacant. When I entered the room, I did not see the accused on top of the girl; instead, he ran towards the door. We reached the scene after hearing the victim's screams. There are two entrances to the house; one through which we entered, and another on the opposite side. We could not catch the accused, while he was fleeing. My companion did not stop him either; he chased the accused for 10–20 paces, but could not succeed, and he escaped. As the accused fled, he was holding up his trousers or '*pajama*'. As far as I recall, he was wearing undergarments; I cannot

specify the colour of the undergarments. The accused was holding the garment in his hand was coloured; I do not remember the colour of the T-shirt he was wearing, nor do I recall the fabric of the T-shirt. I do not remember whether the accused was naked or clothed. When we saw the victim, her head was positioned towards the station. Upon seeing her, I noticed that the silver anklet on her leg had come undone, and she was wearing a 'kurti'. The anklet and the 'kurti' were of the same colour (red). I did not notice, whether any belongings, such as a 'pallu' or similar items, had been left behind in the rickshaw. My companion and I took the girl along with us on foot; we did not carry her. We took the victim home. I did not go to the police station with him. We did not see anyone other than the accused fleeing the scene of the incident. It is incorrect to say that the accused had quit his job, as a cleaner at the house, and it is also incorrect to say that he was falsely implicated in the case for this reason. It is true that the accused is a sweeper.

15. P.W.-4 (Dr. Sunita Gupta), the Medical Officer who conducted the physical, gynecological, and radiological examination of victim. She proved the Injury Report (Ext. Ka-2) and the Supplementary Report (Ext. Ka-3). Upon local examination of the genital organs, she found ***slight laceration over the perineum; the hymen was torn at the 6 o'clock position with a corresponding tear of the vaginal wall; fresh bleeding present from the vaginal tear. Upon supplementary assessment incorporating the ossification/X-ray report, she opined that the age of the victim was approximately 10 to 11 years at the time of occurrence of the incident.***

16. P.W.-5 (H.C. Harpal Singh), proved the registration of the Chik FIR (Ext. Ka-1) and the corresponding G.D. entry (Ext. Ka-4).

17. P.W.-6 (S.I. Ghanshyam Singh), the Investigating Officer, proved the spot inspection, the site plan (Ext. Ka-5), the seizure memo of plain and blood-stained earth (Ext. Ka-6), the arrest of the accused and recovery of his underwear (Ext. Ka-8), and the submission of the charge-sheet (Ext. Ka-9).

18. In his statement recorded under Section 313 Cr.P.C., the appellant / accused denied all incriminating circumstances, pleaded innocence, and stated, that he was falsely implicated due to a prior altercation/enmity with Roshan Lal, the father of the prosecutrix.

19. The learned counsel for the appellant submitted that, there exist discrepancies in the ocular testimony regarding the clothing of the accused. The prosecutrix (P.W.-2) deposed that the accused was wearing only pants without an underwear, whereas P.W.-3 stated that when the accused fled, he was wearing an underwear and carrying his pants in his hand.

20. The learned counsel for the appellant submitted that, there is a variance between P.W.-1 and P.W.-2 regarding the color of the clothes worn by the prosecutrix (P.W.-2 stated she wore a red *salwar* and white *kurta*, while P.W.-1 deposed that the shirt and *salwar* were of the same color).

21. The learned counsel for the appellant submitted that Shakuntala, the other minor girl who allegedly accompanied the prosecutrix, was not examined by the prosecution, which according to the appellant creates a fatal defect in the prosecution story.

22. The learned counsel for the appellant submitted that the appellant had an altercation with the victim's father, giving rise to an axe to grind and false implication.

23. The learned A.G.A. forcefully countered these submissions, contending that the prompt FIR was registered within an hour and twenty minutes, ruling out any deliberation or concoction. The testimony of the minor prosecutrix (P.W.-2) is natural, straightforward, and inspires confidence. Under well-settled principles of criminal jurisprudence, the sole uncorroborated testimony of a victim of sexual assault can sustain a conviction, if found sterling, and in the present case, her testimony is further fortified by an independent eye-witness (P.W.-3), medical evidence (P.W.-4), and the recovery of blood from the spot. The discrepancies pointed out are entirely peripheral and minor, attributable to memory lapse after nine months.

24. This court has perused the material on record, and considered the rival submissions of the parties.

25. As to promptness of the FIR is concerned, the occurrence took place on 23.03.1983 at approximately 11:00 A.M., and the FIR (Ext. Ka-1) was lodged at 1:20 P.M. on the very same day at Police Station Faizganj Behta. The distance between the police station and the place of occurrence in village Asafpur is 10 kilometers. Considering that the

informant (P.W.-1) first attended to her bleeding minor daughter, carried her to the police station, and lodged the report, an interval of one hour and twenty minutes is exceptionally prompt. The FIR explicitly mentions the name of the accused, the place of occurrence (Sharab Wali Kothi), the precise time, and the arrival of witnesses Ram Prasad (P.W.-3) and Dwarki. This promptitude completely rules out any possibility of tutoring, deliberation, or false embellishment.

26. As to sterling quality of the testimony of the Prosecutrix (P.W.-2) is concerned, the prosecutrix (P.W.-2), was a minor girl of tender age (10–11 years). It is well settled, that in offences involving sexual violence, the evidence of the victim must be appreciated with sensitivity. Her testimony is not to be equated with that of an accomplice; rather, she is an injured witness of a heinous crime. Corroboration is not an absolute rule of law, but in the present case, ample corroboration is available.

27. A careful examination of P.W.-2's deposition indicates, that her statement is consistent, coherent, and unshaken in cross-examination. She vividly recounted being enticed onto the rickshaw and taken into the deserted *kothi*, where the appellant subjected her to sexual assault. No minor child of 10 or 11 years would invent a story of ravishment and genital bleeding simply to settle a purported dispute between her father and the accused or anybody else.

28. As to independence and corroboration by P.W.-3 (Ram Prasad), who is an independent resident, and was returning from the railway station. He had no axe to grind against the accused and bore no relationship or affinity with the family of the prosecutrix. His presence near the deserted building at the time of hearing, the screams is natural and convincingly explained. His testimony confirms that as soon as he and Dwarki entered the building, the appellant fled the spot, leaving the girl naked and bleeding. The non-examination of Dwarki stands satisfactorily explained, as he had unfortunately passed away prior to the recording of evidence.

29. The ocular testimony finds complete and unassailable corroboration from the medical evidence of Dr. Sunita Gupta (P.W.-4). Furthermore, the collection of blood-stained earth from the scene of crime by the Investigating Officer (Ext. Ka-6) establishes beyond doubt that the sexual assault took place inside the abandoned Sharab Wali Kothi. In the case of ***Pruthiviraj Jayantibhai Vanol vs. Dinesh Dayabhai Vala and Ors.***

passed in Criminal Appeal No. 177 of 2014, decided on 26.7.2021 MANU/SC/0475/2021, in which it has been held by Hon'ble Supreme Court that,

“ocular evidence is considered the best evidence unless there are reasons to doubt it. Ocular evidence is considered the best evidence unless there are reasons to doubt. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and Rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that muddamal No. 5 was a simple iron rod without noticing the evidence that it had a sharp turn edge.”

30. In the instant case, the ocular evidence is supported by the medical evidence, hence, one compliments the other.

31. The learned counsel for the appellant has laid heavy emphasis on the divergence in statements regarding the appellant's apparel (whether he was wearing an underwear or carrying pants in his hand) and the color of the prosecutrix's kurta.

32. In my view, the learned Trial Judge has correctly dealt with and repelled this contention. Witnesses were examined in the trial court about nine months after the date of occurrence. Human memory is not photographic. Discrepancies of a minor nature relating to the color of clothes or the exact mode in which an accused was attempting to dress himself while hastily fleeing from the spot do not touch the core fabric of the prosecution case. In a state of intense panic and trauma, a 10-year-old child who has just been ravished cannot be expected to notice or recollect every minute detail of the culprit's fleeing attire. Only those contradictions that demolish the core substratum of the charge can enure to the benefit of an accused. The contradictions pointed out here are peripheral and insignificant.

33. As regards the non-examination of Shakuntala, it is settled law that the prosecution is required to prove its case by quality of evidence, not quantity (Section 134 of the Indian Evidence Act, 1872). When the direct, injured eye-witness (P.W.-2) and the independent rescuer (P.W.-3) stood steadfast in the witness box, non-examination of another child companion does not create any dent in the prosecution case. The Hon'ble Supreme Court in the case of **Wahid Khan vs. State of Madhya Pradesh** passed in

Criminal Appeal No. 1798 of 208, decided on 1.12.2009 has held that,

“it is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are. Thus, in a case of rape, testimony of a prosecutrix stands at par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible.” The Hon’ble Supreme Court in the case of Phool Singh vs The State Of Madhya Pradesh on 1 December, 2021.”

10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in [Vijay vs. State of M.P., (2010) 8 SCC 191], it is observed in paras 9 to 14 as under: (SCC pp. 195-98) “9.1 [State of Maharashtra v. Chandraprakash Kewalchand Jain](#) [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550] Hon’ble Supreme Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under (SCC p. 559, para 16) :

“A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 14 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the

testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.”

34. Lastly, the plea taken by the appellant under Section 313 Cr.P.C. regarding an alleged altercation with the victim's father Roshan Lal is completely hollow and unsubstantiated. Neither any oral or documentary evidence was led by the defence to establish any prior dispute or animosity between the families. Even assuming an ordinary dispute existed, it is inconceivable, that parents would, sacrifice the honour and physical integrity of their 10-year-old child to frame a rickshaw puller on a capital charge.

35. On a holistic appraisal of the entire record, this Court is of the opinion that the prosecution has successfully established the guilt of the appellant Desh Pal for the offence punishable under Section 376 I.P.C. beyond any shadow of reasonable doubt.

36. On the question of sentence, the learned Trial Court has already taken an exceptionally lenient approach by awarding a modest sentence of four (4) years rigorous imprisonment, despite the heinous nature of the crime committed on a 10-year-old child. The sentence awarded by the trial court requires no interference whatsoever.

37. In view of the detailed discussion and findings recorded above, the Criminal Appeal is devoid of merit and is hereby dismissed.

38. The impugned judgment and order of conviction and sentence dated 17.01.1984 passed by the learned V Additional Sessions Judge, Budaun in Sessions Trial No. 171 of 1983 is hereby confirmed.

39. If the appellant, Desh Pal, is on bail, his bail bonds are cancelled and his sureties are discharged. The appellant shall be taken into custody forthwith to serve out the remaining period of his sentence.

40. Let a certified copy of this judgment along with the original Trial

Court Record (LCR) be transmitted immediately to the learned Trial Court, Budaun for immediate compliance and necessary action.

(Harvir Singh,J.)

October 1, 2026
Faridul