



2026:AHC:189788

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 690 of 2013

Rakesh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Birendra S. Pandey, Santosh Kumar Yadav
Counsel for Respondent(s)	:	Govt. Advocate

Court No. - 90

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the appellant and the learned AGA for the State.
2. Challenge in this criminal appeal by the appellant-Rakesh is to the judgement of his convictions dated 29.1.2013, passed by learned Additional Sessions Judge, Court No.20, Agra in S.T. No. 69 of 2011 in case crime No. 457 of 2010 (State Vs. Rakesh), convicting the appellant under Section 452 IPC for 5 years and fine of Rs. 2000/ and under Section 376 IPC for ten years with fine of Rs. 30,000/-.
3. In brief, the prosecution story is that on 31.10.2010, the complainant/ Kalicharan, son of Maharaj Singh Yadav, gave a written application to the Station House Officer, Etmadpur, District Agra, stating that on 31.10.2010, at around 4:30 in the evening, he was working in the fields. His wife, Mrs. Anita Devi, and his 18-month-old daughter, the victim, were at home. His wife had gone to fill water from the tap in front of the house of Moolchand, son of Natthi Lal, of the same village. His daughter was playing alone at home. Meanwhile, Rakesh, son of Siyaram Yadav, of the village, who was passing in front of his house, saw his daughter playing alone. He grabbed the girl and began raping her there inside the hut; the girl started screaming in pain. Hearing her screams, his wife (Smt. Anita), his brother (Jai Dayal) and sister-in-law (Smt. Lalvati), who were working in the fields along with Satyveer and many other villagers arrived at the scene. They rescued the girl from Rakesh, subdued him after a scuffle, and detained him on the spot. At that time, the girl was drenched in blood, and Rakesh's clothes were also stained with blood from the rape. With the help of the villagers, the girl and Rakesh were brought to the police station, and a request was made to register a formal complaint. Based on the written complaint submitted by the

complainant, an FIR No. 338/2010, dated 31.10.2010 was registered against the named accused, Rakesh son of Siyaram, for offenses under Sections 376 and 452 of the IPC at 18:05 hours on 31.10.2010. This entry was recorded in the General Diary (Roznamcha Aam) vide Report No. 36 at 18:05 hours on 31.10.2010, and the investigation of the case was entrusted to SSI Shri Ram Prakash Chaudhary.

4. During the investigation, the Investigating Officer recorded the statements of witnesses, inspected the crime scene, and prepared a site plan (Naksha Nazri). A medical examination of the victim/prosecutrix was conducted, and the medical reports were compiled. An expert report regarding the bloodstains found on the clothes worn by the victim and the accused was obtained from the Forensic Science Laboratory. After completing all other necessary investigative procedures, the Investigating Officer submitted a charge sheet against the accused, Rakesh/appellant, as mentioned above.

5. Charges were framed against the accused, Rakesh, by the Court of the Additional Sessions Judge (Court No. 17), Agra, for offenses under Sections 376 and 452 of the Indian Penal Code (IPC).

6. During the investigation by the investigating officer of the case, statements of witnesses were recorded, the scene of the incident was inspected and a map was prepared. Medical examination of the victim/prosecutrix was conducted and medical examination reports were compiled. Expert report of the blood stains on the clothes worn by the victim and the accused was called from the Forensic Science Laboratory and the investigating officer, after completing all other necessary proceedings of the investigation, sent the charge sheet against the accused Rakesh as mentioned above. In order to prove the above charges framed against the accused/ Rakesh by the prosecution, PW1 Smt. Anita wife of Kalicharan, PW2 plaintiff Kali Charan, PW3 Satyaveer, PW Dr. Neelam Rani, PW5 Vishnu Dutt, PW6 SO Shri Ram Prakash Chaudhary have been examined.

7. On behalf of the prosecution, in the form of documentary evidence, the complaint/ Exhibit Ka-1, the form of taking the accused into custody, Exhibit Ka-2, the list of clothes of the victim/prosecutrix and the accused, Exhibit Ka-3 and Exhibit Ka-4, medical examination report of the victim/prosecutrix, Exhibit Ka-7, official G.D., Exhibit Ka-8, map, Exhibit Ka-9, charge sheet, Exhibit Ka-10, examination report of the forensic

science laboratory, Exhibit Ka-11 and Exhibit Ka-12 have been presented and the above mentioned prosecution documents have been proved by the evidence of the concerned witness.

8. PW1, Mrs. Anita, stated that on October 31, 2010, at approximately 4 p.m., she was present in her home with her victim daughter. She had gone to fetch water, and her daughter, aged 18 months, was alone at home when accused Rakesh took her daughter inside the house and began raping her. Her daughter screamed, and she ran towards the house. Hearing her voice, she raised an alarm, attracting the neighbors. Her husband, who was working in the fields, returned. They apprehended appellant/Rakesh and rescued her daughter from him. Her daughter's clothes were soaked in blood, and the appellant's clothes were also stained with blood. Accused Rakesh, her husband, Jaidayal, and she, along with other villagers, took her and her daughter to the police station. Her husband had filed a report against Rakesh and her daughter was sent for medical examination with the police from the police station. She and her husband accompanied her for medical examination. Her daughter was treated after being admitted in the hospital for two days and later she got her treated in a private hospital. Rakesh is a resident of her village. She knows him well. Seeing Rakesh present in the court, the witness said that this is the same Rakesh, who had raped her daughter. The police inspector questioned her regarding this incident and she told everything about this incident.

9. Kalicharan of the case has been examined as PW-2. The above witness gave a statement that on 31.10.2010 at around 4.30 pm in the evening, his wife Smt. Anita and daughter who was one and a half years old were at his house. His wife went out of the house to fetch water. His daughter was alone at home at that time. Accused Rakesh, who is a resident of his village came and seeing his daughter alone, raped her. When his daughter screamed, on her voice his wife Jaidayal, Amar Singh, Satyaveer, Smt. Lalvati and other people of the village also came. He was cutting millet two fields away from his house. On hearing the noise of his wife, he came home and Rakesh was being held by the villagers. Blood was coming out of his daughter's urine. After this, he did nothing. He took Rakesh to the police station along with other people of the village.

10. Satyaveer Parikshit has been examined as W3. He stated that on

31.10.2010, after working in the fields, he was on his way to fetch milk. It must have been around 4:30 in the evening. He heard Kalicharan's wife, Mrs. Anita, and their 18-month-old daughter screaming and crying in his hut. He arrived and saw that Rakesh from his village had committed a crime against Kalicharan's one-and-a-half-year-old daughter. The girl was covered in blood and blood was oozing from her private parts. Other people also arrived, including Mrs. Lilavati, Kalicharan, Jaidayal, Amar Singh, and several other villagers. They all caught Rakesh at Kalicharan's hut and took him to the police station. He also accompanied him to the police station. Kalicharan had Amar Singh write a report about the incident. The paper written by the police at the police station to take the accused into custody is present in the file and has been proved as Exhibit Ka-2. The witness identified his signature on it. On the same day at the police station, the police had got the blood-stained handkerchief of Kalicharan's daughter. This witness identified his signature on it and this form has been proved as Exhibit Ka-3. On the same day, the under wear and vest of the accused Rakesh were seized and an individual document was prepared on which, he identified his signature and has been proved as Exhibit Ka-4.

11. Dr. Neelma Rani, Senior Consultant, District Women's Hospital, Agra has been examined as PW-4. She has given a statement that on 31.10. In 2010, she was posted in the District Women's Hospital as EMO. After obtaining written consent, he found no signs of injury on the victim's body. A physical examination of the victim revealed no signs of injury to her genitals. An internal examination revealed a ruptured hymen at the 12 o'clock position, causing bleeding. The genitals were swollen. She prepared a swab and sent it to the medical college to determine the presence of sperm. The victim's mother stated that the victim's undergarments had been deposited at the Etmadpur police station. The victim was sent to the CMO, Agra, for age determination, and the victim was sent to SN Medical College for treatment. She was asked to give her final opinion after the report arrived. After the report arrived on 16.10.2010, she prepared a supplementary report. The pathology report was given by the pathologist and signed by him on which sperms were not found. A lot of blood cells were visible in the slit. In her opinion, no definite opinion can be given about rape. The injury on the private part of the victim was caused by a hard and blunt object, it could be a male genital. Based on the report of CMO Agra, the age of the victim was about one and a half years. The medical report and

supplementary medical report have been proved as Exhibit Ka-5 and Exhibit Ka-6 respectively by the witnesses, stating that they are in their own handwriting and signature.

12. Vishnu Dutt has been examined as PW-5. The witness stated that on 31 October 2010, on the written information of plaintiff Kalicharan, he had registered complaint no. 338/2010, case crime no. 457/2010 under sections 376 and 452 of the Indian Penal Code. Identifying the text of the complaint and his signature on it, he presented the said form as Exhibit Ka-7. The original GD was brought along and on its basis, a statement was made that he had registered the matter in the GD in the diary at 10:05 a.m. on 31 October 2010. The photocopy of the GD was verified by comparing it with the original and proving it as Exhibit Ka-8.

13. The Investigating Officer, Sub Inspector Ram Prakash Chaudhary has been examined as PW-6. He has stated that on 31.10.2010, he was posted as S.S.I. in Etmadpur police station. On that day, after receiving the investigation report of FIR No. 457/2010 under sections 376, 452 of IPC, the copy FIR and copy report were mentioned in the case diary and the statements of plaintiff Kalicharan, clerk of the writer of the copy FIR and accused Rakesh were recorded by him. On 1.11.2010, a copy of the medical report of the victim was made in the case diary and on 4.11.2010, the clothes worn by the victim were taken into custody and the statement of the victim's mother, Mrs. Anita, was recorded and the list of the victim's clothes was prepared by Vijay Singh, which is Exhibit Ka-4. On 5.11.2010, statements of witnesses were taken and the spot inspection was done on the pointing out of the complainant and the witnesses and the said form was proved as Exhibit Ka-9 by confirming that the map was in his writing and signature and it was stated that on 19.11.2010, he had obtained the medical report, supplementary report of the victim and the forensic laboratory report of the clothes of the victim and the clothes worn by the accused on 1.4.2011. He has stated that on the basis of evidence, charge sheet was filed against the accused/appellant which is verified by him as Ext. Ka-10.

14. The statement of the accused under Section 313 Cr.P.C. had been record. He has denied all the charges and evidence produced against him. In defence, DW-1, Siyaram and DW-2 Dr. Beena Sharma had been examined in support of defence.

15. Learned counsel for the appellant has submitted that the appellant has been falsely implicated in the present case. No such offence has been committed by the appellant as narrated by the prosecution. Due to enmity, the appellant has been falsely roped in the present case. Therefore, the judgment and order passed by the learned trial court is liable to be set aside and the appeal is liable to be allowed.

16. Learned AGA has opposed the appeal and has submitted that the appellant has committed rape with a infant child of aged 18 months only. This is heinous and serious offence. He is not entitled to any sympathy and, hence appeal is liable to be dismissed and judgment and order of conviction is liable to be upheld.

17. According to the prosecution story, the accused Rakesh is alleged to have entered into the complainant's hut with the intention of causing hurt to the 18-month-old daughter/victim, in the jurisdiction of village Gadpura, police station Etmadpur, district Agra, on 31.10.2010 at 4.30 pm, and forcibly raped the 18-month-old daughter/victim. In this case, the accused/ Rakesh has committed rape with the daughter of the complainant, who was aged about 18 months only. On hearing the victim's screams and cries, the victim's mother, Mrs. Anita, saw the accused committing the rape on the spot and on the screams of Mrs. Anita, with the help of the people nearby, the accused Rakesh was caught on the spot and blood stains of rape were found on his vest and underwear. This is confirmed by the statements of the examined witnesses and the test reports of the Forensic Science Laboratory, Exhibit Ka-11 and Exhibit Ka-12. The First Information Report of the case in question was filed very promptly without delay.

18. Learned counsel has in its judgment has held that the defence evidence presented by the defence side has been presented after discussion in the further stage of the trial with the intention of saving the accused from punishment in a fictitious manner. No such suggestive questions have been asked in the cross-examination of PW1 witness Mrs. Anita and PW2 plaintiff Kalicharan which could have any bearing on the statement made by accused Rakesh under Section 313 CrPC that two months before the incident the complainant/ Kalicharan had borrowed one lakh rupees from his father Siyaram for sowing potatoes and when accused Rakesh went to complainant's house to demand the money, he was beaten up. The defense could not prove any enmity with the independent witness, Satyaveer, who

reported arresting accused Rakesh at the scene and taking him to the police station to file a report.

19. The learned trial court found the prosecution witnesses reliable and their testimonies confidence inspiring in respect of appellant and, therefore, held him guilty of offences under sections 376 and 452 IPC vide his impugned judgement.

20. The present appeal was filed in this court on 14.2.2013 and was subsequently admitted on 19.2.2013. It was listed for consideration of bail prayer of the appellant many a times, but could not be taken up for interim relief. Today, when the appeal was listed, learned counsel for the appellant made a request that the appellant had already completed his period of sentence awarded by the learned trial court and now, he had already been released from jail on 14.6.2019. This fact has also been mentioned in the custody certificate of the appellant. The maximum sentence is ten years and, therefore, his appeal be decided on merits. It was also pointed out that while convicting the appellant, trial court has ordered that both the sentences under section 376 and 452 shall run concurrently and, therefore, maximum period which appellant is required to under go is ten years.

21. On consideration of all the prosecution evidences, it is evident that the prosecution has proved its case beyond reasonable doubt against the appellant. The appellant has committed rape with a infant child of 18 months, which is a serious and heinous offence. All the evidence adduced by the prosecution is corroborating to each other. The medical examination of the victim is also corroborating.

22. In view thereof, the judgment and order passed by the learned trial court convicting and sentencing the appellant is liable to be upheld and the appeal is liable to be dismissed.

23. Accordingly, the criminal appeal is **dismissed**. The judgment and order dated dated 29.1.2013, passed by learned Additional Sessions Judge, Court No. 20, Agra in S.T. No. 69 of 2011 is affirmed. The appellant had already completed his entire period of sentence awarded by the learned trial court and further he had already been released from jail on 14.6.2019 as stated in the custody certificate of the appellant which is annexed with the compliance affidavit submitted by the learned AGA for the State dated 1.9.2026, therefore, he need not surrender. His bail bonds is cancelled and sureties

stands discharged.

24. Let a copy of this judgement alongwith trial court record be sent to the learned trial court for intimation.

September 10, 2026
sfa/kk.

(Abdul Shahid,J.)