



2026:AHC:190940

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 7947 of 2026

Mohit

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Mukesh Kumar
Counsel for Respondent(s)	:	Basu Dev, G.A.

Court No. - 90

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the appellant and the learned A.G.A. for the State.

2. The instant appeal is directed against the judgment of conviction and sentence dated 14/20.07.2026 passed by Special Judge (POCSO Act)/Additional Session Judge, Farrukhabad in Special Session Trial No. 69 of 2017, State Vs. Mohit, under sections 3/4 of Protection of Children From Sexual Offence Act, 2012 and Sections 363, 366, IPC, Police Station: Maudarwaja, District: Farrukhabad, arising out of Case Crime No. 193 of 2017 and acquit the appellant from all the charges.

3. The prosecution story, in brief, is that the informant submitted a written complaint (Exhibit Ka-01) at Police Station Mau Darwaza on April 18, 2017, stating that he is a native of Village Sunara, Police Station Kalan, District Shahjahanpur. For about 3 years, he has been living as a tenant in the house of Rambabu in Village Babanagla, Police Station Mau Darwaza, earning a living for his family through manual labor. It is further alleged that on April 13, 2017, Mohit, son of Shambhu, who was working as a laborer with him, enticed and took away his minor daughter/victim, aged about 13 years. Siyaram, son of Maiku, resident of District Shahjahanpur, and Shriram, son of unknown, resident of Kasiapur, Police Station Shamsabad, District Farrukhabad, who work with him at the cold storage, are fully involved in abducting his daughter and have complete information about her.

4. Based on the informant's written complaint, First Information Report

(FIR) No. 193/2017 under Sections 363 and 366 of the IPC and Sections 3/4 of the POCSO Act was registered against the accused persons, including Mohit and others, at Police Station Mau Darwaza on April 18, 2017.

5. Learned counsel for the appellant has relied upon the law laid down by the Supreme Court in **K. Dhandapani Vs. State by the Inspector of Police (2022 LawSuit(SC)1129)**, specifically paragraphs 5, 6, 7, 8, and 9, which state as follows:

"[5] After hearing the matter for some time on 08th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life. Forensic Science Laboratory (FSL)

[6] Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

[7] In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant, who is the maternal uncle of the prosecutrix, deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamil Nadu of the marriage of a girl with the maternal uncle.

[8] For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly disposed of. Pending application(s), if any, shall stand disposed of.

[9] In case the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this order."

6. Learned counsel for the appellant has further relied upon the law laid down by the Supreme Court in **Ayyub Malik and another Vs. State of Uttarakhand and another (2026 SCC OnLine SC 637)**, specifically paragraphs 5, 5.1, 5.2, 8, and 10, which state as follows:

"[5] There is no gainsaying that the appellants are presently a married couple. Both, out of their own wish and volition, tied the matrimonial knot as per the rites of their religion. Both belong to the same religion. The appeal before this Court came to be filed by both of them jointly seeking to quash the criminal proceedings which were initiated at the instance of respondent No. 2—father of appellant No. 2. It is also not disputed that the parties have been happily residing at their matrimonial home at village Saliyar Salhapur, Ganganahar, Roorkee, Haridwar. It was stated that a child has been born out of the wedlock.

[5.1] Appellant No. 2 gave her statement under Section 164 of the Cr.P.C. before the police at the very initial stage on 10.08.2020. She stated on oath thus: 'We have married. We love each other; our family members came to know and they were unwilling. We left the house and got married, and now our family members are harassing us. I am happy with him and I want to live with him only. Some people are torturing us and giving us threats to kill; we want to live in our home at Saliyar. I am also an adult and have married of my own will. This is my statement.'

[5.2] A faint attempt was made by learned counsel for the respondent to try and submit that at the time of the incident, when

the appellant ran away with appellant No. 2, appellant No. 2 was a minor and was not of marriageable age. On the other hand, it is claimed that the boy and girl had attained marriageable age when they entered into the matrimonial relationship. Whether appellant No. 2 was a minor of an age a little less than the marriageable age, whether appellant No. 1 lured appellant No. 2 and made her elope with him, and whether the conduct on the part of appellant No. 1 was in the nature of the offence alleged against him or not, are questions which all pale into insignificance.

[8] Here are the parties in the present case who are spouses living and leading their matrimony. In the interest of rendering complete justice to them, the criminal case against appellant No. 1 is required to be put to an end finally. Since it was stated that the appellants have been staying happily and peacefully and that appellant No. 1 is taking good care of appellant No. 2, this Court does not impose any condition on appellant No. 1, hoping earnestly that he and his family members would continue to extend due care and affection to appellant No. 2.

[10] The appeal is accordingly allowed."

7. Learned counsel for the appellant has next relied on the statement of the appellant, who stated under Section 313 Cr.P.C. that the victim was living with him as his wife of her own free will. They had three children, two of whom are alive and present with him.

8. Learned A.G.A. appearing for the State opposed the appeal, submitting that the victim was a minor at the time of the incident according to the FIR, and therefore, her consent is immaterial under the POCSO Act and relevant sections of the IPC..

9. As per the medical examination of the injured victim, there were no signs of physical and sexual intercourse; however, the report from the Forensic Science Laboratory (FSL) remains pending. In the radiological examination of the victim, her age was determined to be 16 years, and this is the only document regarding the age of the victim available on record based on

radiological examination.

10. The victim recorded her statement under Section 161 Cr.P.C., which was verified by P.W.-2/victim herself as Ex. Ka-2, stating that she has known Mohit/appellant for a period of one year and went with him of her own free will on April 13, 2017.

11. The statement of the victim was recorded before the learned trial court, in which she specifically stated that the incident occurred on January 01, 2022, at approximately 1:00 PM. The victim was going to her fields to collect fodder. While she was returning after cutting the fodder, the accused, Chote, came from behind, grabbed her, dragged her away, and committed rape against her. She stated that she understands the meaning of rape.

12. When she returned home, she was frightened. She called her brother-in-law (Jija), Rampal, and narrated the incident to him, after which he took her to the police station. She had the written complaint drafted by someone in the village. The application was read out to her, after which she affixed her thumb impression on it. Upon examining the application attached to the record, the witness identified it as the same complaint she had submitted at the police station, which was subsequently marked as Ex. Ka-1.

13. A female constable recorded her statement at the police station. She also pointed out the scene of the occurrence to the Sub-Inspector (Daroga Ji). With the permission of the Court, the prosecution opened the sealed statement under Section 164 Cr.P.C. The victim was shown her Section 164 Cr.P.C. statement, and after inspecting the photograph and the thumb impression thereon, she confirmed that the photograph and thumb impression belonged to her. The statement under Section 164 Cr.P.C. was marked as Ex. Ka-2. Her medical examination was conducted at the Akbarpur District Hospital.

14. Dr. Yogendra Singh, Senior Consultant Radiologist, examined the victim on April 24, 2017, and advised an X-ray of the victim. An X-ray report was conducted, on the basis of which the opinion is as follows:

15. The Supreme Court of India held in **Rajak Mohammad Vs. State of Himachal Pradesh (2018 (9) SCC 24)** regarding Sections 363 & 366 IPC

that where the prosecutrix left for 12 days, met several people, but made no complaint, and the prosecution failed to establish her exact age at the relevant time to prove she was a minor, the possibility of her being a consenting party cannot be ruled out. The benefit of doubt must go to the appellant.

16. The radiologist gave the opinion that the age of the prosecutrix was between 17 to 18 years. While it is correct that the age determined on the basis of a radiological examination may not be an exact determination and a reasonable margin either way has to be allowed, the totality of the facts stated above, read with the radiological examination report, leaves ample room for doubt regarding the exact age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favor of the accused.

17. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.

18. We will, therefore, have to conclude that the accused-appellant deserves to be acquitted on the benefit of doubt.

19. Upon consideration of the evidence available on record, it is evident that the prosecution has primarily relied upon the radiological examination for establishing the age of the victim. The medical evidence and the radiological opinion have assessed her age to be between 16 and 18 years at the time of the alleged occurrence.

20. It is a settled principle of law that determination of age on the basis of radiological examination is not an exact science and that a reasonable margin of error is permissible. In **Rajak Mohammad v. State of Himachal Pradesh, (2018) 9 SCC 24**, the Hon'ble Supreme Court has recognised the limitations inherent in radiological assessment of age. Where the evidence regarding the exact age of the prosecutrix remains inconclusive, the accused is entitled to the benefit of such doubt.

21. In the present case, the prosecution has failed to place on record cogent

and unimpeachable evidence conclusively establishing that the victim was below 18 years of age on the date of the alleged occurrence. The radiological opinion, by itself, does not furnish a sufficiently certain basis for recording a finding of minority. Accordingly, the prosecution has failed to discharge the burden of proving the minority of the victim.

22. The judgment of conviction and sentence dated 14/20.07.2026 passed by Special Judge (Pocso Act)/Additional Session Judge, Farrukhabad against the appellant, Mohit, is hereby set aside. The appellant is acquitted of all charges

23. The criminal appeal is allowed.

24. The appellant shall be released forthwith, if not in custody in any other case.

(Abdul Shahid,J.)

September 11, 2026
M. Tarik