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2026:UHC:9714-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 585 of 2025

Pradeep --Appellant

Versus

State Of Uttarakhand --Respondent

Presence:-

Mr. Priyanshu Gairola, Legal Aid counsel for the appellant

Ms. Manisha Rana Singh, D.A.G for the State.

JUDGMENT

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against the judgment and order dated 29/30.07.2025, passed in Special Sessions Trial No. 47 of 2022, State of Uttarakhand Vs. Pradeep, by the court of Special Judge (POCSO)/Additional District Judge, Dehradun. By it, the appellant has been convicted under Section 376 IPC and Section 5 (n)/6 of the Protection of Children From Sexual Offences Act, 2012 ("the Act") and sentenced to undergo rigorous imprisonment for a period of twenty years with a fine of Rs.10,000/- under Section 6 of the Act and in default of payment of fine, to undergo simple imprisonment for a further period of one month.

2. FIR in the instant case was lodged by the PW1, the maternal aunt (mother's younger sister of the victim). According to it, the PW3, the victim a young girl of 13 years of age was staying with her since her childhood because her mother had died long back. The appellant, who is father of the victim was staying with

his mother. Two months' prior to the date of the incident, the appellant took his daughter with him and on 19.03.2022, in the evening, he raped the victim. Somehow, the victim would manage to escape from there. She approached the neighbours and narrated the incident to them. The appellant followed her and tendered apologies and requested the victim to accompany him. The victim denied to it. On it, the FIR records that the appellant telephoned his mother, who had gone to village at that relevant time and the appellant told her that she should come back or else she would hear about his death. The mother of the appellant came to his house. There the appellant consumed poison so that he may not be blamed for anything. Based on this FIR, Ex. P1, Chik FIR, Ex. P12 was recorded on 24.03.2022 at Police Station Doiwala, District Dehradun and Case Crime No.103 of 2022, under Section 376 IPC and Section 5/6 of the Act was lodged against the appellant. The extract of General Diary Entry is Ex. P13.

3. The victim was examined under Section 164 of the Code of Criminal Procedure, 1973 ("the Code"), on 26.03.2022. It is Ex. P4. On 26.03.2022 itself, the victim was medically examined. There also in the history column, the prosecution case is recorded. Medical examination report records that the hymen was ruptured. The Investigating Officer collected the documents pertaining to the age of the victim, which are scholar register, Ex. P5, date of birth certificate Ex. P6, prepared site plan, Ex. P7 and after investigation, submitted charge sheet Ex. P11 under Sections 376 (3) IPC and Section 5(n)/6 of the Act, against the appellant. Based on it, the proceedings of the case were instituted.

4. On 20.08.2022, charge under Section 376 IPC and Section 5 (n)/6 of the Act were framed against the appellant, to which he denied and claimed trial.

5. In order to prove its case, the prosecution examined eight witnesses, namely, PW1 the maternal aunt of the victim, PW2 Dr. Monika Shrivastav, PW3 the victim, PW4 Principal of the school of the victim, PW5 uncle of the victim (elder brother of the father of the victim), PW6 aunt of the victim, PW7 Sub Inspector, Rashmi Rawat and PW8 Head Constable 145 Suvardhan.

6. After prosecution evidence, the appellant was examined under Section 313 of the Code. According to him, he has been falsely implicated. In his defence, the appellant examined three witnesses, namely DW1 the maternal uncle of the victim, DW2 Chaman Lal, neighbour of the victim and DW3 grandmother of the victm.

7. After hearing the parties, by the impugned judgment and order, the appellant has been convicted and sentenced, as stated hereinbefore. Aggrieved, the appeal.

8. Heard learned counsel for the parties and perused the record.

9. Mr. Priyanshu Gairola, learned Legal Aid Counsel for the appellant submits that the prosecution has utterly failed to prove its case beyond reasonable doubt. The appellant ought to have been acquitted of the charges framed against him, but the

court below has committed an error in convicting and sentencing the appellant. He also raised the following points in his submissions:-

(i) PW3, the victim was a troubled child who has lost her mother at a young age. She was staying with her maternal grandfather and thereafter, with her maternal aunt. She was biased towards the appellant, who happens to be her father.

(ii) Neither the first informant PW1, the aunt of the victim nor any other witness, including her uncle, maternal uncle has supported the prosecution case.

(iii) As a witness, the PW3, the victim has also admitted that the appellant would scold and beat upon her and would discipline her, due to which she was not happy with her father, the appellant.

(iv) DW1, the maternal uncle of the victim has stated that PW3, the victim was in the habit of defying the command. She would roam around the house. She would not go to school. She would level allegations against the neighbours, due to which, even DW1, the maternal uncle had altercations with the neighbours. He would submit that it is a false case, which was lodged by the PW3, the victim against her father.

10. Learned counsel for the appellant submits that the testimony of PW3, the victim is not that of sterling quality witness. The sole testimony may not be the basis for conviction. Hence, the appellant deserves acquittal.

11. In support of his contention, learned counsel has placed reliance upon the principles of law, as laid down in the case of Santosh Vs. State of Maharashtra, 2023:NCBHC-NAG 17605. In this case also, the victim has leveled allegations of rape against her father and the Court in that case has noted that the victim was revengeful to her father. In the case of Santosh *(supra)*, the Hon'ble Bombay High Court has relied on the principles of law, as laid down in the case of Rai Sandeep @ Deepu and another vs. State of NCT of Delhi, (2012) 8 SCC 21, in which case, the Hon'ble Supreme Court had occasion to discuss the impact of testimony of the sterling witness in para 22 as follows:-

> "22. In our considered opinion, the "sterling witness'" should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said

witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

12. Having discussed the law on the subject and testimony in the case of Santosh *(supra)*, in paras 17 and 18 of the judgment, the Hon'ble Bombay High Court observed as follows:-

"17. At the cost of repetition, we may say that there is no difficulty in basing the conviction on the sole testimony of the prosecutrix. The conviction can be based on her sole testimony subject to inspiring full confidence of the Court. It is well settled that the victim's evidence is to be tested like the evidence of other witnesses. Though the statutes provide presumption however foundational facts are to be established. When the Court is confronted with the sole testimony of the victim, the Court must be cautious and careful while accepting her version. Certainly, law does not require that the prosecution shall establish the guilt with 100% certainty but it should establish the guilt beyond reasonable doubt. If the circumstances gave rise to the reasonable possibility of innocence then benefit of doubt belongs to the accused. The Trial Court while relying on the victim's sole testimony has expressed that, the victim who must have proud of her beloved father has no reason to depose falsely. The Trial Court has also taken aid of the marked portion of the hostile witnesses, which was established through the evidence of the Investigating Officer. The Trial Court appears to have much swayed against the accused on account of relationship.

18. Considering the entire material, we find it difficult to place implicit faith on the sole testimony of the victim to base the conviction. It emerges that the victim was rebellant girl attracted expulsion from the School. Admittedly, she was beaten by her father and she accepted that, she was having revengeful attitude against her father (accused). Besides that in duel mind she admitted that out of revenge she has filed the report."

13. On the other hand, learned State counsel submits that if victim is consistent and reliable, her sole testimony is enough for recording the finding of guilt. It is argued that the victim has been consistent. She is minor. She has not levelled weird allegations. She has stated that on a particular date, at a particular time, when the grandmother of the victim was not at home, the appellant did commit rape on her.

14. Learned State counsel has invited the attention of the Court to the statement of PW3, the victim, particularly, para 2 of her statement when the court had noted that the victim is not confident while speaking about rape. It is argued that it shows that the victim was not such a girl who would openly level such false allegations. Therefore, it is argued that the prosecution has proved its case beyond reasonable doubt.

15. Before the arguments are appreciated, it would be apt to examine as to what the witnesses have stated.

16. PW1 is the aunt of the victim, who has lodged the FIR. In her statement, she has stated that the victim was staying with her, but she had joined the company of the appellant on her own and had told this witness that the appellant would beat her up. She did not want to stay with her father, the appellant, as he would molest her. Thereafter, according to PW1, the aunt of the victim, she lodged report, Ex. P1. In her examination-in-chief itself, PW1, the aunt of the victim has stated that after the information, when she reached at the place of incident, the victim did not tell her that the appellant did commit any rape on her. The neighbours have told that the victim was molested. She was declared hostile.

17. PW2 Dr. Monika Shrivastav has medically examined the victim on 26.03.2022. She has stated about the observations made by her. According to her, hymen of the victim was old ruptured. Since she had already washed her clothes, therefore, they were not taken into custody. The pathological reports were negative. There was no spermatozoa. She has proved her reports Ex. P2 and P3.

18. PW4 is the Principal of the school where the victim has studied. She has proved the date of birth record, Exs. P5 and P6. According to her, the date of birth of the victim is 11.01.2009. In fact, the date of birth of the victim has not been disputed. The appellant is father of the victim. He is in better position to tell the date of birth of the victim.

19. PW5 is the uncle (elder brother of the father of the victim) of the victim. He has also not supported the prosecution case. According to him, the victim did not tell anything to him or his wife.

20. PW6 is the aunt of the victim. She has also not supported the prosecution case. She was also declared hostile.

21. PW7 Sub Inspector, Rashmi Rawat is the Investigating Officer. She has stated about the steps taken by her during investigation and proved the site plan Ex.P7. She has proved the documents given for recording of the statements of the victim, which are Exs. P8 and P9. According to her, the appellant was

arrested by her, of which memo, Ex. P10 was prepared. After investigation, she filed charge sheet, Ex. P11.

22. PW8 Head Constable 145 Suvardhan is the General Diary writer. He has proved the chik FIR, Ex.P12 and extract of General Diary, Ex. P13.

23. DW1 is the maternal uncle of the victim. He has not supported the case of the victim. According to him, the victim would quite often leave the house. She was in very bad company. She was staying with her maternal aunt. There also she would leave the house. According to DW1, the maternal uncle of the victim, the appellant did not commit any offence with the victim. The victim is habitual liar. Multiple times she had leveled allegations against the neighbours of this witness, due to which he had quarrel with his neighbours also.

24. DW2 Chaman Lal is neighbour of the victim. He would say that the victim was in the habit of roaming here and there. She did not go to school and whenever the appellant, the father of the victim would scold her, she would start fighting with her father, the appellant.

25. DW3 is the grandmother of the victim. She has also not supported the prosecution case. According to her, they would send the victim to school, but she would not go there. Whenever, the appellant would stop her from moving out of the house, she would take up fight with her father, the appellant and would claim that if she is not send with her uncle *(mausa)* and aunt *(mausi),* she would implicate the appellant.

26. PW3 is the victim. She tells that her mother is not alive. She was grown up in her maternal grandfather's house and after his death, her maternal aunt took care of her. During Holi, according to this witness, she came to her father' house and on that date, in the night, the appellant raped her. In para 2 of her statement, PW3, the victim has stated that when the appellant committed rape, he vomitted also. The victim ran away to reveal the incident to her uncle (the appellant's elder brother). In the process, the appellant wanted to stop her, but anyhow she went to her uncle and narrated the story to him and there at that spot, the appellant told that she was lying. Thereafter, she says that the appellant did telephone his mother and told her to return as early as possible and thereafter, her grandmother returned out of fear. She has stated about the statement given to the Magistrate under Section 164 of the Code, which is Ex. P4. She also tells that she was medically examined.

27. As stated, except PW3, there is no other witness, who has supported the prosecution case. The first informant, who is the aunt of the victim has not supported the case entirely, though she has proved the FIR, Ex. P1. PW5 and PW6, who are uncle and aunt of the victim, respectively have not supported the prosecution case. Not only this, DW1 is her maternal uncle and DW3 is her grandmother, both have not supported the prosecution case. Now the question is, whether the testimony of PW3, the victim may be termed as a sterling witness, which may be the sole basis of conviction or does it fall short of sterling witness which may require corroboration in material particulars so as to bring home the guilt of the appellant?

28. In her cross examination, PW3, the victim has stated that the appellant would stop her from leaving house. He would scold her and she never liked it. In para 3 of her cross examination done on 04.05.2023, PW3, the victim has stated categorically about it. In para 10 of her cross examination recorded on 04.05.2023, the victim has further stated that she never liked her father, the appellant since her childhood because her maternal grandfather has told her much about the appellant. She further says that her maternal grandfather has told her that since the victim was separated from her mother by the appellant, she was quite unhappy with the appellant. In paras 8 and 9 of her cross-examination recorded on 04.05.2023, the victim has further stated that once she has left the house and ran away to Bihar.

29. It may be noted that PW3, the victim was a young girl of 14 years when she deposed before the court. These factual narrations, as stated by PW3, the victim make it abundantly clear that she was a troubled child. She was not staying at one place. She was with her maternal grandfather, where she was grown up for a while and after his death, she was brought up by her maternal aunt and some day before the date of incident, the appellant took her in his house, where PW3, the victim says that at 09:00 in the night, she was raped.

30. The victim has also proved her statement recorded under Section 164 of the Code, which is Ex. P4. In order to examine the trustworthiness of the testimony of PW3, the victim, the attending circumstances need to be seen. According to PW3, the victim, the appellant was staying in two room house alongwith his mother. The incident allegedly took place at 09:00 p.m. on

19.03.2022. The question is where was DW3, the grandmother of the victim at the relevant point of time? The FIR records that DW3 the grandmother of the victim had gone to the village, whereas in her statement under Section 164 of the Code, PW3, the victim tells that her grandmother had gone for check up of her eyes. In court as PW3, the victim has not stated as to where was her grandmother at the relevant point of time? If the victim had gone to village, which was that village? Where was she? The Investigating Officer has not examined DW3 the grandmother of the victim, who definitely was a very important witness. If the grandmother of the victim was away from her house, her testimony could have been tested by examining those persons, to whom she met on the date of incident at the relevant point of time. But, it was not done. The testimony of PW3, the victim is not consistent about the absence of DW3, her grandmother. As stated, in the FIR it is recorded that the grandmother of the victim had gone to the village, whereas, in her statement under Section 164 of the Code, PW3, the victim says that she had gone at the relevant point of time for check up of her eyes and in court she has not said where her grandmother had gone at the relevant point of time.

31. There is another aspect to it. In court, PW3, the victim says that after the incident, the appellant called DW3, the grandmother of the victim and told her to return at the earliest and then in para 2, last 3 lines, PW3 the victim tells that her grandmother returned out of fear. The question is what was the fear?

32. If the testimony of PW3, the victim is examined as a whole, she cannot be categorized as a sterling witness. Admittedly,

she was not happy with her father for variety of reasons which she has stated. Her testimony may not be a sole basis of conviction. It requires corroboration.

33. According to PW3, the victim, after the incident, she narrated the incident to her uncle, who has been examined as PW4, but he has not supported the prosecution case. Not only this, even her maternal aunt has not supported the prosecution case. Her grandmother has not supported the prosecution case. There is no corroboration to the testimony of PW3, the victim. We are of the considered view that it would not be safe to base conviction on the sole testimony of PW3, the victim.

34. In view of the foregoing discussion, we are of the view that the prosecution has utterly failed to prove the case against the appellant beyond reasonable doubt. The appellant deserves to be acquitted of the charge levelled against him Accordingly, the appeal deserves to be allowed.

35. The appeal is allowed.

36. The impugned judgment and order dated 29/30.07.2025, passed in Special Sessions Trial No. 47 of 2022, State of Uttarakhand Vs. Pradeep, by the court of Special Judge (POCSO)/Additional District Judge, Dehradun is set aside.

37. Appellant is acquitted of the charge under Sections 376, IPC and Section 5 (n)/6 of the Act.

38. The appellant is in custody. Let he be released forthwith, if not wanted in any other case.

39. The appellant shall furnish a personal bond and two sureties each of the like amount, to the satisfaction of the court concerned under Section 437 A of the Code within one month from today.

40. Let a copy of this judgment along with Lower Court Record be sent to the court concerned.

(Siddhartha Sah, J.) (Ravindra Maithani, J.)

28.10.2026

Jitendra