



2026:AHC:141206

Reserved on 21.05.2026
Delivered on 14.07.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 753 of 1983

Kali Charan and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: V.c. Katiyar, Vivek Kumar Mishra
Counsel for Respondent(s)	: Govt. Advocate

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Shri Vivek Kumar Mishra, learned counsel for the appellant no.2 and Shri Purshottam Maurya, learned AGA for the State.

2. The present criminal appeal has been preferred by the three appellants, namely, Kai Charan (died), Ram Swarup and Ram Lal (died) against the judgment and order passed by the Court of Assistant Sessions Judge, Pilibhit, in Sessions Trial No. 132 of 1981, (State v. Kali Charan and others), whereby the appellants Kali Charan, Ram Lal and Ram Swarup were convicted for the offences punishable under Sections 363, 366 and 376 of the Indian Penal

Code, 1860 and sentenced for a period of three and a half years under Section 363 IPC, three and a half years under Section 366 IPC and seven and a half years under Section 376 IPC.

3. During the pendency of this appeal, appellant no.1, Kali Charan and appellant no.3, Ram Lal have died. This appeal has already *abated* qua appellant no.1, Kali Charan and appellant no.3, Ram Lal vide order dated 28.09.2022. This appeal, therefore, survives and is being decided only in relation to appellant no.2, Ram Swarup, who is stated to be alive and is presently on bail.

4. The prosecution case, in brief, is that the prosecutrix Kumari Shakuntla, daughter of Budhi, resident of village Orajhar, Police Station- Bilsanda, District- Pilibhit, was, on the date of occurrence, going to ease herself in the field of one Sia Ram when the three accused persons, Ram Lal, Ram Swarup and Kali Charan, all residents of the same village, met her. It is alleged that Ram Swarup was armed with a knife and threatened to kill her, if she raised an alarm. Ram Lal caught one of her hands and Kali Charan caught the other, and the accused persons forcibly took her to the railway station, Bisalpur. From there, they took her by train to Shahjahanpur and thereafter to Tilhar, where she was confined in a locked, vacant house for about a week, during which period all three accused are alleged to have committed rape upon her against her wishes and without her consent. Thereafter, she was brought to Bilsanda to see a fair (mela),

where, on the intervening night of 31.10.1979 and 01.11.1979, near the Hanuman Mandir at the mela site, Sub-Inspector Sri Daya Ram Dubey, with the help of witnesses and police personnel, apprehended accused Kali Charan along with the prosecutrix. The First Information Report was thereafter lodged by the prosecutrix herself at Police Station- Bilsanda. The underwear of accused Kali Charan and the petticoat of the prosecutrix were taken into police custody, and the prosecutrix was medically examined at the District Women Hospital, Pilibhit. On completion of investigation, a charge-sheet was submitted, and the accused persons were committed to the Court of Session and put on trial.

5. All three accused pleaded not guilty. Their common defence was one of false implication on account of pre-existing enmity, and that they had been called from their houses and falsely implicated at the instance of the police. Accused Kali Charan denied the recovery of his underwear, accused Ram Swarup additionally pleaded an alibi, asserting that he was working at Jhala during the period of occurrence.

6. In support of its case, the prosecution examined six witnesses. PW-1 Smt. Shakuntla (the prosecutrix), PW-2 Raj Bahadur and PW-3 Bandey Hasan (witnesses to the occurrence/recovery), PW-4 Budhi (father of the prosecutrix), PW-5 Sri Daya Ram Dubey, Sub-Inspector (investigating officer), and PW-6 Dr P.K. Mehrotra (Medical Officer,

District Women Hospital, Pilibhit), besides documentary evidence including the chik F.I.R. (Ex. Ka-1), the superdginama (Ex. Ka-2), site plans, the charge-sheet, recovery memos of the underwear and petticoat, and the medical examination and supplementary reports (Ex. Ka-11 to Ex. Ka-13).

7. P.W.-1, the daughter of Buddhi, deposed, in brief, that about two and a half years prior to the trial, while she was unmarried and living in village Oraghar, she went to Sia Ram's field around 6:00 P.M. to ease herself. On her way back, co-villagers Ram Lal, Ram Swarup, and Kali Charan intercepted her. Ram Swarup brandished a knife and threatened to kill her if she raised an alarm, while Ram Lal and Kali Charan grabbed her hands and forcefully took her to the Bisalpur railway station, where they kept her detained overnight. The next day, the accused took her by bus through Shahjahanpur to an empty house in Tilhar, which Ram Lal unlocked. She was confined there for about 6–7 days on a bedding setup brought by Kali Charan, during which all three accused repeatedly raped her without her consent and against her wishes. While in Tilhar, her clothes were changed to a dhoti, blouse, and petticoat. Subsequently, she was brought to Bilsanda to see a fair (Mela) and fetch money. After watching a movie until midnight, she emerged from the cinema hall and spotted a police officer (Daroga Ji). By then, Ram Lal and Ram Swarup had already left. Upon seeing the police, her remaining

companion, Kali Charan, attempted to run but was apprehended with the help of a bystander and a constable. Both she and Kali Charan were taken to the Bilsanda police station, where her report (Ex.Ka.1) was dictated to Deewan Ji. The police seized and sealed her petticoat (proved as Ex.1) and Kali Charan's underwear. She was sent to the Women Hospital, Pilibhit for a medical examination and was handed over to her father's custody (superdgi) four days later via a document marked as Ex.Ka.2. Finally, she stated that Allah Bux and Raj Bahadur witnessed her abduction and that she was 15 years old at the time of the incident.

8. P.W.-2 deposed under oath, in brief, that he knows the prosecutrix, Shakuntla, who is the daughter of Buddhi Dhuna. He stated that about 2 and half years prior to the trial, at around 6:00 PM, he witnessed the accused persons, Kali Charan, Ram Lal, and Ram Swarup, who were present in the court—taking Shakuntla away. The accused persons were threatening Shakuntla, telling her they would give her a knife blow, if she raised an alarm. PW 2 observed this occurrence from the southern corner of a field, and noted that another individual named Allaha Bux was present with him at the time.

9. P.W.-3, Bandhey Hasan deposed, in brief, that two and a half years ago, he was at the police station where the prosecutrix, Km. Shakuntla, was handed over into the custody (superdgi) of her father, Budhi. He stated that the custody document (superdginama) was

written by Deewan Jai, and after it was read over, PW 3 placed his thumb impression on it, subsequently proving the document as Ex.Ka.2. He also noted that Ismail was present and signed the document.

10. P.W.-4, Budhi, the father of Km. Shakuntla, deposed, in brief, in his examination-in-chief that about two and a half years ago, his daughter was kidnapped by three persons after she went out after sunset on the fateful evening to ease herself and failed to return home. He searched for her for 7–8 days and was informed by Raj Bahadur and Allaha Bux that they had witnessed the accused persons—Ram Lal, Ram Swarup, and Kali Charan, taking Shakuntla away with them. He subsequently learned 8–9 days later that his daughter was caught by the Bilsanda police along with Kali Charan, prompting him to go to Bilsanda to take custody (superdgi) of his daughter, where a custody bond (superdginama Ex.Ka.2) was executed upon which he placed his thumb impression. Additionally, he stated that at the time of the occurrence, Shakuntla was 12–13 years of age.

11. During his examination-in-chief, S.I. Sri Daya Ram Dubey (P.W.-5) deposed, in brief, that while posted as a Sub-Inspector at police station Bilsanda from October to November 1979, the case investigation was assigned to him. He stated that on October 31, 1979, while on Mela duty near Hanuman Mandir, he observed a boy and a girl emerging together; the boy let go of the girl's hand and fled,

raising suspicions that led PW 5 and witness Ganga Ram to chase and apprehend him. The duo identified themselves as Kali Charan and Shakuntla, and after bringing them to the police station, the girl lodged the F.I.R. and was sent for a medical examination. Over the course of his investigation, PW 5 recorded the statements of the victim, the accused persons, and various witnesses under section 161 Cr.P.C., arrested co-accused Ram Lal, prepared two site-plans (Ex.Ka.3 and Ex.Ka.4), and ultimately submitted the final chargesheet (Ex.Ka.5) after Ram Swarup surrendered in court. Furthermore, he formally proved several vital prosecution documents, including the chik F.I.R. (Ex.Ka.6), General Diary entries (Ex.Ka.7 and Ex.Ka.8), and the recovery memos for the victim's petticoat and underwear (Ex.Ka.9 and Ex.Ka.10).

12. During her examination-in-chief, Smt. Dr. P.K. Mehrotra (P.W.-6) deposed, in brief, that on November 1, 1979, while serving as a medical officer at the District Women Hospital, Pilibhit, she conducted a medical examination of Km. Shakuntla. She noted that the victim was 143 cm in height, weighed 30 kg, had a teeth count of 14/14, possessed developed breasts, and had both axillary and pubic hairs present. No external or internal marks of injury were found on her body, and her vagina easily admitted two fingers. Dr. Mehrotra formally proved her handwritten medical report as Ex.Ka.11. She also proved a supplementary report dated November 2, 1979,

showing that no living or dead spermatozoa were detected (Ex.Ka.12), and an X-ray-based supplementary report dated November 4, 1979 (Ex.Ka.13), estimating the victim's age to be approximately 17 years, though she refrained from giving a definitive opinion regarding rape.

13. PW-1, the prosecutrix, deposed in detail and consistently regarding the kidnapping and the commission of rape by all three accused, and no material contradiction was elicited in her cross-examination on the core allegations of kidnapping and rape, notwithstanding cross-examination touching upon her prior conduct. PW-2 and PW-3 corroborated the manner of her being taken away and, respectively, her apprehension along with accused Kali Charan. PW-4, the father, spoke to the fact of the disappearance of his daughter and the subsequent recovery. PW-6, the Medical Officer, though she did not find any injury on the person of the prosecutrix or express a definite opinion on rape, opined, on the basis of ossification/X-ray examination, that the age of the prosecutrix was about 17 years, with a margin of six months on either side. The learned trial court, on a consideration of the oral testimony of the prosecutrix and her father together with the medical and documentary evidence on record, recorded a finding that the prosecutrix was a minor at the time of the occurrence.

14. On an appreciation of the entire evidence on record, the learned trial court held the prosecution case to be proved and, by the judgment impugned, convicted the appellants under Sections 363, 366 and 376 IPC.

15. Learned counsel for the appellant does not press this appeal on the question of conviction any further, and confines his submissions to the question of sentence alone. He submits that appellant Ram Swarup was aged about 27 years when his statement under Section 313 Cr.P.C. was recorded on 11.6.1982, and is presently about 71 years of age. Furthermore, this appeal has remained pending before this Court since the year 1983, i.e., for a period of about 43 years, and no part of this inordinate delay is attributable to the appellant, that the appellant has no other criminal antecedent, and learned A.G.A. has not been able to point out any previous criminal history against him. In the totality of the aforesaid circumstances, this is a fit case in which the sentence awarded by the trial court deserves to be suitably moderated in exercise of the discretion available to this Court, while maintaining the conviction and the appellant should be released on probation.

16. Learned A.G.A., per contra, while not disputing the age of the appellant or the pendency of the appeal, has opposed any reduction in sentence, submitting that offences of this nature are grave and that

leniency would be inconsistent with the interest of the victim and society.

17. Having heard learned counsel for the parties and having perused the record, we find no reason to interfere with the conviction of appellant Ram Swarup under Sections 363, 366 and 376 IPC. The testimony of the prosecutrix (PW-1) is consistent on the material particulars of kidnapping and rape and stands corroborated by PW-2, PW-3, PW-4 and the medical evidence of PW-6. It is well settled that the testimony of a prosecutrix, if found to be credible and trustworthy, does not require corroboration as a matter of law, and minor discrepancies elicited in cross-examination, going only to peripheral matters, do not detract from the substratum of the prosecution case. The finding of the trial court on the minority of the prosecutrix at the time of occurrence, based on the medical report and the oral testimony of P.W.-1 prosecutrix and PW-4, also calls for no interference. The conviction of appellant Ram Swarup is, accordingly, affirmed.

18. The Court has given its anxious consideration to the prayer made by the learned counsel for the appellant seeking the benefit of the Probation of Offenders Act, 1958, or a lenient view in the matter of sentencing. Having regard to the nature and gravity of the offences proved against the accused under Sections 363, 366, and 376 of the IPC, this Court is of the considered opinion that the

prayer for leniency is entirely devoid of merit. The offence under Section 376 IPC is not merely a crime against an individual but a grave assault on the dignity and bodily integrity of a woman, which reverberates through society and undermines public confidence in the rule of law. The prosecutrix has unequivocally supported the prosecution's case, and her testimony has been found to be consistent, reliable, and creditworthy, leaving no room for any doubt regarding the culpability of the accused. In such cases, where the victim's testimony is the bedrock of the conviction, showing 'undue sympathy' to the convict would be a gross miscarriage of justice. Sentencing is not merely a retributive exercise; it must serve as a deterrent to the offender and others, and reflect the legislative intent to protect the vulnerable. The social impact of sexual violence is profound, and granting the benefit of probation in a case of this magnitude would be counter-productive to the societal interest and the principles of criminal justice. In this case, the accused appellant, Ramswarup and two others have committed 'Gang rape' with a minor victim having age of about 15-17 year at the time of incident. Thus, the offence comes within the category of '*heinous offence*'. Accordingly, the request for release on probation or the imposition of a sentence already undergone is hereby rejected.

19. Now coming to the question of sentence. Section 376 IPC, as it stood at the relevant time, while providing for the substantive sentence of rigorous imprisonment, also empowers the Court, for adequate and special reasons to be recorded in the judgment, to impose a sentence lesser than what would ordinarily be called for. It is well settled that this discretion is to be exercised sparingly and only where the reasons recorded are genuinely special to the facts of the case, and not merely sympathetic; grounds such as subsequent compromise, marriage of the parties, or the social status of the accused have been held by the Supreme Court, in catena of judgements, not to constitute "adequate and special reasons" within the meaning of the proviso. At the same time, the Supreme Court has, in appropriate cases, invoked the proviso and moderated sentence where the incident was an old one and the appeal itself had remained pending for a long duration, coupled with the advanced age of the accused and the absence of any other criminal antecedent. Prior to substitution by Act 13 of 2013, Section 376(1) IPC provides that "whoever, except in the cases provided for by sub section (2), commits rape **shall be** punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years, and **shall also be liable to fine.....**". Furthermore the same provision regarding mandatory part of imposition fine is provided

under section 363 and 366 of IPC. Thus, where the IPC provision prescribes punishment in the form: “...**shall be punished with imprisonment ... and shall also be liable to fine**”, or “...**with imprisonment and fine**”, the trial court is expected to impose fine also. Failure to impose fine amounts to a material legal error in sentencing.

20. It is true that the learned trial court has committed an error in not imposing the fine though the penal provision contemplates punishment of imprisonment coupled with fine. Nevertheless, the present appeal has been preferred only by the convicted accused. Neither the State nor the victim has preferred any appeal seeking enhancement of sentence, nor has any revisional jurisdiction for enhancement been invoked after due notice. Since imposition of fine would undoubtedly amount to enhancement of the sentence already awarded, this Court, while deciding the appeal preferred by the accused alone, cannot place him in a more disadvantageous position. The omission of the trial court, though legally erroneous, cannot therefore be rectified in the present appellate proceedings.

21. In the present case, we find that the occurrence is of the year 1979, i.e., about 47 years old. The appeal itself has remained pending in this Court for about 43 years for no fault of the appellant. The appellant, who was about 27 years of age at the time of recording of his statement under Section 313 Cr.P.C., is presently about 71 years

old and there is nothing on record to show that he has, either before or after this occurrence, been involved in any other criminal case. Taking the cumulative effect of these circumstances, and being satisfied that they constitute 'adequate and special reasons' within the meaning of the proviso to Section 376(1) IPC, this court is of the considered view that, while the conviction must be maintained, the substantive sentence deserves to be moderated.

22. The appeal is, accordingly, **partly allowed** to the extent indicated as under:

(a) Insofar as appellant no. 2 Ram Swarup is concerned, his conviction under Sections 363, 366 and 376 IPC, as recorded by the trial court, is affirmed.

(b) The sentence awarded to appellant no.2, Ram Swarup is modified. He shall undergo four years R.I. under section 376 IPC, two years R.I. under section 366 IPC and two years R.I. under section 363 IPC.

23. All the aforesaid sentences of imprisonment shall run concurrently. The appellant shall be entitled to set-off, under Section 428 Cr.P.C., for the period, if any, already undergone by him as an undertrial and in pursuance of the sentence awarded by the trial court.

24. Appellant no.2 Ram Swarup, who is on bail, shall surrender before the court below within a period of two weeks from today,

without any fault, to serve out the remainder of the sentence, failing which the trial court shall take steps including coercive actions in order to secure his custody in accordance with law.

25. Let a copy of this judgment be transmitted forthwith to the trial court concerned along with trial court record for compliance.

26. The Registrar (Compliance) is also directed to serve a copy of this order within 48 hours by FAX/e-mail to the concerned court through District & Sessions Judge, Pilibhit for compliance.

(Santosh Rai,J.)

July 14, 2026

Ankit.