



2026:AHC-LKO:62582

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. – 301 of 2013

Bhaiya Lal Raidas

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s)	: Arun Kumar Singh Parihar
Counsel for Respondent(s)	: Govt. Advocate

A.F.R.

Court No. -14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Shahzad Ahmad, the learned Counsel for the appellant and Ms. Nikita Mishra, the learned A.G.A. representing the State.

2. This appeal was filed on 04.03.2013 through Sri. Arun Kumar Singh Parihar Advocate, was admitted on 06.03.2013 and the appellant was granted bail by means of an order dated 27.05.2013 with the condition that he would deposit half of the amount of fine imposed by the trial Court. Thereafter the appeal was taken up on 03.04.2026, on which date Sri. Arun Kumar Singh Parihar Advocate sought adjournment of the case. On 24.06.2026, Sri. Arun Kumar Singh Parihar Advocate stated that he could not contact the appellant and, therefore, an order was passed directing the Chief Judicial magistrate concerned to issue bailable warrant for ensuring appearance of the appellant before this Court on 15.05.2026.

3. The Chief Judicial Magistrate Unnao submitted a report that the appellant was not found at his address and, therefore, on 15.05.2016 this Court had passed an order directing the Chief Judicial magistrate Unnao to issue notices to the sureties of the appellant and to take recourse to the provisions contained in Section 446 Cr.P.C. On 21.07.2026, Sri. Pramod Kumar Yadav Advocate put in appearance on behalf of the sureties of the appellant and prayed for an adjournment for appearance of the appellant before this Court. The sureties have filed I.A. No. 2 of 2026 for recall of the orders dated 15.05.2026 and 03.07.2026 and they are present in the Court alongwith their learned Counsel. The appellant-Bhaiya Lal Raidas is also present in the Court today.

4. The learned Counsel for the sureties submitted that they had stood sureties for appearance of the appellant during the trial, they are not sureties for appearance of the appellant during this appeal and, therefore, the Chief Judicial Magistrate, Unnao ought not to have proceeded against them. However, as the appellant has appeared before this Court and the appeal is being decided, there would not remain any occasion to proceed against any person who stood as surety for the appellant at any stage.

5. By means of the instant appeal, the appellant has challenged the validity of a judgment and order dated 08.02.2013 passed by Shri Jagdish Prasad - Fourth, Additional Sessions Judge, Ex-cadre, Unnao in Sessions Trial No. 332 of 2011, titled "State vs. Bhaiya Lal", arising out of Case Crime No. 91 of 2011, under Sections 363, 366, 376 IPC, Police Station Asiwan, District Unnao, whereby the appellant has been convicted for the offence under Section 366 IPC and has been sentenced to undergo rigorous imprisonment for 7 years and to pay Rs. 10,000/- as fine, while he has been acquitted for the offenses under Sections 363 and 376 IPC.

6. The aforesaid case was instituted on the basis of a written complaint dated 19.01.2011 given to the Superintendent of Police stating

that earlier also he had given an application dated 20.12.2010 stating that the appellant, who was a married man, had enticed away the complainant's minor daughter. The Superintendent of Police had directed the complainant to go to the police station and although he had repetitively visited the police station, his report was not registered. On this application, the Superintendent of Police directed the Station House Officer, Police Station Asawan, Tehsil Hasanganj, District Unnao to register an FIR, whereupon FIR bearing Case Crime No. 91 of 2011 was registered on 19.01.2011.

7. Medico-legal examination of the prosecutrix was conducted on 06.05.2011. The medico-legal examination report mentions no injury on any part of her body, including her private parts. The ultrasonography examination report mentioned a single live fetus of 20 weeks. The X-ray examination report mentioned that the joints of right knee, right elbow, and right wrist were fused and age of the prosecutrix was about 18 years.

8. Statement of the prosecutrix under Section 164 CrPC was recorded on 05.05.2011. She stated before the Magistrate that she was having a friendly relationship with the appellant. Both of them wanted to marry each other, but her father (the complainant) was not agreeing for their marriage. Therefore, she had gone away with the appellant to Ludhiana. The appellant earned some money at Ludhiana and thereafter they returned to Hardoi and got married. After the marriage, they again went to Ludhiana and there they were staying in a rented room as husband and wife. The prosecutrix stated that she was having pregnancy of six months and she wanted to live with the appellant. She categorically stated that she did not want to go to her parents.

9. The Investigating Officer submitted a charge-sheet dated 24.05.2011 against the appellant for the offences under Sections 363, 366, 376 IPC.

10. The complainant was examined as PW-1. He reiterated the FIR version. During cross-examination, PW-1 stated that he had seven daughters and some sons, who are younger to the daughters. He did not disclose the number of his sons. The prosecutrix is at serial number five of his daughters. He stated that five of his daughters had got married, but the prosecutrix and two younger daughters were not married. The eldest of his daughters had got married about 20 years ago. Thereafter, his second daughter got married about 7 years ago while she was aged 15 years. He stated that he did not know the age of the prosecutrix. The prosecutrix had eloped and the morning following the day of the incident, he had gone to the police station. His FIR was lodged 2 to 2½ months after the prosecutrix had gone away. The prosecutrix met her seven months after the incident. He did not know where did she stay during this period of seven months. He stated that he had not mentioned the age of the prosecutrix in the FIR. He also stated that he did not understand the meaning of major or minor. He did not know that how many years had passed since he had got married. PW-1 stated that the appellant's house was situated at a distance of 20 steps from his house. The prosecutrix had studied up to class VIII. He did not remember as to when did she pass class VIII, he did not remember the age of the prosecutrix when she had started going to the school.

11. PW-1 stated that wife of the appellant was not visiting his home for the past about 6 months to 1 year. PW-1 denied the suggestion that the prosecutrix was aged 20 years when she had gone with the appellant. He stated that the prosecutrix had told him that the appellant had stated that her mother was calling her to the fields to get fodder. He had told this thing while getting the FIR written. He stated that he did not remember the age of the prosecutrix recorded in the school.

12. The prosecutrix was examined as PW-2. She stated that the appellant works as a driver, he lives in her neighborhood, he used to visit her home. On the date of the incident, i.e., 30.10.2010, she was at her home with her younger sister. The appellant came there at about 5:00

p.m. and told that her mother was calling her to the field for getting fodder. She had covered a small distance from her home when the appellant made her inhale something and she fell unconscious. She regained consciousness at Ludhiana where the appellant used to commit the misdeed against her wishes, due to which she got pregnant. She stated that the police caught her with the appellant from near Miyaganj crossing, Unnao. The prosecutrix stated that her date of birth was 25.09.1993. She had studied up to class VIII and she filed the original mark sheet of class VIII at the time of recording of her statement.

13. During cross-examination, the prosecutrix was asked to read the headline of a Hindi daily newspaper, but she could not read it. She stated that she can write. She was asked to write Ram Khilawan (in Hindi) and the trial court has recorded in the judgment that she wrote 'Ramkhilan'. The prosecutrix stated that the appellant used to visit her home. The appellant had come to her home at 5:00 p.m. No talk took place between the two of them. She did not have consciousness, so she could not tell whether she had gone to Bangarmau or not. She reached Ludhiana the following day, but she did not remember the time when she had reached there. She had dinner at Ludhiana. The appellant had brought dinner from some hotel. She stayed at Ludhiana for 7 months. She did not use to cook meals and the appellant used to get the same from some hotel. She had meals from hotels for 7 months. After 7 months she returned from Ludhiana with the appellant by train. She had traveled from Unnao Railway Station to Miyaganj by a bus.

14. The doctor who had conducted the medico-legal examination of the prosecutrix, was examined as PW-3. She stated that the prosecutrix was having pregnancy of 24 to 26 weeks as per the date of her last menstrual period date. As per ultrasonography report, the prosecutrix was having 20 weeks pregnancy. As per X-ray report, the prosecutrix was aged about 18 years. During cross-examination, PW-3 stated that the prosecutrix could be aged 20 years also. PW-3 stated that the prosecutrix was habitual of having sexual intercourse.

15. The radiologist was examined as PW-4. He stated that the prosecutrix was aged 18 years and she was having pregnancy of 20 weeks and 2 days. During cross-examination, he stated that there could be a variation of 6 months in age of the prosecutrix on either side, but she could not have been aged 20 years.

16. The investigating officer was examined as PW-5. He proved the prosecution documents, including the statement of the prosecutrix recorded under Section 164 CrPC. The investigating officer stated that in her statement recorded under Section 161 CrPC, the prosecutrix had stated that she was in a loving relationship with the appellant and that the appellant had married her in the court at Hardoi. She had stated that she was uneducated.

17. In the statement of the appellant recorded under Section 313 CrPC, he denied all the allegations and stated that the prosecutrix had gone with him out of her own free will and thereafter she had given a false statement under pressure of her family members.

18. The trial court held that the medico-legal examination report mentions that the teeth were 14x14, auxiliary and pubic hair were present, but it is not mentioned that the same were fully developed. The trial Court mentioned that auxiliary and pubic hair normally develop by the age of 17 years, 14x14 teeth are attained between the age of 12 to 14 years and the third molar emerges in the age of 17 years. From the condition of teeth, the trial Court assessed the age of the prosecutrix to be between 14 to 17 years. The trial Court further held that the radiological age could vary on either side by 3 years. The trial court also held that the prosecutrix belonged to a lower strata of the society which and was used to do physical labor and girls of such families get developed at an earlier age. The trial Court also took into consideration the fact that the marks-sheet of class VIII mentions the date of birth of the prosecutrix as 25.09.1993.

19. On the basis of the aforesaid facts, the trial court held that the age of the prosecutrix at the time of the incident was about 17 years and she was minor; that the appellant was a married man and yet he took away the minor prosecutrix with him and made physical relations with her, therefore, the appellant was guilty of offence under Section 366 IPC. However, the trial court acquitted the appellant of the charges under Section 376 and 363 IPC.

20. It is relevant to note that the complainant, who is the father of the prosecutrix, did not mention her age in the FIR. In his testimony, he stated that he did not know the age or date of birth of the prosecutrix. No educational certificate of the prosecutrix was provided to the investigating officer. It was only during examination of prosecutrix as PW-2, that stated that she was filing the original marks-sheet of class VIII, wherein her date of birth was mentioned as 25.09.1993. However, I have gone through the entire record of the trial Court and have found that the original marks-sheet of the prosecutrix or even its copy is not available in it. The statement of the prosecutrix, the index of the trial Court's record or the judgment of the trial Court do not make a mention of any document number or exhibit mark allotted to the marks-sheet or its copy. In these circumstances, the trial Court could not have taken into consideration the date of birth mentioned in a document which is not a part of its record.

21. Moreover, the marks-sheet could not have been filed by the prosecutrix by producing it during her examination-in-chief. In **Bhagyashree Prashant Wasankar v. State of Maharashtra**: 2021 SCC OnLine Bom 1064, the Bombay High Court held that: -

“13. ...As per the procedure contemplated under the Cr.P.C., upon completion of investigation, the Investigating Officer under Section 173 of Cr. P.C. submits a final report. Under Section 173(5) of the Cr. P.C. the Investigating Officer forwards to the Magistrate all documents on which the prosecution proposes to rely and statements of witnesses recorded under Section 161 of the Cr. P.C. The report or charge-sheet along with all its accompaniments is

also served upon the accused so as to give fair opportunity to the accused to prepare his/her defence. In other words, the documents filed along with charge-sheet are the material upon which the Public Prosecutor ultimately relies when the case is committed to trial before the Sessions Court. In the present case, there is no dispute about the fact that a sessions trial is being conducted against the accused, including the petitioner, which is governed by Chapter XVIII of the Cr.P.C. pertaining to trial before the Court of Sessions. Sections 225 to 237 provide the procedural framework on the basis of which the sessions trial is conducted.

14. *Upon the accused pleading not guilty under Section 230 of the Cr. P.C., a date is fixed for prosecution evidence and under Section 231 thereof, on the date so fixed, the Sessions Court proceeds to take all such evidence as may be produced in support of the prosecution. Such evidence includes the recording of evidence of the prosecution witnesses. As noted above, **the documents upon which the prosecution seeks to rely are placed on record along with charge-sheet, copies of which are furnished to the accused.***

15. *In the present case, it is at the stage of examination of the aforesaid witness that the said witness filed the application at Exh.1106, seeking to directly produce additional documents during the course of trial before the Sessions Court. There is no reference to any provision under the Cr. P.C. invoked by the witness for producing the documents directly in such a manner. The accused, including the petitioner, vehemently opposed such an attempt on behalf of the witness, contending that the application was not maintainable. The Sessions Court rejected the contentions raised on behalf of the accused and allowed the said application, the consequence of which is that the documents that are not part of the charge-sheet and relied upon by the prosecution, have directly come on record in the sessions trial.*

16. *In the context of the specific contentions raised on behalf of the petitioner, it is necessary to refer to the manner in which sessions trials are conducted under the Cr. P.C. and the role of the Public Prosecutor while conducting such a trial. Public Prosecutors are appointed under Section 24 of the Cr.P.C. and Section 225 of Cr. P.C. specifically provides that in every trial before the Court of Sessions the prosecution be conducted by the Public Prosecutor. Section 226 of Cr. P.C. provides that the Prosecutor shall open his case by describing charge against the accused and stating that he proposes to prove the guilt of the accused. **The role of the Public Prosecutor in the scheme of the Cr. P.C. is that of an independent office which assists the Sessions Court during the course of the trial to ascertain the truth of the allegations and charges levelled***

against the accused, in a fair manner. This is precisely the reason why the counsel for the complainant or victim is permitted to only assist the Prosecutor and not to lead the charge during the course of a sessions trial. There is every possibility of a sessions trial degenerating into a vindictive battle between the complainant/victim on the one hand and the accused on the other. It is the Prosecutor's office that leads the charge for the reason that it is the State which prosecutes the accused to prove the charge beyond reasonable doubt and the State acts on behalf of the society at large, because the offences alleged against the accused in sessions trial, by their very nature are offences against the State/society.

17. The Hon'ble Supreme Court has laid down in the cases of Shiv Kumar v. Hukam Chand: (1999) 7 SCC 467, J.K. International v. State: (2001) 3 SCC 462, Sundeep Kumar Bafna v. State: (2014) 16 SCC 623 and Dhariwal Industries Ltd. v. Kishore Wadhwani: (2016)10 SCC 378, that in a Sessions Trial the public prosecutor leads the charge and that the trial is conducted by the public prosecutor. Even the counsel engaged by the informant, victim or aggrieved person has to act under the directions of the public prosecutor, who represents the State in a Sessions trial, thereby showing the paramount role of the public prosecutor in Sessions trials under chapter XVIII of the Cr. P.C. consisting of sections 225 to 237.

18. It is the Public Prosecutor, who makes the strategic call as to which of the witnesses are to be examined and which of them are to be dropped. It is for the Public Prosecutor to take a call as to the documents on which reliance is to be placed during the course of the trial and it is for this reason that all such documents are placed on record along with the charge-sheet, with copies thereof being furnished to the accused persons. This is to afford the accused persons a fair opportunity to prepare their defence. In these circumstances, it becomes clear that the Cr. P.C. does not contemplate any procedure for a witness to directly produce documents during the course of trial. The procedure known to law whereby additional documents can be produced on record and then relied upon in a sessions trial is through the channel of further investigation, contemplated under Section 173(8) of Cr. P.C., as held by the Hon'ble Supreme Court in the case of Central Bureau of Investigation v. R.S. Pai (2002) 5 SCC 82.

19. Recourse to Section 294 of the Cr. P.C. can also not be taken for a witness to claim that he could directly produce additional documents during the course of trial or during the course of recording of his evidence. Section 294 of the Cr. P.C. pertains to no

formal proof of certain documents and it opens with the words “Where any document is filed before any Court by the prosecution or the accused”, thereby demonstrating that the said provision is applicable only when a document is sought to be produced either by the prosecution or the accused and not any third party like a witness. In fact, in the judgment in the case of Shamsher Singh Verma v. State of Haryana (2016) 15 SCC 485, the Hon'ble Supreme Court has referred to the object of Section 294 of Cr. P.C. and it has been held that same is for accelerating the pace of trial, by avoiding waste of time in recording unnecessary evidence. The judgment of this Court in the case of Niwas Keshav Raut v. The State of Maharashtra (supra) lays down that Section 294 of Cr. P.C. does not place any embargo upon the prosecution or the accused to file a document at a stage subsequent to filing of the charge-sheet. There can be no quarrel with the said proposition. Yet, it cannot come to the aid of the witness in the present case, who has sought permission of the Sessions Court to directly produce documents during the course of trial and at the time of recording his evidence.”

(emphasis added)

22. I am in perfect agreement with the aforesaid view expressed by the Bombay High Court in **Bhagyashree Prashant Wasankar** (supra) and hold that a complainant or a prosecutrix cannot file an additional document as prosecution evidence by simply producing the same during his / her examination-in-chief, and that too, without seeking leave of the trial Court. The trial Court could not have taken the document on record without giving an opportunity to the appellant – accused to file objections against the same, as taking an additional document on record as a part of prosecution evidence at the stage of examination of a prosecution witness might cause a serious prejudice to the accused – appellant.

23. Further, the marks-sheet of class VIII filed by the prosecutrix during her examination-in-chief could only be proved by the Principal or the Head-Master or any other official of the school which had issued the same, which has not been done in this case. The scholar's register or the transfer certificate issued by the school first attended by the prosecutrix was not produced before the trial court. Therefore, the trial Court could

not have relied upon the date of birth of the prosecutrix mentioned in the marks-sheet of class VIII alleged to have been produced during her examination-in-chief, whereas the marks-sheet or its copy is not available on the trial Court's record, it does not find any mention in the index of the trial Court's record and it has not been allotted any exhibit number.

24. So far as the assessment of age made by the trial court on the basis of physical characteristics of the prosecutrix is concerned, the doctor who had conducted the medico-legal examination and the radiologist opined that the age of the prosecutrix was about 18 years, but the trial court has itself acted as an expert and has recorded its own opinion regarding age of the prosecutrix on the basis of the fact that the prosecutrix had 14x14 teeth and the medico-legal examination report merely mentioned presence of auxiliary and pubic hair, but it does not mention that the axillary and pubic hair were fully developed. Mention of presence of auxiliary and pubic hair cannot lead to an inference that the same were not fully developed when the medico-legal examination report does not say so. Emergence of the third molars is not essential and absence of the third molars cannot be made a basis for holding that the person had not attained the age of 18 years. When the doctor who had examined the prosecutrix and the radiologist stated her age to be about 18 years, the trial court ought not to have acted as a super-specialist so as to superimpose its own expert opinion over the opinion of the doctor and the radiologist.

25. In **Jaya Mala v. Govt. of J & K**: (1982) 2 SCC 538, the Supreme Court held that "*one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side.*"

26. In **Jyoti Prakash Rai v. State of Bihar**: (2008) 15 SCC 223, it was reiterated that the age determined by the doctors should be given flexibility of two years on either side.

27. In **Rajak Mohammad v. State of H.P.**: (2018) 9 SCC 248, the Hon'ble Supreme Court has held that: -

*“9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. **The benefit of the aforesaid doubt, naturally, must go in favour of the accused.**”*

(emphasis added)

28. When we examine the evidence available on record in light of the law laid down by the Hon'ble Supreme Court in the cases of **Jaymala, Jyoti Prakash Rai** and **Rajak Mohammad (supra)**, it appears that although as per the medical opinion age of the prosecutrix was about 18 years, adding an error margin of 2 years on the higher side, it can even be taken to be even 20 years on the date of the incident. Therefore, I am of the view that the prosecution has failed to establish that the prosecutrix was minor on the date of the incident.

29. The trial court itself has held that the prosecutrix had gone with the appellant out of her own free will after exercising a discretion to fulfill her natural desires. She did not allege use of force by the appellant. She stayed with the appellant for a continuous period of 7 years. She did not level any allegation against the appellant in her statements recorded under Section 161 and 164 CrPC, and she did not disown the statements recorded before the investigating officer and before the Magistrate even during her testimony recorded in the court.

30. However, the trial Court convicted the appellant because in her testimony recorded in the Court, the prosecutrix alleged that the appellant had taken her away by making her inhale something, due to which she had fallen unconscious. Although it is true that a conviction can be based on the solitary testimony of the prosecutrix, but it can only

be done where she is a witness of sterling quality and her testimony inspires confidence.

31. In **Rai Sandeep v. State (NCT of Delhi)**: (2012) 8 SCC 21, the Hon'ble Supreme Court held that: -

*“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre 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 every one 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.”***

(emphasis added)

32. When we examine the statements of the prosecutrix recorded at various stages in light of the law laid down by the Hon'ble Supreme Court in the above-mentioned cases, it appears that in initial statements recorded by the investigating officer and by the Magistrate, the prosecutrix categorically stated that she had gone with the appellant out of her own free will and she did not level any allegation against him. The prosecutrix did not disown her statements recorded by the investigating officer and the Magistrate during her testimony recorded by the trial Court. Although she alleged the appellant had taken her away by making her inhale something, due to which she had fallen unconscious, it cannot be believed that the appellant alone would be able to take an unconscious grown up woman from a village in District Unnao to Ludhiana. Moreover, the prosecutrix did not allege use of force by the appellant during the continuous period of 7 months while she lived with him in a rented accommodation at Ludhiana. It cannot be accepted that a young lady would stay with a person for such a long period of time against her own wishes without use of any kind of force by the appellant. The trial court has held the appellant guilty of the offence under Section 366 IPC without adverting to the aforesaid aspects of the matter, which vitiates the findings of the trial court.

33. Accordingly, the appeal is **allowed**. The impugned judgment and order dated 08.02.2013 passed by Shri Jagdish Prasad - Fourth, Additional Sessions Judge, Ex-cadre, Unnao in Sessions Trial No. 332 of 2011, titled "State vs. Bhaiya Lal", arising out of Case Crime No. 91 of 2011, under Sections 363, 366, 376 IPC, Police Station Asiwan, District Unnao, convicting and sentencing the appellant for the offence under Section 366 IPC, is **set aside**. The appellant is **acquitted** of the aforesaid charge.

34. The appellant is directed to furnish a personal bond and two sureties before the trial court for his appearance before the Hon'ble Supreme Court in case any appeal is filed against this order and the

Hon'ble Supreme Court issues notice to the appellant, as required by Section 437-A CrPC.

35. The sureties, if any, furnished by the appellant prior to passing of this order stand discharged.

(Subhash Vidyarthi, J.)

Whether the order is speaking - Yes
Whether the order is reportable - Yes

(Subhash Vidyarthi, J.)

August 31, 2026
-Amit K-