2026:AHC:239964

# HIGH COURT OF JUDICATURE AT ALLAHABAD

**CRIMINAL APPEAL No. - 1872 of 2020**

Rupesi @ Rupesh

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

| | | |
|---|---|---|
| Counsel for Appellant(s) | : | Atul Kumar, Chandra Bhushan Prasad |
| Counsel for Respondent(s) | : | Abhishe Pandey, G.A., Praveen Singh |

**AFR.**
**Judgment reserved on 26.10.2026**
**Judgment delivered on 25.11.2026.**

**Court No. - 88**

**HON'BLE ABDUL SHAHID, J.**

1. Heard Sri Chandra Bhushan Prasad, learned counsel for the appellant and Mr. Mohd. Shoeb Khan, learned AGA for the State.

2. The present criminal appeal has been preferred against the judgment and order dated 12.2.2020, passed by learned Special Additional and Sessions Judge (POCSO Act), Muzaffar Nagar in Special Sessions Trial No. 75/9 of 2015, arising out of case crime No. 637 of 2013, convicting the appellant under Section 376(2) IPC read with Section 6 POCSO Act for 25 years RI with a fine of Rs. 50,000/.

3. The genesis of the aforesaid case has been initiated on the basis of FIR which was lodged by the complainant, who is father of the victim. He stated in the FIR that his five years old daughter /victim had left the house to play at around 10-11 in the morning. When she did not return for a long time, we started searching for her, then Kaushalya w/o Gopal of our village told us that on the way to Fahimpur Khurd, the sound of a child crying is coming from the sugarcane field. We all villagers ran there and saw that Rupesi s/o Sohanbir of our village was doing bad act with the

victim, who ran away into the sugarcane after seeing us. I have come to the police station with the girl. This incident happened at around 2 'o'clock in the afternoon. I have come on information. Please take strict action against the accused.

4. The incident is of dated 11.10.2013 at around 2.00 pm and the FIR has been lodged on 11.10.2013 at 17.45 hours against named accused Rupesi son of Sohanveer. The FIR had been lodged promptly without any delay. The FIR was lodged at Case Crime No. 637 of 2013, under Section 376 IPC and Section 3/4 of POCSO Act. After investigation, the charge sheet was filed against the appellant. The charges were framed under Section 376 IPC and Section 5/6 of POCSO Act and trial commenced in said sections.

5. The medical examination of the victim was conducted. The doctor has found on examination, height 98 cm weight 14 Kg teeth 10/10. She is fully conscious at the time of examination. No mark of external injury all over body, mud is present over head, upper lip, nose and legs, ears. As per vaginal examination, perineal tear is present at 6 O'clock position, extending upto rectum hymen is also torned at 6 'o' clock position, margins are scooler. She was sent for X-ray of wrist joint and for determination of age, she was referred to CMO.

6. The victim was admitted in L.L.R.M. Medical College, Meerut on 12.10.2013, where she was operated and discharged from the Hospital on 23.10.2013 (Ext. Ka-6).

7. The victim is five years old. There has been consistency in the submission and the evidences recorded before the learned trial court. No

issue has been raised at any stage about question of age. The age of the victim has been considered as five years, whereas the accused was 25 years of age at the time of incident. At the time of medical examination of the accused, he was also found in drunken condition as smell of alcohol was found.

8. Section 5 of POCSO Act is as follows:

***5. Aggravated penetrative sexual assault****. (a) Whoever, being a police officer, commits penetrative sexual assault on a child-*

*() within the limits of the police station or premises at which he is appointed; or*

*(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or*

*(iii) in the course of his duties or otherwise; or*

*(iv) where he is known as, or identified as, a police officer; or*

*(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child-*

*(i) within the limits of the area to which the person is deployed; or*

*(ii) in any areas under the command of the forces or armed forces; or*

*(iii) in the course of his duties or otherwise; or*

*(iv) where the said person is known or identified as a member of the security or armed forces; or*

*(c) whoever being a public servant commits penetrative sexual assault on a child; or*

*(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or*

*(é) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or*

*(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution;*

*or*

*(g) whoever commits gang penetrative sexual assault on a child.*

*Explanation. When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or*

*(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or*

*(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or*

*(j) whoever commits penetrative sexual assault on a child, which-*

*(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently,*

*(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;*

*(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; [*]*

*2[(iv) causes death of the child; or]*

*(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or*

*(1) whoever commits penetrative sexual assault on the child more than once or repeatedly; or*

*(m) whoever commits penetrative sexual assault on a child below twelve years; or*

*(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or*

*(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or*

*(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or*

*(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or*

*(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or*

*(s) whoever commits penetrative sexual assault on a child in the course of 3[communal or sectarian violence or during any natural calamity or in similar situations]; or*

*(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or*

*(u) whoever commits penetrative sexual assault on a child and makes the child*

*to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.*

9. The appellant/accused has been sentenced under Section 376(2) IPC read with Section 6 of the POCSO Act. The incident is of 2013 and as per Section 6 of the POCSO Act, 2012, the punishment is as under:

**6. Punishment for aggravated penetrative sexual assault**.-(1) Whoever commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine. Whereas, this Section 6 has been amended with effect from 16.8.2019 as follows:

**6. Punishment for aggravated penetrative sexual assault**.-(1) Whoever commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

10. Section 42 of the POCSO Act, 2012 is as under:

*"**42. Alternate punishment**. Where an act or omission constitutes an offence punishable under this Act and also under Sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E, Section 509 of the Indian Penal Code or Section 67B of the Information Technology Act, 2000, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree."*

11. As per Ext. Ka-4, Dr. Nishi Singh (Senior Consultant) has specifically

opined in her report dated 13.11.2019 that there are signs suggestive of forceful penetration of vagina. Sexual violence cannot be ruled out.

12. The summary of admission and operation and discharge as per L.L.R.M. Medical College and Associated SVBP Hospital, Meerut as verified by PW-4 as Ext. Ka-6, where the victim of five years age has been admitted on 12.10.2013. She has been operated on 12.10.2013 and she has been discharged on 23.10.2013. The patient presented to SVBP Hospital as a referred case from District Women Hospital, Muzaffarnagar with alleged history of sustaining perineal injuries in a sexual assault at 10.00 am on 11.10.2013 at near an isolate place, village Ahmad Garh, P.S. Khatauli, district Muzaffarnagar as stated by uncle Srichand. Patient brought by relatives to SVBP Hospital as a referred case from District Women Hospital, Muzaffarnagar with alleged history of sustaining perineal injuries in a sexual assault at 10.00 am on 11.10.2013 near village: Ahmadgarh, P.S. Khatauli, District Muzaffarnagar as stated by uncle-Srichand. The hospital observed vaginal bleed.

13. The medical examination of the victim was done by the Medical Officer, Women Hospital, on 11.10.2013 and the doctor has observed perineal tear is present at 6 O' clock position extending upto rectum, Hymen is also torned at 6 O'clock position. It has been referred to CMO, Muzaffarnagar. Thereafter, patient was referred to Meerut Medical College to Pediatric Surgeon for repair of tear and further management. The victim has suffered serious injuries in her private part. The age of the victim is five years, whereas, age of the accused was 25 years.

14. As per medical report Ext. Ka-9 which is verified by PW-4, the operation of exploratory laparotomy with sigmoid loop colostomy. The

indication deep perineal tear due to assault. It has been done with anesthesia. Steps- 1. Part painted and drapped, 2. A transverse infraumblical incision given in Lt lumber region ( app. 6 cm in length). 3. Incision depend in layers with cautry and hemostasis is achieved. 4. Sigmoid colon is delivered with the help of finger and NG tube is passed through mesentry. 5. Maturation of sigmoid loop colostomy done in single layers with vicryl 3-0 RB and Extra incision closed in layers with vicryl 3-0 RB and nylon 3-0 cutting.

15. This reflects that the victim aged about 5 years has gone through severe pain and suffered serious injuries due to said assault and injury in her private part.

16. PW-4 has verified injuries at the time of medical examination which is Ext. Ka-10 that urethral opening visible. Perineal tear at 6 O'clock position. Anus not visible separately, vaginal opening not visible separately. At the time of consent for colostomy, which has been given by Ravindra, uncle of the victim which is Ext. Ka-11 verified by PW-4. whereas it has been written in Hindi, the translation version thereof is as " We had been informed that due to our patient has got injury in her portion of latrine, there is requirement of a cutting in the stomach to create path from the stomach for latrine. It is dangerous nature, it may occur excessive blood oozing, may cause injury in intestine, wound may be infected and further operation may be required. We may also have been informed that in future, further operation may be required. After knowing and understanding all these conditions, we are giving consent for operation. The consent was given by Ravindra as well as Srichand, both are uncle of the victim. It categorical certified that how much severe

injuries was there and thereafter its consequences that has been explained in detail in Hindi and laid down in the colostomy report.

17. The age of the accused was 25 years. The medical examination of the accused was conducted on 11.10.2013 at 9.30 pm at CHC Khatauli, District Muzaffarnagar, Ext. Ka-21. The smell of alcohol was present in the breath of the accused aged about 25 years.

18. As per Forensic Science Laboratory report Ext. Ka-22, the exhibit (1) was having blood. Exhibit 1 and 2, there was no sperm found and on exhibit 1 and 2 no hair was found and on exhibit 1 and 2, blood stained was found on exhibit (1). The FSL report is corroborated with the injury of the victim where there was serious injury in her private part. Perineal tear at 6 O'clock position. Anus not visible separately. Vaginal opening not visible separately.

**19. PW-1 is Sunil**. He is father of the victim. He deposed his statement before the learned trial court on 12.5.2015. He stated that I know the accused Rupesh, who is present in the court today. He is belonged from my village and living near to my house. The incident was happened on 11/10/2013. My daughter/victim had went outside from house for playing in morning time. Her age was about 5 years old. She was gone from home at about 10 or 11 AM. When she was not came back for a long time, then we all started to searching her. At the time of searching, Kaushalya, wife of Gopal, had told us that she had heard the crying sound from nearby sugarcane field. After hearing this, we all was running towards the field and there we seen that accused Rupesh was committing rape with my daughter. When the accused saw us, then he ran away inside the sugarcane field. After that I brought my daughter to police station. He

further stated that at about 2:00 PM, accused Rupesh was doing rape with my daughter. I had lodged report of this incident from Mukesh, son of Netrapal, and submitted it in Khatauli police station. Mukesh had written the report as I was told him about the incident. After reading over the report, I had signed on the same. He further stated that I am doing the work of labour. On the day of incident I was at my house only. At the time of incident I was sitting and eating the food in my house. My daughter/victim is studying in class 2. I cannot be able to tell that in which school she is studying. The timing of going to school was 8 O'clock in the morning and the school was giving holiday at 12.00 O'clock in afternoon. On the date of incident, no child of myself had went to school. My all three children was remained in the house. The distance of school from my house may be about 100 meter. My three children were used to go to school together daily. They go to the school on foot. I don't know that at what time the interval in school was made. I don't also know that at interval, children were came to home for taking food or not because I am mostly remained outside. I had not told this thing to Daroga Ji. I don't knows how the Daroga Ji had written this thing. The above matter also I was not got written in my tehrir. The house of accused Rupesh is after two houses from my house. I cannot able to tell in which direction his house is situated because I have no knowledge of direction. The distance between the place of incident and school is approximately one kilometre. When I was came to know about this matter then I started searching my daughter in village. On the incident day I was not knowing that my daughter had gone school or not. This matter was told me by my house members. My all three children were used to go school by walking. Daroga Ji had taken my statement on 11.10.2013 at

2.00 O'clock of day. I was went in village for searching my daughter alongwith villagers. Jhavar Singh, Sanju, Ravindra, Devendra, Rajkumar and many peoples was with me. My daughter was missing from 10 O'clock morning to 2.00 O'clock afternoon. In between this time we all were searching her. I had not taken the Daroga Ji at the place of incident. The missing of girl was informed to me by my family members. I am not an educated and only knows to make signature.I was not having any previous quarrel with accused Rupesh before the incident. We was informed by Kaushalya that the crying voice of child is coming from the field. From the place where the crying voice was coming, firstly the villagers had went there and after that I was also went there. Because on the incident day rain was falling, so I had left my work and came to home. I was came to home at about 9-10 O'clock in morning. On searching the girl she was found in the field. I had personally seen with my own eyes that accused Rupesh was doing bad act with my daughter in the field. We directly brought the girl to our home. At that time the condition of girl was very serious and blood was coming from her body. I cannot able to tell that how much distance is between my house and police station. We had gone to police station by tractor with the girl. The tractor driver name was Shyam Singh. I do not remember his father's name. The tractor was of red colour.

20. Daroga Ji had taken my statement only one times. transaction there was a quarrel between me and Rupesh and due to that enmity we had falsely taken his name. It is also wrong that accused Rupesh was not present at the place of incident on the incident day. It is also wrong that any beating was happened between me and accused.

21. PW-1, who is father of the victim has supported the prosecution story. He has specifically stated that her daughter/victim has been missing since 120.00 am to 2.00 pm. He had searched her. There has been no altercation ever took place to himself with the accused. The victim, who is  is sterling witness of the case, the evidence of prosecutrix is of much significance in the cases of sexual assault.

22. At the time of examination-in-chief before the learned trial court on 13.7.2018, the victim/PW-2 has  stated her age 8 years. Her  mental understanding has been assessed by the learned trial court and she has been found capable to depose her evidence.

23. She stated on oath that, about incident four or five years has been passed. This incident is of morning time. I had gone very far from my house at my garbage place for doing toilet. There Rupesh was met me. The witness identified Rupesh present in the court. Rupesh told me that I will give you biscuit. I was called my mother loudly but my mother was far away, therefore she could not listened my voice. Rupesh taken me inside the sugarcane field. Rupesh removed all my clothes and placed his organ in my body. My place of  doing urine and place of doing latrine became one. When I was started crying, then one aunt came from the other side, who went and informed my mother. At the time of doing bad act Rupesh had filled soil into my mouth. When my mother brought me to home and given me bath, then soil came out from my mouth. My operation was done in the hospital. My three operations were done. My mother was not present with me on the day of incident. My mother was not came with me. The place where I was gone for doing toilet was situated three or four fields far from my house. I had told him about that I

was went for doing toilet. If this fact is not written in my statement, then I am not able to explain it. The accused Rupesh @ Rupeshi had told me about giving biscuits to me. If the Inspector had not written this fact in my statement, then I cannot be able to give any explanation for it. The accused Rupesh had not covered his mouth by any clothes. I had told to the Inspector about all bad act which was done with me by accused Rupesh @ Rupeshi. If the Inspector had not mentioned this fact in my statement, then I am not able to explain about the same.

24. She further stated that the Inspector had not recorded my statement in front of Magistrate. Rupesh had filled mud in my mouth. I had informed this fact to the Inspector, but if the Inspector had not included this fact in my statement then I cannot give any reason for the same.

25. After the incident I was became unconscious. I had regained my consciousness only when I was brought to my house. It is wrong to say that Rupesh had not committed rape with me, but some unknown person had kidnapped me and on the saying of my parents and family members I had told before the court about wrong acts of accused Rupesh @ Rupeshi. It is also wrong to say that accused Rupeshi had not committed rape with me.

26. Learned trial court has specifically observed that the accused has tried his best not to cross examine the victim on the same day and tried his best to delay the cross-examination so that the witness of prosecution may be win over. Thereafter, accused has started cross-examination with the victim on 10.1.2020 approximately after one and half years of recording of examination-in-chief. This clearly reflect that the accused wanted delay

willfully and deliberately in cross-examination of the victim and prosecution witnesses.

27. In her cross-examination on 10.1.2020, the victim had stated that when the incident was occurred, my mother was not with myself. When I had went for latrine from my house, then my mother did not go with myself. Where I had went for latrine that is at a distance of about 3-4 agricultural field from my home. The inspector had enquired with myself. I had told to the inspector regarding going of latrine. If it is not recorded in my statement, I could not give any reason for it. The accused Rupesh has also stated myself to provide biscuit. If it is not recorded in my statement, I could not explain any reason for it.

28. The victim has fully supported the nature of incident and she specifically deposed that the accused has committed rape with her.

**29. PW-3** is Ravindra. His statement was recorded before the learned trial court on 26.7.2018. He, in his examination-in-chief, has supported the prosecution story. He is uncle of the victim.

30. Learned counsel for the appellant has relied on **Jaikam Khan Vs. State of Uttar Pradesh; 2021 LawSuit SC 851** and he relied on paragraph no. 28 of the said judgment which is as follows:

*"28. Both PW-1-Ali Sher Khan and PW-2, Jaan Mohammad are witnesses, who are closely related to the deceased as well as the accused No.1-Momin Khan. No doubt that, merely because the witnesses are interested and related witnesses, it cannot be a ground to disbelieve their testimony. However, the testimony of such witnesses has to be scrutinized with due care and caution. Upon scrutiny of the evidence of such witnesses, if the Court is satisfied that the evidence is creditworthy, then there is no*

*bar on the court in relying on such evidence."*

31. It is settled law that evidence of interested witnesses and closely related witness are admissible in the eyes of law. It is also settled law that family members are natural witnesses and they are proper witnesses. It has been considered that close related witnesses or natural witnesses would not falsely implicate any innocent person in the case and real culprit would be free. The statement and evidence of natural witnesses are duly admissible before the court of law.

32. PW-3 has specifically supported the prosecution story and he stated that my brother name is Sunil. His daughter's name is xxx. At the time of incident, the age of girl was about 3 years. She was playing outside in the street at about 10-11 O'clock in morning. When we were came to our house, the girl was not seen by us in the house. Then we had searched her, here and there. After that I, Sushil, the persons of locality had went for searching in the sugarcane fields. On the way we were met with Kaushalya. She asked us what is the matter. We told her that victim has been missing somewhere. Then Kaushalya told that from the sugarcane field of Fahimpur Khurd, crying voice of a child is coming. Then we reached there. After seeing us, Rupesh of our village, who was lying over the victim, had run away after seeing us. My niece was fully covered with mud and blood was coming out from her body. Firstly we taken her to the house. Thereafter, we take the victim to Khatauli and from there the girl was sent to District Hospital, Muzaffar Nagar. Then from District hospital, she was referred to Meerut for medical examination.

33. The FIR has been promptly lodged just after the incident. The accused has duly been named in the said FIR. The victim had been taken for

medical examination at Muzaffarnagar. Her condition was serious, hence she was referred to Meerut for further medical treatment and management.

34. The cross-examination, which was done by the accused with the PW-3 on 10.1.2020. He did not cross-examine on the day when examination-in-chief was recorded. It was closed on that date, whereas further opportunity to cross-examine has been provided to the accused.

35. In the cross-examination, he has stated that I had stated on oath that I am doing labour work. Sunil is my brother and victim is my niece. Our houses are situated side by side. I am going from my house for doing labour at about 6-7 O'clock in morning and returning back to home at about 6-7 pm in evening. In front of me, the victim had not went outside from the house. Whether she had gone alone or with any person, I am not knowing about this. Daroga Ji had made enquiry from me at my house.I had told to Daroga Ji that bad act had happened with this girl. If the fact of bad act was not written by Daroga Ji in my statements, I could not give any explanation for it. The house of Kaushalya is very far away from our house and situated in another side. The house of Rupesh/appellant is situated after leaving one house from the house of victim. Accused Rupesh @ Rupeshi was tied a clothes on his mouth at the time of incident. I had not told to Daroga Ji about tying of cloth on the mouth. It is correct that today for the first time I am telling in the court about the fact of clothes tied on the mouth. The field of incident was of sugarcane and around the field also sugarcane crops was standing. The height of sugarcane was about 6 feet. We had seen the accused from a distance of 4-5 steps. At that time we were about 15 persons. All the persons was

going together while talking with each other and searching the girl. In the nearby fields nobody was doing any work because rain water was present in the fields. I am not having knowledge of directions and I am an uneducated person. Therefore, I cannot tell that in which direction the accused had run away. I had not told to Daroga Ji about the fact that the girl was playing in the outside street. I am not remembering whether the victim was playing. She was wearing salwar. There were injuries on the mouth and body of her. It is correct to say that on the date of incident I was not present in my house. It is wrong to say that some days before the incident my brother Sunil had quarrelled with Rupesh and beating had taken place between them and accused Rupesh had not committed any rape with my niece. It is also wrong to say that I had not seen the incident with my own eyes and I was also not present at the spot at the time of incident and due to previous enmity I am giving false evidence in the court today after making conspiracy with the complainant. It is also belied to state that I had not identified accused Rupesh @ Rupeshi while committing the incident. Accused Rupeshi was wearing pant-shirt.

36. PW-1, who is father of the victim, PW-3, who is uncle of the victim and PW-2, who is victim herself, they all are supported the prosecution story which is completely corroborated with the medical evidence and statement recorded before the learned trial court.

37. Learned counsel for the appellant has drawn attention to minor contradiction. It is settled provisions of law that appreciation of evidence in criminal cases would not be done as mathematical niceties. It is held in **Leela Ram Vs. State of Haryana; 2000 SCC (Cri) 222** that in criminal case, corroboration with mathematical niceties should not be expected.

38. PW-4, Dr. Gaurav Gupta has deposed before the learned trial court on 23.10.2019. He in his examination-in-chief stated that I was posted as a surgeon at S.V.B Hospital. On that day, the patient, daughter of Sunil, age 5 years, resident of Ahmed Garh, Police Station Khatauli, District Muzaffar Nagar, was admitted after being referred from Women's Hospital, Muzaffar Nagar, due to alleged sexual assault that occurred at 10:00 a.m. on 11/1/2013 in the village of Ahmed Garh, Police Station Khatauli, District Muzaffar Nagar. At the time of admission, the patient's vitals were as follows: The patient was conscious and attentive. Bowel Sounds were present, chest was bilateral, and temperature was clear. There was no fever. The patient was found to have the following injuries at the time of admission. It was a complete tear: the genital passage was torn from the 6 'o'clock position back to the rectum, and the septum between the genital passage and the anus was also torn, and the wound was filled with pus.

39. This reflect severity and gravity of wound and injury caused to the victim due to said sexual assault. He has further verified that the operation was conducted in an emergency situation on 12.10.2013 in complete unconsciousness. The patient was subsequently treated with bandage and necessary medicines.The patient was discharged in satisfactory condition on 23.10.2013 from the Hospital.

40. In her cross-examination, she has stated that he had provided ante-biotic and pain killer to the patient during her treatment. The patient has been admitted for treatment for about 12 days in the Hospital. The I.O. has not recorded any statement of myself. The said doctor, who has conducted the medical treatment as well as emergency operation of the

victim has supported the prosecution story which is corroborated with the verbal deposition with the medical treatment. He has also verified that the patient has suffered injuries in her genital organ due to sexual assault and he has verified his treatment as well as the consent of guardian of the victim prior to operation of the victim. He has verified the medical papers as Ext. ka 6 to Ka-13.

41. PW-5, Dr. Nishi Singh, Senior Consultant, Kasturba Women Hospital, Bulandshahar has deposed before the learned trial court on 13.11.2019. She has prepared the first medical report of the victim on 11.10.2013 on the date of incident. She has verified that on internal examination of the victim, there was perineal tear is present at 6 O'clock position. The tear was reaching till rectum. Hymen was torned at 6 O'clock position. There was swelling on the boundaries. The victim has been referred to Medical College for pediatric surgeon for repair of tear and for further management. She has verified said medical report which is in her hand writing and signatures. She has also verified her supplementary report where she opined that there are signs suggesting of forceful penetration of vagina. Sexual violence cannot be ruled out. The supplementary report has been verified by her Ext. Ka-4 and 5.

42. In her cross-examination, she has stated that the victim did not told anything to her about the incident. I did not ask anything to her. She has stated that she has conducted the medical examination of the victim on 11.10.2013 at 10.00 pm and immediately she has referred her to Meerut.

43. She is the doctor, who has initially medically examined the victim. She opined that there are signs suggesting of forceful penetration of vagina. Sexual violence cannot be ruled out. It is corroborated with the

prosecution story and ocular statement of witnesses including victim.

44. PW-6 is Ashok Kumar, SI. He deposed that he was posted at P.S. Khatauli on 11.10.2013. He has verified the check FIR as well as GD entry Ext. ka-14 and 15. In his cross-examination, he has verified that at the time of registration of the FIR, mother of the complainant, Rajo, Bhabhi, Pushpa, brother, Ravindra and other co-villagers came at the police station. He has verified that though the S.O. was not present and there was no written order of SO for registration of the FIR, he had been informed on wireless. The nature of the case was very serious and grievous nature, hence, there was no possibility to cause any delay in registration of the FIR. He has verified the G.D. entry as well as check FIR which was immediately lodged at the concerned police station.

45. PW-7 is Prem Niwas Sharma, Inspector, P.S. Loha Mandi, Agra. He deposed his statement on 7.1.2020. He stated that he was posted as Sub-Inspector at the police station Khatauli in the year 2013-2015. He was the first I.O. of the said case. He has verified Ext. Ka 16, 17, 18 and material exhibits 1,2, 3,4,5,6 and 7. After completing investigation, he has submitted charge sheet against the sole accused/appellant which is Ext. Ka 19. He has conducted the entire investigation of said case.

46. In his cross-examination, he has verified that he prepared site plan on the identification of Ravindra Singh on 14.10.2013. He has verified that he has arrested the accused on the date of incident on 11.10.2013 from Yatri Shed, Falwada road, Biharipur village. It is true that the victim has told to me in her statement that the accused was lying on her and beaten her. This has not been told by the victim that Rupesh has committed bad act or rape with her. He has not recorded statement of the victim under

Section 164 Cr.P.C. before the Magistrate because even after several time, the family members of the victim did not come for recording her statement under Section 164 Cr.P.C. I had not sent any written information for recording statement under Section 164 Cr.P.C. I had sent information orally through one constable.

47. Learned counsel for the appellant has submitted that no proper investigation has been conducted by the I.O.. There are serious defects in the investigation, whereas, it is settled law that any fault in the investigation would not affect to the case of prosecution and it could not be fatal for the prosecution.

48. PW-8 is Dr. Avnish Kumar Singh, Incharge Medical officer, CHC Khatauli, District Muzaffarnagar. He deposed his statement before the learned trial court on 15.1.2020. He has stated that he was posted as Incharge Medical Officer at CHC, Khatauli, Muzaffartnagar on 11.10.2013. He has stated that he has conducted the medical examination of the accused on 11.10.2013 at 9.30 pm, emergency No. 57511/3649/40. There was no mark of external injury in the medical examination. The smell of alcohol was found in his breath. On internal examination of the accused, the smagma was not present. He has specifically opined that it is not necessary that smagma must be found at the time of intercourse.

49. In the cross-examination, he stated that in this medical examination no consent is required from the accused because he has been brought with police memo. He is a major. The purpose of medical examination is informed to the accused, but I did not mention it in the medical report. It is belied to state that I did not inform the accused about purpose of his medical examination. Hence, he did not mention in his medical

examination report. It is belied to state that if forceful sexual intercourse has been conducted with minor girl of five years, then there would be smagma. At the time of medical examination of the accused, he was found of 25 years age. There was smell of alcohol from his breath.

50. The statement of the accused/appellant under Section 313 Cr.P.C. had been recorded on 15.1.2020, where he has stated that he was not present at the time of incident. He stated that all the evidences recorded by the prosecution witnesses are false and incorrect. He did not produce any defence evidence. He stated that he has been falsely implicated in the said case due to enmity.

51.Learned trial court has categorically discussed the age of the victim as 5 years at the time of incident which has not been controverted either before the learned trial court or before this Court. Hence, it is categorically clear that the age of the victim was five years at the time of incident, whereas the accused was of major age of 25 years which has been corroborated with the statement of the accused, under Section 313 Cr.P.C, where he has deposed his age as 29 years. Hence, it is hereby, confirmed that the victim was five years and the accused was 25 years old at the time of incident. The victim is minor and could not able to understand real nature of act, whereas accused/appellant is of matured age of 25 years. He fulfills his lust and caused serious injuries on her genital part.

52. The injuries of the victim was serious, hence she was referred immediately to Meerut from Muzaffarnagar for further medical treatment and management on 11.10.2013 on the date of incident itself. She has been operated in emergency on 12.10.2013. There were serious

consequences due to said injury and she has been admitted in Hospital for 12 days for her medical treatment after operation. The finding recorded by the learned trial court does not requires any interference which is hereby confirmed.

53. The FIR has been lodged promptly after the incident. The accused had been seen by the witnesses on the spot. PW-1, father of the victim, PW-3, uncle of the victim and PW-2 victim, all had completely identified and verified the accused/appellant of committing said heinous and grievous offence. The nature of the offence is sexual assault. In **Mohd. Imran Khan Vs.State (Govt. of NCT of Delhi), 2011 (10) SCC 192**, it has been held that it is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime, but is a victim of another person's lust.The victim stands at a higher pedestal than an injured witness as she suffers from emotional injury. In the present case, the victim had identified, deposed and verified injuries caused to her genital organs by the appellant/accused. The finding recorded by the learned trial court that the appellant has committed said offence with the victim, does not requires any interference, it is hereby confirmed.

54. The nature of the injuries which has been caused to the victim that has been corroborated by the doctor who had initially examined at Muzaffarnagar and thereafter when operation and further management at Medical College,. Meerut.

55. Learned trial court has also relied on the judgment of Hon'ble Supreme Court in **Vipin Kumar Mandal Vs. State of West Bengal; 2010(2) SC Criminal Ruling** and in **State of U.P. Vs. Krishna Master; 2011 (72) ACC 519** respectively, where it has been held that if evidence

of ocular witness has been found to be of solely in nature and true and correct, then accused may be convicted only on the basis of sole evidence.

56. Learned trial court has also relied on **Mohammad Chaman Vs. State; 1998 Cr. L. J 3739**, where it has been laid down that recovered blood stains clothes of deceased from place of occurrence, medical evidence showing rape was committed mere non presence of semen either on clothes of deceased or on clothes recovered from place of occurrence not fatal for prosecution. Learned trial court has further relied on **Maqbool Vs. State of Andhra Pradesh; AIR 2011 SC 814 and Shiv Shankar Vs. State of Jharkhand; 2011 Crl.L.J. 2139 (SC)** that where blood stained as well as plain soil and blood stained clothes of injured or deceased could not be sent for Forensic Science Laboratory for chemical examination, it would not be fatal for the prosecution, provided the case of the prosecution has to be proved by cogent eye witnesses.

57. In the present case, the prosecutrix is the best witness and who has completely supported the story of prosecution. The offence committed by the appellant/accused and her injuries as well as her entire medical treatment are serious in nature. The case of the prosecution story has been proved by the ocular as well as medical evidence including the victim alongwith further corroboration with the medical evidences supported by the concerned expert doctor, who had initially examined the victim and referred the victim for further treatment as well as the doctor who had conducted the operation of the victim in emergency after obtaining consent from the guardian of the victim. The guardian of the victim has been duly communicated and apprised about seriousness of the injuries as well as further consequences of operation.

58. Learned trial court has relied on **Kartar Singh Vs. State of U.P.; 2012 (79) ACC 875** that the witnesses of home could not be considered as interested witnesses. They would not falsely implicate innocent person without any specific reason. These witnesses should not be treated as interested witnesses and no benefit of it could be provided to the accused. Learned trial court has also relied on **Ram Sagar Vs. State; 1994 C.R.L.J 589,** where the Allahabad High Court has held that there may be some minor contradiction in the statement and deposition of ocular witnesses. These kind of variation or omission could not be considered that the case of the prosecution is false because minor contradiction like variation or omission is natural and probable.

59. Learned trial court has also relied on **Ram Sajivan Singh Vs. State of Bihar AIR 1996 SC 3265**, where the Hon'ble Supreme Court has held that where the ocular witness are natural at the place of incident and there is nothing constructive has been corroborated during cross-examination which proved that if evidence is absolutely false, hence, statement of this kind of ocular evidence could not be normally discarded.

60. The nature of offence committed by the appellant/accused has been duly verified and corroborated by ocular as well as medical evidence including the statement and deposition of the prosecutrix. The prosecution has proved its case beyond reasonable doubt against the appellant/accused. The finding recorded by the learned trial court are totally legal and justiceable. They are liable to be confirmed. Hence, conviction of the appellant is hereby confirmed. The appellant/accused has been convicted and sentenced under Section 376(2) IPC read with Section 6 of the POCSO Act.

61. In view of seriousness and gravity of said offence and its nature, age of the victim, the sentence and fine awarded by the learned trial court is just and reasonable, and both are hereby confirmed.

62. In view of all these facts, circumstances and perusal of medical evidence, the judgment and order passed by the learned trial court dated 12.2.2020, passed by learned Special Additional and Sessions Judge (POCSO Act), Muzaffar Nagar in Special Sessions Trial No. 75/9 of 2015, arising out of case crime No. 637 of 2013 is liable to be up-held and it is upheld. The criminal appeal is liable to be dismissed.

63. The criminal appeal is **dismissed**. The appellant is in jail. He shall remain in jail to complete his sentence as awarded by the learned trial court. The period of incarceration already suffered by the appellant/accused shall be adjusted in completing the period of remaining sentence.

64. The criminal appeal stands **dismissed.**

**(Abdul Shahid,J.)**

**November 25, 2026**
sfa/

Digitally signed by :-
SYED FAHEEM AHMAD
High Court of Judicature at Allahabad