



2026:AHC:167870

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2146 of 1983

Yaseen

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Kanchan Chaudhary(A.C.)
Counsel for Respondent(s)	:	A.G.A.

Court No. - 75

HON'BLE DR. GAUTAM CHOWDHARY, J.

RESERVED ON 16.07.2026

DELIVERED ON 11.08.2026

1. In compliance of the order dated 17.02.2026 passed by this Court, office has submitted its report dated 14.05.2026, stating therein that the Chief Judicial Magistrate, Bulandshahar vide its letter dated 13.03.2026 has informed that the appellant is not found at the given address and he is not traceable.

2. On 01.12.2022, when this Court finds that none is appearing on behalf of appellant to argue the appeal, this Court directed the High Court Legal Services Committee to appoint an Amicus Curiae and in compliance of the same, Ms. Kanchan Chaudhary has been appointed as Amicus Curiae to argue the appeal on merits.

3. Since, as per office report dated 14.05.2026 the appellant is not found at the given address and his whereabouts are not known, this Court has gone through the judgment of Supreme Court in **Bhola Mahto Vs. The State of Jharkhand**, reported in **2026 INSC 257**, wherein the Apex Court in para-23 of the said judgment has observed as under:

23. In continuation of the above and in the light of what has transpired in course of the present proceedings, we wish to make an additional observation. It is a matter of common knowledge that once a convict obtains an order from the appellate court suspending the sentence of imprisonment and

is, consequently, released on bail, more often than not, he neglects and/or fails to cooperate with the court and impedes an expeditious decision on his appeal by staying away from the proceedings with a view to ensure that his liberty is not curtailed, if the appeal were to fail. Drawing from experience, we can record that on many an occasion, such convicts become untraceable. These convicts, enjoying the concession of bail and misusing it, need to be dealt with firm and strong hands by the courts. Having regard to the dictum of the three-Judge Bench in *Anokhi Lal Vs. State of Madhya Pradesh* (reported in 6 2019 20 SCC 196) and in order to curb the tendency of convicts to raise technical pleas of the nature which were advanced before us, we observe that, henceforth, **whenever an appellate court considers it desirable to appoint an amicus to represent a convict whose counsel is absent, such court may also consider the desirability of issuing a notice from the registry to the address of the convict mentioned in the memorandum of appeal, for such notice to be served on him through the jurisdictional police station, with an intimation that the convict may contact the learned amicus and provide him necessary instructions so that his case is argued before the court effectively and meaningfully.** In the event the convict contacts the amicus and provides instructions, there would ordinarily be no impediment in proceeding with hearing of the appeal. If, indeed, the convict desires to have his own counsel argue the appeal on his behalf and not the amicus, the court may hear such counsel in addition to the amicus. **However, if the service report indicates that the convict was not found at the address or that he refused to accept notice despite being present, it would amount to sufficient compliance if the notice is pasted on the outer wall of the premises, address whereof is mentioned in the cause title of the memorandum of appeal. Should the convict still remain dormant, and it is so reported, the High Court may proceed to decide the appeal without waiting for the convict to turn up either in person or through the counsel of his choice engaged by him. This**

process, in our view, would substantially serve the purpose of eliminating any plea of unfairness being raised before this Court if an appeal is disposed of upon hearing the amicus appointed by the court. Additionally, in a case of like nature where the appeal is listed two decades after grant of bail, this process would ensure obtaining of information as to whether the appeal survives for decision or stands abated. In case of the latter, the courts could avoid spending precious judicial time deciding an appeal which, by operation of law, may not require a decision on merits. Of course, for a convict in custody who has committed an offence punishable with death or life imprisonment, the directions in Anokhi Lal (supra) have to be scrupulously followed apart from the relevant rules regulating the business of the courts concerned.

4. This appeal has remained pending for the last 43 years and the appellant is enjoying the fruits of bail from more than four decades. Thus, in view of the above dictum of the Apex Court, this Court thinks it appropriate to proceed to decide the appeal on merits with the help of Amicus Curiae, representing the appellant, as he is neither traceable nor he was found on the given address.

5. Heard Ms. Kanchan Chaudhary, learned Amicus Curiae, appearing for the appellant, Shri Chandan Singh, learned A.G.A. for the State and perused the material brought on record including the entire trial court record.

6. This appeal has been preferred against the judgment and order dated 09.09.1983 passed by the learned Vth Additional Sessions Judge, Meerut in Sessions Trial No. 298 of 1980 (State Vs. Yaseen), under Sections 363, 366, 376 I.P.C., Police Station Civil Lines, District Meerut, convicting and sentencing the appellant under Section 363 I.P.C. for four years rigorous imprisonment, under Section 366 I.P.C. for four years rigorous imprisonment with a fine of Rs. 3000/- and under Section 376 I.P.C. for six years rigorous imprisonment with a fine of Rs. 3,000/-, and in default of payment of fine he shall undergo three years additional rigorous imprisonment.

7. Prosecution case is that at the time of alleged incident the victim was the student of St. Thomas Girls Inter College, Meerut. She used to go to college by a local Mini Bus. She was the resident of Mohalla Devnagar, Meerut and her father was a medical practitioner. The accused was the conductor of the said vehicle and the father of the victim frequently travelled by that Bus. On 25.08.1978 at about 10:00 a.m. the victim was going to market to purchase some copies, etc. The accused met with her at a certain place and told her to accompany him to Delhi as she wanted to get some employment. The victim told him that she has to go to her house to seek permission from her parents. The accused informed her that he had already spoken to her parents and took her to Delhi by the Bus. The accused has been representing himself as Raju Saxena, resident of District Bulandshahar and told that he was having two Buses. Thereafter, the accused took the victim to Delhi by Bus and stayed at the house of in-laws of his younger brother. At about 04:30 p.m. he came to railway station from that place. From Delhi railway station he took the victim to Moradabad by a passenger train and reached Moradabad next morning at 5:30 a.m. and reached in a Madarsa. From Moradabad he hired a Metador vehicle and took the victim to Sambhal, where his friend met at his house and after staying for a short time at Sambhal, the accused brought the victim to Hapur, from where he brought her to Bulandshahar and went to the house of his friend Jeete, but he was not available there. The accused, thereafter, took the victim to a Dharamshala of Chhajju Mal and asked the Manager to arrange for a room of two beds for them and, thereafter, he threatened the victim and forced her to sleep with him. He outraged her modesty and committed rape upon her forcibly against her will. The victim came down on the ground floor and informed about the incident to the Manager of the Dharamshala, who called the police and the accused was taken into custody and brought to Kotwali Police Station at Bulandshahar. The victim herself lodged the report (Ex.Ka.-4) of this occurrence. On 27.08.1978 the father of the victim received information from police and went to Bulandshahar. The victim was given in the 'supardgi' of her father after executing 'supardginama' (Ex.Ka.-6). The victim was medically examined on 28.07.1978.

8. After lodging of the F.I.R., the matter was entrusted for investigation. During investigation the victim was medically examined. The

investigation culminated in to submission of charge sheet under Sections 363, 366, 376 I.P.C. against the appellant. Cognizance was taken in the matter by the concerned Magistrate whereafter, case was committed to the Court of Sessions and it was registered as Sessions Trial No. 298 of 1982 (State Vs. Yaseen), under Sections 363, 366, 376 I.P.C. Police Station Civil Lines, District Meerut. Thereafter the Court of Sessions framed charges against the appellant in the aforesaid provisions. The accused-appellant denied the charges and demanded trial.

9. During trial, the prosecution has relied upon documentary as well as oral evidence.

10. P.W.4 is the father of the victim, who at the trial stated that she passed High School examinations in 1978 and her date of birth is 19.05.1963, thus, she was 15 years of age at the time of alleged occurrence. On 25.08.1978 the victim had gone to the market to purchase copies, she did not return that day. On 27.08.1978 he received information from the police and went to Bulandshahar and her daughter was handed over to him by the police. The accused was in the custody of the police at that time.

11. P.W.5-Hari Ram is a formal witness, who proved that the victim had given written statement (Ex.Ka.-4) to him, on the basis of which chik report (Ex.Ka-7) was prepared and the case was registered in G.D. (Ex.Ka-8).

12. P.W.6- S.I. Kiran Singh proved Ex.Ka-4, Ex.Ka-7 and Ex.Ka-8 and its receiving in G.D.

13. P.W.7- S.I. Mangal Singh investigated the case. He proved site plan (Ex.Ka-10) where the commission of rape allegedly took place. After completing investigation he submitted charge sheet (Ex.Ka-13) against the accused-appellant.

14. P.W.3, victim of the case, in her statement at the trial stated that at the time of the alleged incident she was about 15 years of age. She was taken by the accused-appellant to Delhi on 25.08.1978 at about 10:00 a.m. From Delhi she was brought to Moradabad, from where she was taken to Sambhal and then she was brought to Hapur, thereafter, she was taken to

Bulandshahar and reached there in the night. The accused went with her to the house of his friend namely Jeete, but he was not available there, and then the accused took her to the Dharamshala of Chhajjumaal, where he talked with the Manager of Dharamshala for arranging a room. She was taken in a room on the first floor of the said premises where the accused outraged her modesty, forcibly. She stated that she also received minor abrasions of nails.

15. P.W.2- Dr. H.U.K. Zuberi proved X-Ray report and stated that he did not mention the age in the X-Ray report (Ex.Ka-3). He stated that there may be difference of two years either side in the age.

16. The accused-appellant was confronted with the evidence collected against him during trial. His statement under Section 313 Cr.P.C. came to be recorded wherein he stated that he has been falsely implicated and that the evidence adduced is not reliable.

17. On the basis of the above material produced during trial, the Court of Sessions has come to conclusion that the guilt of the accused appellant has clearly been established beyond reasonable doubt and consequently, the accused-appellant has been convicted and sentenced, as stated above.

18. Challenging the impugned judgement and order of conviction and sentence, learned Amicus Curiae for the accused-appellant submits that the Court of Sessions has erred in recording the findings of guilt leading to conviction and sentence against the accused-appellant inasmuch as the testimony of witnesses are not reliable and the accused-appellant has been falsely implicated. He further submits that the victim did not sustain any internal injury in her private parts. The medical examination as well as supplementary medical report do not corroborate with the prosecution version. Learned counsel for the accused-appellant further argued that the victim knew the accused-appellant, prior to the occurrence. She went with the applicant, travelled several places and did not raise any alarm during the entire journey. Thus, perverse finding has been given by the trial court that the applicant took her forcibly and committed her rape against her wishes. It is thus contended that the accused-appellant has been falsely roped in the present case and he is liable to be acquitted from the charges levelled against him.

19. Per contra, learned A.G.A. for the State has opposed the contentions advanced by the learned counsel for the accused-appellant and submits that there is no doubt that the alleged offence has been committed by the accused-appellant and the learned trial Court after considering the entire evidence available on record, recorded the findings of guilt of the accused leading to conviction and sentenced the accused-appellant in accordance with law. Therefore, there is no illegality or perversity in the impugned judgment and order of conviction passed by the trial court and warrants no interference by this Court.

20. We have heard learned Amicus Curiae for the appellant, learned A.G.A. for the State and perused the material brought on record including the original records of the trial Court.

21. The manner in which the incident was occurred, has already been noticed above. It is the specific case of the prosecution that on 25.08.1978 at about 10:00 a.m. when the victim went to market to purchase copies the accused-appellant met with her and told her to accompany him to Delhi as she wanted to get some employment. The victim told him that she has to go to her house to seek permission from her parents. The accused informed her that he had already spoken to her parents and took her to Delhi by the Bus. From Delhi she was brought to Moradabad, from where she was taken to Sambhal and then she was brought to Hapur, thereafter, she was taken to Bulandshahar and reached there in the night. The accused went with her to the house of his friend, Jeete, but he was not available there, and then the accused took her to Dharamshala of Chhajjuma, where he talked with the Manager of Dharamshala for arranging a room. She was taken in a room on the first floor of the said premises where the accused outraged her modesty. Apart from it, the victim has also alleged rape upon her in the room of Dharamshala. Thus the allegation of enticement as well as commission of rape is clearly made out against the accused-appellant. Apart from the statement of P.W.3-victim, the P.W.4 also stated that on receiving information from the police on wireless he went to the Police Station Kotwali at District Bulandshahar, where the victim was handed over by the police to him and the accused-appellant was in the custody of the police. Moreover, the victim herself informed the Manager of Dharmashala about such incident

and she also went to Police Station and submitted written report before the police, making allegation of rape against the appellant. Thus, there is no reason to disbelieve that the accused-appellant had not taken the victim at Bulandshahar, where he committed her rape at the Dharmashala of Chhajjuma. Moreover, the statement of the accused under Section 313 Cr.P.C. clearly shows that the accused had taken the victim to Dharmshala with intention of committing rape upon her. The accused has also admitted that he was caught by the police from Dharmshala and he had taken her to Delhi, Moradabad, Sambhal and Bulandshahar. This admission of the accused clearly shows that the accused had gone with the victim from one place to another to take shelter at the house of his relations and when none of his relations agreed to give him shelter at his house, he came to Dharmshala of Chhajjuma in the night between 26/27.08.1978. These facts show that all the relations of the accused refused to give him shelter. Thus, there was no other occasion for the accused to take the girl to different places, if he had no bad intention. The accused outraged the modesty of the victim. The statement of the victim shows that the rape was committed upon her against her will. She has clearly stated that she did not give her consent for establishing physical relations with her and the accused forcibly committed rape upon her. Therefore, there is no occasion to disbelieve the prosecution story, specially to disbelieve the statement of the victim. The accused has himself admitted that he had taken the victim to Dharmshala on the alleged night and he was arrested there, when he was with the victim in the said Dharmshala. He has also admitted that he had previous acquaintance with the victim. If the victim had given her consent she would not have informed the Manager of Dharmshala or called the police there. These circumstances, therefore, make the prosecution story reliable and trustworthy.

22. The submission of the learned that the victim was a consenting party and as per statement of the accused she had consented for the rape and no internal injury was found in her medical examination, it is found that the statement of the lady doctor shows that the victim was having menstruation at that time, therefore, naturally, in these circumstances no injury would be come on the private parts of the victim. The circumstances, therefore, show that the statement of the victim regarding

penetration is sufficient to constitute the offence. When the age of the girl is about 15 years then the consent has no force. For the offence of rape, penetration is sufficient to constitute the sexual intercourse. If the girl is under 16 years of age, even the consent of the girl becomes immaterial. Thus, it is quite clear from the statement of the victim that she never consented for intercourse. Moreover, she was also not in a condition, when she could have given her consent for the intercourse, as discussed above. These circumstances show that the rape was committed upon her against her will and without her consent. The aforesaid circumstances and the prosecution evidence fully establish the charges levelled against them.

23. In the instant case, the prosecution version is in consonance with the statement of the victim, itself, who was committed upon rape. Thus, the reasoning assigned by the trial Judge while convicting and sentencing the accused-appellant is legal, just and proper, especially in view of the manner of assigning the role to the accused-appellant upon evaluation of evidence on record as well as the argument advanced on behalf of the accused-appellant. Moreover, this Court finds that the finding of conviction recorded by the trial court is based on proper appreciation of materials on record. The finding of conviction is, therefore, sustained.

24. Considering the fact that the view taken by the trial court is clearly a permissible view, in the facts of the case, and just because a different view could be taken would ordinarily not be a ground for this Court to interfere with the judgment of conviction. In such circumstances, this Court finds that neither any triable issue is raised before this Court in this appeal nor any perversity is shown, which may persuade this Court to interfere with the judgment of conviction and sentence.

25. In that view of the matter, this Court finds no good ground to entertain the present appeal filed under Section 374(2) Cr.P.C., which consequently fails and is, accordingly, **dismissed**.

26. The accused-appellant is on bail. His bail bonds are cancelled and sureties are discharged. The appellant is directed to surrender before the concerned Court to serve out the remaining sentence, forthwith.

27. In case of failure on part of the appellant to surrender, the Chief

Judicial Magistrate, Meerut, shall ensure his arrest.

28. The Chief Judicial Magistrate, Meerut, shall submit its compliance report to this Court within a period of two months from today.

29. The trial Court record along with the copy of this order be transmitted to the court concerned forthwith.

30. The Registrar (Compliance) is directed to transmit a copy of this judgement and order within 48 hours to the Chief Judicial Magistrate, Meerut.

31. This Court appreciates the assistance rendered by Ms. Kanchan Chaudhary, learned Amicus Curiae appearing for the appellant. The State Government is to pay Rs. 15,000/- as remuneration to her, at the earliest.

(Dr. Gautam Chowdhary,J.)

August 11, 2026

Mustaqeem.