



2026:AHC:12068-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2465 of 2010

Shahid

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Brij Raj Singh, Prem Shanker Tiwari
Counsel for Respondent(s)	:	Govt. Advocate their

Court No. - 42

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE PRASHANT MISHRA-I, J.

1. Heard Sri Aushim Luthra, learned Amicus Curiae for the appellant, Sri Muniraj Mehrotra, learned A.G.A. for the State and perused the material available on record.

2. The instant criminal appeal has been preferred against the judgement and order dated 07.04.2010 passed by Additional Sessions Judge, Court No. 7, Etah, in Sessions Trial No. 1026 of 2008 (State of U.P. Vs. Shahid), arising out of Case Crime No. 351 of 2008, Police Station- Ganjdundwara, District- Kanshiram Nagar, whereby appellant- Shahid, has been convicted and sentenced to imprisonment for life and fine of Rs. 20,000/-, for the offence under Section 376(2)(f) I.P.C. and in default of payment of fine, two years of additional imprisonment.

3. When an offence under Section 376 of I.P.C. was committed viz-a-viz a small child of two and a half years on 24.08.2008 at 9 am then an FIR was lodged at 10:30 am on 24.08.2008 itself, which had given rise to Case Crime No. 351 of 2008. The accused-appellant was implicated in the said offence and he was also named in the FIR.

4. The version of the first information report is that on 24.08.2008 the victim, aged about two and a half years, was playing outside her house at 9 am when the appellant-accused, namely, Shahid who was residing in the neighborhood took her away. After some time, from the house of the accused-appellant, the cries of the victim were heard and thereafter the first informant i.e. mother of the victim, went over to the house of Shahid

along with Raees Ahmad, uncle of the victim, Khalila, Noor Mohammad, Bhure and other persons. When they entered the house of the accused-appellant they found that the child was weeping and she was profusely bleeding from her private parts and the accused-appellant, Shahid, was drawing up his pants. Upon seeing this, all who had reached the house of Shahid caught hold of the accused-appellant. The crowd which had assembled there was also in a very foul mood. The child was picked up by her mother in her lap. Thereafter, they all straightaway went to the police station. The mood of the crowd was such, as stated in the FIR, that even the markets etc were closed down and they were very sure that it was the appellant alone who had committed the crime.

5. Thereafter, the victim was examined by one doctor, namely, Anita, PW-3. The medical report, which is annexed at page no. 14 of the paper book, clearly mentions that there were injuries on the private parts of the victim caused by penetration of a hard object and that could have been caused by private part of a man and the injury was also fresh. It was also advised that the patient be kept under observation.

6. Similarly, the accused was also medically examined by one doctor, namely, S.K. Gupta. The medical report is exhibit Ka-3 and is on page 9 of the paper book in which very categorically it is mentioned that the accused had attempted a sexual offence as there were injuries on his private parts as well.

7. However, it was mentioned in the medical report that smegma was not present and the reason for its non-presence is also mentioned by the doctor in his examination in chief that because of the circumcision, the Smegma in all probability could not to be found. After the police had submitted its charge sheet the trial had commenced. The mother of the victim had appeared as PW-1; the uncle of the victim had appeared as PW-2; Doctor Anita who had done the medical examination of the victim had appeared as PW-3; Doctor S. K. Gupta who had done the medical examination of the accused-appellant was examined as PW-4; ML Pandey who examined as PW-5 was the Investigating Officer and Rajnarayan who was examined as PW-6 was the constable who had proven the Chik report prepared by him.

8. The PW-1, Shaheen Begum in her examination in chief has proved the contents of the FIR and thereafter had stated that it was the accused and the accused alone who had committed the crime. In her cross-examination she stood firm with what she had stated in her examination in chief.

9. The PW-2 had also stated almost the same facts as the PW-1 had stated and in the cross-examination he also stood firm with what he had stated in his examination in chief.

10. The PW-3, the doctor who had medically examined the victim, had in her statement in chief categorically stated that it was because of sexual offence that the said injuries had occurred. In her cross-examination she also stood firm with what she had stated in her examination in chief.

11. The PW-4 who was the doctor who had medically examined the accused and had found that apart from the injuries, which had occurred because of the actual offence, there were injuries on the person of the accused also as the crowd had given the accused a beating. He has very categorically stated that the private parts of the accused were circumcised.

12. The PW-5 was the Investigating Officer and he has narrated the manner in which he had conducted the investigation. The PW-6 had proven the chik report.

13. The accused had denied the offence under section 313 of the Cr.P.C. and stated that he has been implicated on account of a prior rivalry. The Additional Sessions Judge, Court No. 7, Etah, on 07.04.2010 had, after analyzing the evidence brought before him, convicted the accused under Section 376(2)(f) and had punished him with life imprisonment and with a fine of Rs. 20,000/-.

14. Aggrieved by the judgement and order dated 07.04.2010 the instant criminal appeal has been filed.

15. The instant appeal was taken up for hearing on the 08.01.2026 and when no one had appeared on behalf of the appellant, the Court had appointed Sri Aushim Luthra (A/A0174/2019) as an Amicus Curiae to assist the Court. Today, the learned Amicus Curiae has argued the case

and has submitted that even if the entire incident, as was reported in the FIR, was taken to be correct, there was no spermatozoa found on the victim's private parts and also there was no smegma found on the private part of the accused. He further submitted that the accused has been implicated in this case on account of previous rivalry.

16. Learned A.G.A., however, opposed the appeal and submitted that the PW-1 and the PW-2 had reached the spot almost simultaneously to the occurrence of crime and that they had themselves with their own eyes found that the victim was bleeding from her private parts and the accused was pulling up his pants and was covering his private parts and that injuries were caused to both the accused and the victim. He further submitted, relying upon the medical report, that if the medical report is seen then there is absolutely no escaping the fact that the incident had occurred.

17. In the end, however, learned Amicus Curiae submitted that the accused had been in jail since 24.08.2008 and that he had remained in jail now for almost seventeen years and five months and that sufficient punishment had been undergone by him.

18. Having heard, Sri Aushim Luthra, the learned Amicus Curiae and the learned A.G.A. Sri Muniraj Mehrotra we are of the considered view, upon analyzing of all the evidence which has been seen by us, that the incident did occur and that the accused and no other person was responsible for the incident. There were injuries on the private parts of both the victim and the accused and therefore, there is absolutely no escaping the fact that the accused himself was responsible for the incident which had occurred. The perusal of the doctors' report both of the victim as well as of the appellant definitely go to show that the accused was the only person responsible for having committed the crime.

19. Under such circumstances, we are of the view that no interference in the appeal is required. However, considering the arguments advanced by the learned Amicus Curiae that no useful purpose will be served by further detaining the appellant in jail after he has served a jail term of seventeen years we are of the considered view that punishment which the

appellant has till date undergone may be considered to be the punishment awarded to the appellant. We are however of the view that the fine of Rs. 20,000/- be increased to Rs. 1,50,000/- which shall be given to the victim and in case the victim, by any chance, is not in this world, then it would be given to the female legal heir of the victim.

20. With the altering of the sentence, we partly allow the instant appeal in the manner, as stated above. In case of default of payment of fine/compensation, the appellant shall continue to serve the imprisonment which would extend for another three years.

21. For the hard work which has been put in by Sri Aushim Luthra, learned Amicus Curiae, we provide that he shall be paid a fee of Rs. 25,000/- by the High Court Legal Services Committee, High Court Allahabad. The payment etc., shall be overseen by the Registrar (General) of the Court.

22. Office is directed to return the Trial Court record within 15 days and notify this judgment to the Trial Court too.

(Prashant Mishra-I,J.) (Siddhartha Varma,J.)

January 19, 2026

Saurabh