



2026:AHC:13256-DB

Order Reserved On:-08.12.2025

Order Delivered On:-20.01.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4693 of 2023

Chhuttan Soni

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Maneesh Kumar, Vinay Kumar Pal
Counsel for Respondent(s)	:	Beena Mishra, G.A.

In Chamber:-

HON'BLE SIDDHARTH, J.

HON'BLE PRASHANT MISHRA-I, J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Maneesh Kumar, learned counsel for the appellant; learned AGA for the State and perused the trial court record.

2. The present Criminal Appeal has been filed against the judgment and order dated 03.04.2023 passed by the learned Special Judge, Protection of Children from Sexual Offences Act/Additional Sessions Judge, Chitrakoot in S.S.T. No. 53 of 2018 (State Vs. Chhuttan Soni), arising out of in Case Crime No.405 of 2018, Under Sections 363, 366, 376 (2)(i) I.P.C. And 6 Protection of Children from Sexual Offences Act, 2012 and 3(2)5 S.C./S.T. (P..A.)Act, Police Station Kotwali Karvi, District Chitrakoot whereby the appellant is convicted and sentenced Under Section 363 of I.P.C. for 5 years simple imprisonment with punishment and fine of Rs. 5000/- and in default of fine to undergo 15 days further imprisonment; in under Section 366 I.P.C for simple imprisonment of 7 years with a punishment of fine of Rs.10,000/-, in default of payment of fine of the said amount to undergo one month for further imprisonment; the appellant is convicted and sentenced under section 6 Protection of Children from Sexual Offences Act. 2012 for 10 years simple imprisonment with the punishment of Rs.20,000/- and in default of payment of fine to undergo two months for further imprisonment; the appellant is convicted and sentenced Under Section 3(2)5 S.C./S.T. Act for the life imprisonment with a punishment of fine of Rs.20,000/-, in default of fine to undergo two months for further imprisonment. All the aforesaid sentences will run concurrently. In respect of Section 357 I.P.C. the of fine so deposited by the appellant, half of amount will be paid to the victim.

3. The prosecution case is that on 05.05.2018 at about 07:00 a.m., informant's daughter aged about 16 years had gone to study in school but did not returned. After making her search, her missing report was lodged at the police station, Karbi, on

06.05.2018 at 04:00 p.m. Thereafter, informant came to know that her daughter has been enticed away by Chuttan Soni and hence the F.I.R. was lodged against the appellant on 19.06.2018.

4. After investigation, the investigating officer of the police submitted charge-sheet against the appellant and charges were framed against him under sections- 363, 366, 376(2)(i) IPC, section 6 of POCSO Act and section 3(2)(v) of SC/ST Act by the trial court. The appellant denied the charges and sought trial.

5. To prove the prosecution case, the prosecution examined P.W.-1, Gyan Mati(informant); P.W.-2, the victim; P.W.-3, Vijendra Dwivedi(investigating officer); P.W.-4, Krishna Dev Singh(scribe of F.I.R.); P.W.-5, Chhedi Lal(investigating officer); P.W.-6, Dr. Sweta Singh and P.W.-7, Chotte Lal Singh.

6. Statement of accused was recorded under section 313 Cr.P.C., wherein he denied the prosecution case and has alleged false allegation.

7.D.W.-1, Shiv Bhola and D.W.-2, Smt. Kamla, were also examined as defence witnesses.

8. P.W.-1 proved the prosecution case as per the F.I.R. and admitted that after lodging the missing report on the next date of the incident i.e., 06.05.2018 she lodged the F.I.R. after 10-15 days of the incident. After one and half months of the incident, her daughter was recovered by the police.

9. P.W.-2, victim, stated that on 05.05.2018 she was studying in class-12th and after the school was over, she was purchasing copy-book from the shop at 12:01 p.m., when the appellant enticed her away and took her to Surat. He took a room on rent and kept her for one month. He used to go to his work in day time and after returning in the night, sometimes committed offence of rape against her. She eloped from Surat and came to Karbi by train and when she went to the bus stand she was caught by the police. She returned to Karbi after one and half months. Thereafter, her medical examination was conducted and her statement was recorded before the Magistrate.

10. P.W.-3, P.W.-4 and P.W.-5 are formal witnesses.

11. P.W.-6, Dr. Sweta Singh, conducted medication examination of the victim, but did not found injury of any type on her body. She mentioned the age of the victim as 17 years in her statement.

12. P.W.-7, Principal of Gyan Bharti Inter College, proved that he has brought high school certificate and S.R. register of his school where from date of birth of P.W.-2 appears to be 10.02.2002. She has passed high school in the year, 2017.

13. D.W.-1 and D.W.-2 proved that the house of the victim is close to their house and on the date of incident, the appellant was at his house while the victim has left her

house and this fact was known to the people of the locality. D.W.-2, Smt. Kamla, is the wife of appellant.

14. After hearing the learned counsel for the parties, perusal of the material of trial court record and the judgment of the trial court, we find that the appellant is a married man and D.W.-2 is his wife. As per the high school certificate of the victim, she was aged about 17 years. In this case, the ossification test of the victim was not conducted when she had claimed that at the time of incident she was studying in class-12th. The High School Certificate of the victim proved by the principal of her college could not have been relied upon by the trial court as the evidence of her date of birth. Since there was no evidence led before this Court proving that the date of birth recorded in the High School Certificate is supported by any underlying document of class-1st to class-8th. Merely on the basis of High School Certificate and without any evidence of her date of birth recorded in earlier classes, the date of birth mentioned in the High School Certificate cannot be accepted to be genuine as held by the **Apex Court in the case of Sanjeev Kumar Gupta Vs. State of U.P. and others reported in AIR 2019.** Hence it cannot be definitely held that victim was minor at the time of alleged offence. There are both views possible and one of her being adult, being in favour of appellant is accepted.

15. The next point of consideration in this case is that the victim in her statement recorded before the Magistrate under section 164 Cr.P.C., did not made any allegation of abduction or rape against the appellant. In her cross-examination, she stated that she gave the statement under section 164 Cr.P.C. in favour of appellant on account of pressure made by the wife of the appellant, who met her in the police station. At the time of recording of her statement, she claimed her age as 17-18 years.

16. We further find that the victim has left Karbi on 05.05.2018 and went to Surat with the appellant by public transport. At no point of time she raised any alarm or cried for help from the public. She lived in the rented room with the appellant for about one and half months and thereafter went back to Karbi. Her over all conduct shows that she willingly went with the appellant to Surat from the market after attending school without any protest. She stayed with him for about one and half months without trying to contact her parents telephonically or otherwise. She was aware that the appellant is a married man and it was not proved before the trial court that she was minor at the time of incident as discussed hereinabove.

17. She has also not leveled any allegation of commission of forceful rape by the appellant against her. She has only stated that the appellant sometimes used to commit the offence of rape against her in the night after returning from his job. Clearly the victim after realizing that she has committed wrong in the running from her house with a married man returned to her place by train she was caught by the police at the bus stand. Therefore, in view of the judgment of Apex Court in the case of **S. Varadarajan Vs. State of Madras, 1964 LawSuit (SC) 209** the offence under

section 366 IPC is also not made out against the appellant. Similarly the offence under section 363 IPC can not be said to be made out against the appellant since despite knowing that appellant was married, the victim went with him to Surat and entered into illicit physical intercourse with him, without any protest. It is not her case that appellant promised her to even marry and was abducted for this reason.

18. The punishment of the appellant under section 3(2)(v) of SC/ST Act cannot be sustained in view of the judgment of the Apex Court in the case of **Dinesh Buddha Vs. State of Rajasthan, 2006 LawSuit (SC) 162** wherein the Apex Court has held that unless it is established that the rape was committed against the victim only because she was member of scheduled caste, application under section 3(2)(v) of SC/ST Act could be attracted as follows:-

"At this juncture it is necessary to take note of Section 3 of the Atrocities Act. As the Preamble to the Act provides 'the Act has been enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes. The expression 'atrocities' is defined in Section 2 of the Atrocities Act to mean an offence punishable under [Section 3](#). The said provision so far relevant reads as follows:'3(2)(v): Punishments for offences of atrocities (2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -xxx xx(v) commits any offence under the [Indian Penal Code](#) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine"

Sine qua non for application of [Section 3\(2\)\(v\)](#) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, [Section 3\(2\)\(v\)](#) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine."

19. In view of the above consideration, we are of the view that conviction of the appellant under section 363 and 366 IPC, section 6 of POCSO Act and section 3(2)(v) of SC/ST Act cannot be upheld and are hereby **set aside**. However, the appellant is hereby directed to be convicted under section 376 IPC and sentenced to undergo imprisonment of 10 years with fine of Rs. 25,000/- payable to the victim. In case of failure to deposit the fine, he shall undergo further simple imprisonment of six months. Period of sentence already undergone by the appellant shall be adjusted.

20. The appeal is partly **allowed**.

21. Office is directed to send trial court record to the trial court within a week and also notify this judgment to the trial court.

January 20, 2026
Abhishek

(Prashant Mishra-I,J.) (Siddharth,J.)