



2026:AHC:9009-DB

RESERVED ON 9.12.2025

DELIVERED ON 14.1.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 10604 of 2024

Banshi

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	: Bishram Tiwari, Ritesh Singh, Suresh Singh
Counsel for Respondent(s)	: Anil Kumar Yadav, G.A.

In Chamber

HON'BLE SIDDHARTH, J.

HON'BLE PRASHANT MISHRA-I, J.

(Delivered by Hon.ble Siddharth, J.)

1.Learned AGA informs that notice has been served on informant, but no one has turned up to oppose this appeal.

2.Heard Sri Bishram Tiwari and Sri Ritesh Singh, learned counsel for appellant; learned AGA for State and perused the trial court record.

3.This criminal appeal has been filed against the judgement and order dated 18.9.2024 passed by Additional Sessions Judge/Special Judge (POCSO) Act, Muzaffarnagar in Special Session Trial No.10/09/2017 (State Vs. Darshan and another) arising out of Case Crime No. 612 of 2016 under Sections 363,366,376D I.P.C. and Section 5/6 POCSO Act P.S. Purkaji, District

Muzaffar Nagar, convicting and sentencing the appellant under in section 376D I.P.C.to life imprisonment and a fine of Rs.30,000/- and in case of default in making the payment of fine to 2 months additional imprisonment; under section 363 I.P.C. to five years rigorous imprisonment and a fine of Rs. 10,000/-, and in default of payment of fine, one months additional simple imprisonment and under section 366 I.P.C. to 5 years rigorous imprisonment and a fine of Rs.10,000/- and in default of payment of fine , one months additional imprisonment. A fine of Rs. 1,00,000/- shall be deposited in favour of the victim.

4.The prosecution case is that the daughter of the informant aged about 15 years and a student of class X . Twenty days prior, the relatives of a co-villager, namely, Sundar and Darshan alongwith two children came to the village.The aforesaid Darshan knew the work of a mechanic, and the informant employed him as a mechanic since construction of her house was going on. On 14.11.2016 at about 6 P.M., the aforesaid Darshan enticed away her daughter. He was seen by her elder brother-in-law, Mohkam, Shyam Sundar, etc., who tried to stop him, but he took her daughter away.

5.After investigation and submission of the charge sheet, the trial court framed charges against the appellant under Sections 363,366,376-D I.P.C. and section 5/6 POCSO Act..

6.The accused denied the charges and sought trial.

7.To prove the prosecution case, the prosecution examined P.W.1, Kavita (Informant); P.W.2, victim; P.W.3, Dr. Anupama;P.W.4, Manoj Kumar, (Principal); P.W.5, H.C. Pradeep Kumar and P.W.6, Sub-inspector, Subhash Kumar.

8.P.W.1,the informant, proved the version of First Information Report before the trial court below and further stated that her daughter was recovered after 3-4 days by the police.After she came back to the house, she informed that she was enticed away by Banshi and Sundar and taken to the jungle where they committed offence of rape against her. She later informed that she had become pregnant.

9.In her cross examination, she stated that she is illiterate and can only put her signature.She got the application typed by a typist sitting near the police station, which was read over to her by the typist.She stated that the names of Darshan,Banshi, Sompal and Usha were mentioned in the application given on 14.11.2016 at the police station.She does not remembers the date of the incident, but six years have passed since then. Her daughter and Mohkam, her elder brother-in-law, informed her about the incident.She does not remember the time when she gave the application at the police station nor does she remember whether her statement was recorded by the inspector or not.At the time of the

incident, her daughter was aged 16 years and was a student of class IX. Banshi, is her neighbour and Darshan is relative of Banshi. She did not see the accused persons taking away her daughter nor she had any enmity with them.

10.P.W.2, the Victim, stated in her examination-in-chief, that two months before the incident on 13.9.2016 at about 7.30 A.M. she was going to school when her mouth was gagged by Banshi and Darshan on the way, and they took her to an agricultural field. After tying her mouth with her 'Shawl; they committed forcible rape against her. However she did not inform her family members about the incident. After two months she became pregnant, and thereafter she informed the Banshi and Darshan about the same on 14.11.2016. On the same day, at about 6 P.M., Banshi, Darshan, Sundar and Sompal took her on Sompal Pradhan's motorcycle to a sugar cane field, where they gave her 'Barfi'(sweet) to eat, after which she suffered vertigo. Thereafter Darshan committed rape against her. Banshi, Sompal, and Sundar also beat her with 'fists' on her stomach, causing her pain. On the next day she returned to her house, and her mother lodged the First Information Report. She admitted in her statement recorded under section 164 Cr.P.C. that she was medically examined by the doctor. She claimed her date of birth as 8.10.2000 and stated that she had passed the high school examination in the year 2016.

11. In her cross examination P.W.2 stated that the first incident took place in the evening but she did not inform her family members because Banshi and Darshan had extended threats to her life. Second incident took place after 3-4 months at 7.30 A.M., when she was going to school in a field about two kms. from the place of her residence. She did not inform her family members again after the second incident. After third incident, she informed Banshi and Darshan that she had become pregnant and also stated that she had now informed her family members. Then they took her on their own motorcycle along with Sompal and beat her. When they took her, they gave her 'Barfi' (sweet) to eat after which she became semi-conscious. When she regained consciousness, she was near the village and she was tied. She stated that after 7-8 days, a report was lodged with the police. Police had lodged a report against the wife of Sundar, who is her 'Bhabhi' (sister-in-law) due to village relationship. Sundar and his wife used to carry food and clothes where she was detained. Sundar, Darshan and others took her to the police station and asked her to give statement in their favour. After she became pregnant, she was beaten by the accused persons, and thereafter she suffered bleeding and a subsequent miscarriage. Darshan is her relative, being the brother of her sister-in-law (Bhabhi). Earlier, she never lodged any report against Banshi, Sundar and Darshan. She used to quarrel with wife of Sundar, Usha

because Usha used to say that she should leave the house and do the work of a dancer. Banshi is son of Usha.

12.P.W.3, Dr. Anupama, did not find any external injury on the body of P.W.2. She gave her opinion regarding the possibility of commission of offence of rape against P.W.2 and proved from the ultrasound report of the victim that she was at 21 weeks and two days of pregnancy.. She further stated that possibility of commission of the offence of rape on victim three months ago cannot be ruled out.

13.P.W.4, Principal of the college proved that in the S.R. Register of his school date of birth of the victim is mentioned as 10.8.2000. The victim was admitted to the school on 10.7.2014 in class IX and she failed in class X. He filed the transfer certificate from the earlier school and the high school "failed" mark-sheet of the victim.

14.P.W.4 in his cross examination stated that he recorded the date of birth of the victim on the basis of the transfer certificate obtained from the earlier school. She has not taken her transfer certificate from his school though she had failed in high school twice. He filed the copy of the transfer certificate of the earlier school on record.

15.P.W.5 is a formal witness.

16.P.W.6 admitted in his cross examination that he

cannot say whether there is any jungle or agricultural field near the house of the victim, he did not inquire anything from the neighbour of the victim. The Victim was recovered from the Luskar road trisection on 18.11.2016, and her statement was recorded under section 161 Cr.P.C. on the same day. On 24.11.2016, her statement was recorded under section 164 Cr.P.C. Her medical examination was conducted on 21.11.2016. From the report of the radiologist, her age was found to be 17/1/2 years. She did not send any sample regarding the commission of the offence of rape and pregnancy of the victim to the F.S.L. No independent witness agreed to give evidence in this case.

17. The statement of the accused were recorded under section 313 Cr.P.C., wherein they stated that First Information Report was lodged against them on false allegations. They are innocent and have been falsely implicated in this case.

18. The trial court, by its impugned judgement and order impugned convicted and sentenced the appellant under sections 363, 366, 376-D I.P.C. and 5/6 POCSO Act.

19. After hearing the rival submissions and perusing the material on record and the judgement passed by the trial court, we find that the first incident was committed against the victim, as per her own admission on 13.9.2016 by the appellant Banshi and co-accused Darshan. Thereafter, the second incident took place on

14.11.2016. The victim, in her cross examination, admitted that the second incident took place 3-4 months after the incident dated 13.9.2016. However from 13.9.2016 to 14.11.2016, a period of only two months and two days appears to have passed. The application was given at the police station by P.W.1 on 14.11.2016. From the statement of P.W.3 it is clear that the victim was found to be pregnant by 21 weeks and two days on 22.11.2016, according to her ultrasound report. Therefore, the pregnancy of the victim comes to a period of five months, one week and two days as also submitted by the learned counsel for the appellant. Therefore, as per the statement of the victim herself she conceived prior to the alleged date of first incident dated 13.9.2016, allegedly caused against her by the appellant, Banshi and co-accused, Darshan. The victim has admitted her quarrel with the mother of the appellant, Usha. She also tried to implicate her in this case alongwith Sundar and Som Pal, but during investigation, the investigating officer exonerated them and a charge sheet was submitted only against the appellant, Banshi and co-accused, Darshan. Medical evidence in this case fully belies the prosecution case. It is settled law that where the oral testimony of the witnesses inspires confidence of the court, the medical testimony can be disbelieved, but where the medical evidence tends to fully bely the prosecution case, the oral testimony of the witnesses can be disbelieved. The Apex

court in case of **Himanshu Mohan Rai Vs. State of Uttar Pradesh and another, (2017) 4,, Supreme Court Cases,161** has held that "in a different context, this Court in *Gangabhavani v. Rayapati Venkat Reddy*³., observed that in case there is a contradiction between medical evidence and ocular evidence, the law is that though the ocular testimony of the eye witness has greater evidentiary value vis-à-vis medical evidence, but where the medical evidence goes so far that it completely rules out all the possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

.20.The further finding of the trial court that the victim was minor at the time of the incident is perverse.The high school certificate of P.W.2 was believed by the trial court without ascertaining her date of birth recorded in the school documents. It is settled law that the transfer certificate issued by the school is not the evidence of date of birth as held by the Apex court in the case of **P.Yuva Prakash Vs. State, 2023,Live law (SC) 538**.There was no evidence led before the trial court to prove that, at the time of admission in the first school her date of birth was same as that mentioned in the high school certificate.The Apex Court in the case of **Sanjeev Kumar Gupta Vs. State of U.P.,AIR 2019 (SC), 4364** held that without the underlying school documents supporting the date of birth mentioned in the high school certificate, the high school certificate cannot be accepted as showing correct date of birth of juvenile.

21. In the present case above five months pregnancy of victim without any explanation, coupled with the lack of any D.N.A. report regarding the aborted pregnancy of the victim, fully belies the prosecution case. It is settled law that a mere statement of the victim is sufficient to order the conviction of the accused for committing the offence of rape but such statement should be reliable, truthful without contradiction, trustworthy and of sterling quality. The Apex court in the case of **Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21**, found totally conflicting versions of the prosecutrix, regarding what was stated in the complaint versus what was deposed before the Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:

"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."

22. In **Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130**, The Supreme Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition

in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."has held that where the statement of the victim does not inspire confidence of the court, conviction of the accused cannot be based on the same.

23. In view of the above, consideration we are inclined to extend benefit of doubt to the appellant. The finding recorded by the trial court are not based on proper appreciation of facts of the case and relevant law.

24. The judgement and order passed by the trial court is hereby set aside only against the appellant, Banshi. The appellant is directed to be set free, if not wanted in any other case.

25. Office is directed to return the trial court record to the trial court along with copy of the judgement for necessary compliance.

26. The appeal is allowed.

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

January 14, 2026

Atul kr. sri.