



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

JAIL APPEAL No. - 66 of 2021

Etwari

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant (s)	: Jail Appeal, Diwakar Singh
Counsel for Respondent(s)	: Govt. Advocate

Court No. -10

**Reserved on 08.12.2025
Delivered on 26.02.2026
A.F.R.**

**HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.**

(Per : Rajnish Kumar, J.)

- (1)** The instant Jail Appeal has been filed against the judgment and order dated 21.01.2015 passed by learned Additional Sessions Judge, Court No.8 / Special Judge, POCSO Act, Unnao in Special Session Trial No.01/2023; State Vs. Etwari and Another, arising out of Case Crime No.249/2013, under Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 (here-in-after referred as POCSO Act), Police Station Kotwali, District Unnao, by means of which, Etwari and Ramzan alias Ramzani have been convicted under Section 6 of

the POCSO Act with punishment of life imprisonment and fine of Rs.10,000/- each and in default of payment of fine, to undergo one year's rigorous imprisonment. It has further been directed that 50% of the amount of both the fines would be paid to the victim as compensation. The learned Trial Court has further recommended for damages to the victim under Rule 7 of the Protection of Children from Sexual Offences Rules.

- (2) Heard Sri Diwakar Singh, learned Amicus Curiae for the appellant and Sri Pawan Kumar Mishra, learned A.G.A. for the State.
- (3) Learned Amicus Curiae for the appellant submitted that the appellant has wrongly and illegally been convicted and punished by means of the impugned judgment and order without considering the evidence and material on record appropriately. He further submitted that the appellant is innocent and he has falsely been implicated in this case. He further submitted that there is no eye witness to the incident and it is a case of circumstantial evidence and chain of circumstances is not complete, therefore, it could not have been said that the appellant has committed the crime and convicted. He further submitted that the appellant has been implicated in the case only on account of enmity and the investigation is tainted, which has been done only with a view to implicate the appellant, as looking to the kind of crime, the police was under pressure to solve the case. Thus, learned Amicus Curiae submitted that the impugned judgment and order is not sustainable in

the eyes of law and the same is liable to be set aside and the appellant is liable to be acquitted.

- (4) Learned A.G.A. vehemently opposed the submissions of learned Amicus Curiae for the appellant. He submitted that the appellant has rightly and in accordance with law been convicted and sentenced by means of the impugned judgment and order considering and dealing the same appropriately. He further submitted that the appellant has committed a heinous crime with a minor girl, who was not mentally sound completely. He did not dispute that this is a case of circumstantial evidence but the chain of circumstances is complete, which refers only to the guilt of the appellant. He further submitted that the appellant has failed to show any reason for false implication and the plea of enmity could not be proved. Even otherwise he submitted that the ground of enmity shown by the appellant is highly improbable, on account of which, the parents could have implicated him at the cost of reputation of their minor daughter. He further submitted that father and mother are the best persons to understand the things told by such a challenged person i.e. the victim. Thus, the submission is that the impugned judgment and order has rightly been passed in accordance with law after considering the evidence and material on record by a reasoned and speaking order, which does not suffer from any illegality or error, which may call for any interference by this Court. He further submitted that the instant Jail Appeal filed by the appellant is misconceived and lacks merit, which is liable to be dismissed.

- (5) We have heard learned counsel for the parties and perused the records.
- (6) The prosecution story, in brief, is that the complainant Jaipal Yadav S/o Sri Hiralal Yadav, resident of 64, Anwar Nagar, Chowki Kila, Police Station Kotwali, District Unnao gave a written report stating therein that his father has a hotel of tea at Ibrahim Bagh Chauraha, from which, he and his father earn livelihood. Yesterday i.e. on 11.02.2013 at about 08:30 PM, complainant's sister, who is aged about 8 years, went to defecate but she did not return for a long, therefore, the complainant and his father went to search her. They heard the groaning of victim from inside the boundary wall of Ramesh (Dhobi), Mohalla Pahli Kheda, then, they went there and found that the blood was oozing out from the private parts of the victim and her mouth was tightened with a cloth and some unknown persons have committed misdeed with her and went away after leaving her there. They took the victim to the district hospital for treatment, from where after primary treatment, she was referred to Kanpur, where her treatment was going on. It has also been stated in the written report that before the incident, Etwari, who works on the shop of tea of Badakke and resides at the *aadhat* of chicken (*murga*) of Afzal, was seen there and he was also seen there after the incident. Some people have also seen him taking away the victim and the complainant is sure that the incident and the misdeed have been committed by Etwari. It has further been stated in the written report that seeing and hearing about the incident, there is fear and terror among the ladies of the area.

- (7) In pursuance of the aforesaid written report, a case under Section 376 of the Indian Penal Code, 1860 was registered and after investigation, the charge sheet (Ex. Ka-8) was filed against Etwari and Ramzan alias Ramzani under Section 3/4 of the POCSO Act, on which cognizance was taken by the Sessions Judge on 29.05.2013. Thereafter, after providing the prosecution papers to the accused persons, they were heard on charge and on account of prima facie evidence against the Etwari and Ramzan alias Ramzani, a charge under Section 6 of the POCSO Act was framed. The accused persons denied the charge and pleaded for trial.
- (8) In order to prove its case, the prosecution produced Jaipal, the complainant as P.W.-1, Hiralal as P.W.-2, Constable Nazrul Hasan as P.W.-3, Dr. Sanju Agarwal as P.W.-4, Victim as P.W.-5, Vivek Dubey as P.W.-6, Kripa Shanker Saroj, Investigating Officer as P.W.-7, Kallu Ram Bharti, Investigating Officer as P.W.-8, Dr. Rakesh Kumar Tripathi as P.W.-9, Mahesh as P.W.-10, Shivkumar as P.W.-11, Constable 694 Mohammad Afzal as P.W.-12, Saiyed Mohammad Azmeri as P.W.-13 and Ashok Kumar as P.W.-14. P.W.-13 and P.W.-14 were declared hostile and they were cross-examined by the prosecution.
- (9) The prosecution also placed on record and proved the documentary evidence.
- (10) We have considered the submissions of learned counsel for the parties and perused the records.

- (11) The P.W.-1; complainant stated that his father and he have a hotel of tea at Ibrahim Bagh crossing. On 11.02.2013, his sister, who is aged about 8 years, went from the shop to defecate and when she did not return for a long, then he and his father went for her search. They heard groaning of his sister from the plot of Ramesh (Dhobi) and they reached near the victim and found her in pool of blood and a cloth was also tightened on her mouth. He got shocked with it and, firstly, he and his father brought the victim to their shop and, thereafter, they took her to the hospital, where the doctor advised to take the victim to the Hallet Hospital, Kanpur. The P.W.-2, who is father of the victim as well as of the complainant, has joined the P.W.-1 in stating that he was in his shop of tea at Ibrahim Bagh Crossing at 08:00 PM - 08:30 PM on 11.02.2013 with his daughter i.e. the victim, who is aged about 8 years. The victim went to defecate and when she did not return for a long time, then he went to search her and found her in the boundary of plot of Ramesh (Dhobi). He found that the victim was seriously injured and blood was oozing out from the place of urination and her mouth and neck were tightened. He took the victim to the District Hospital, Unnao but on account of serious condition, he took her to the G.S.V.M. Medical College, Kanpur.
- (12) Dr. Sanju Agrawal appeared as P.W.-4. She proved medical examination report of the victim as Ex. Ka-4, which was conducted by her on 11.02.2023 at 10:00 PM at District Hospital, Unnao. She stated that condition of the girl was very critical. There was injury and

swelling on the right eye of the victim. General condition was very critical. Blood stains were on both the legs. There was extensive bleeding. Vagina was torn, which was going upto rectum. Anal in sphincter was torn. First aid was given to the girl and swab was collected from vagina and sent for testing to lab. For better treatment, she was sent to G.S.V.M. Medical College, Kanpur. It has also been stated that blue lungi, bed sheet of coca cola colour and piece of blood soaked cloth were sealed and handed over to the police. Thus, it has been proved that the victim was found in very critical condition in a plot and the medical examination report supports the condition told by the brother, who is complainant and the father of the victim.

- (13) Dr. Rakesh Kumar Tripathi, Assistant Professor, Surgery Department, G.S.V.M. Medical College, Kanpur appeared as P.W.-9 and stated that the victim, who was aged about 7 years, D/o Hiralal, 64 Anwar Nagar, Police Station Kotwali Unnao was admitted in the maternity hospital at 11:50 PM on 11.02.2023 and a team of Dr. Anshu Mishra had seen the victim and after admission, she was referred for operation to the Surgery Department. Thereafter, Dr. Rakesh Kumar Tripathi and his team had seen the victim and found that there was extensive injuries in the lower part of her body and there was huge blood loss. The girl was not allowing the examination, therefore, after transfusion of blood, a plan was made for examination and surgery after comatizing her. Accordingly, in the next morning, the victim was examined in the

operation theater after comatizing her, wherein, Dr. Rakesh Kumar Tripathi and Dr. Anshu Mishra found five following injuries:-

"(1) पेशाब के रास्ते के आस पास के हिस्से पर चोट था लेकिन पेशाब की नली ठीक थी।

2) बच्चे की बेबी XXXX की बच्चेदानी की नीचे की दीवार दोनों तरफ दाईं और बाईं तरफ 4 से 5 से०मी० की गहराई तक पूरे तौर पर फटी हुई थी।

(3) बच्चेदानी और लेटरिन के बीच की जगह पूरे तौर पर फटी हुई थी।

(4) बेबी XXXX के लेटरिन का रास्ता (मल द्वार) के ऊपरी हिस्से में 4 से 5 से०मी० गहरा घाव था। मल द्वार की ऊपरी दीवार कैंटीरियर कॉन्ट्राइर वॉल लगभग 4 से 5 से० मी० तक पूरे तौर पर फटी हुई थी।

(5) इसे 4th डिग्री पेरिनेल टियर माना गया।"

(14) It has further been stated by him that all the torn parts were stitched, passage for latrine was made from the stomach, therefore, the same may be stopped from going downside and in future, there may not be any damage to the injury. It was done after informing and with the consent of father of the victim. It has further been stated by him that the victim was kept for 10 days in the Gynae Department, thereafter, transferred to Surgery Department. He has also stated that he was referred on 11.02.2013 from District Hospital Unnao to L.L.R. Hospital after primary treatment at 10:00 PM. He proved medical examination report. In the cross examination, he supported his evidence given in the examination-in-chief and nothing can be extracted from him, which may create any doubt about the medical condition of the victim and the treatment given to her.

(15) The learned Trial Court has recorded that the medical examination report of the victim has been proved by the P.W.-4 and no cross-examination has been made by anybody from her, therefore, her statement is completely believable. The subsequent treatment of the

victim has been proved by the Dr. Rakesh Kumar Tripathi, Assistant Professor, Surgery Department, G.S.V.M. Medical College, Kanpur, who appeared as P.W.-9. After considering the medical evidence of the victim, the learned Trial Court has categorically found that at the time of incident, a serious offence of rape has been committed upon the victim. This Court does not find any illegality or error in the finding so recorded by the learned Trial Court.

(16) The complainant further stated that the tea shop of Badakke is near his shop and near chicken's commission agency (आढ़त) of Afzal. The accused, Etwari resides in these shops and one or two persons have seen his sister going with the accused, Etwari and it has been mentioned in the F.I.R. also and on account of it, an apprehension was expressed that the complainant is confident that the incident and the misdeed have been committed by Etwari.

(17) The P.W.-2, Hiralal has stated that after one month of the incident when his daughter was better then she told that Kakwar (Etwari) and Ramzani have done misdeed with her. Ramzani used to bring thelia of chickens at the chicken's commission agency of Afzal and he used to sell the chicken after cutting in the neighbour of his shop. Both of them used to come to take tea at his shop. The information of incident was given by his son Jaipal at the police station and when his daughter told the names of accused persons to him, then he gave a written information of the incident at the police station, which is paper No. 8 क

/ 2, which was written and signed by him, and the same has been marked as Ex. Ka-2. Thus, the names of the accused persons told by the father of the victim are same as told by the victim to her father and the complainant.

- (18) The consistent case of the complainant and his father is that the victim had gone from their shop for defecation, when some persons of area had seen the accused going towards that side and with the victim. Mahesh, P.W.-10 stated that he works in superhouse and lives in Anwar Nagar and knows Hiralal, who is of his family. Hiralal has a hotel of tea on highway. The incident is of 14 months back. He had come back on the date of incident by 06:00 in the evening at his home, thereafter, he went at the hotel of Hiralal for having tea. Daughter of Hiralal, who is aged about 7 years, was at hotel at that time. At about 08:30 in the night, she went to defecate towards the field of Ibrahim Bagh. When he was sitting on the shop, Etwari and Ramzani, who have shops of chicken in front of the hotel of the Hiralal, came at the hotel, when the victim had gone to defecate, they also went behind her. After some time, he came back to his home. At about 09:30 - 10:00 in the night, he came to know that misdeed has been done with the victim and her condition is very bad. On hearing the news, he came running and found that Hiralal and Kali Prasad are accompanying the victim, who was in pool of blood. Seeing the same, he was confident that the misdeed has been committed by Ramzani and Etwari, who had gone behind her. In the cross-examination, he denied the suggestion that he has any enmity

with the Etwari. He also stated that the Inspector had enquired from him near the hotel of Hiralal on the date of incident. He, in his further examination, stated that the victim had gone alone to defecate and he had not seen anybody taking away the victim. In the cross-examination, he also stated that Etwari had come at the shop of Hiralal and from the shop, Etwari and Ramzani had gone behind the victim. He further stated that he had told all this to the Investigating Officer in his statement under Section 161 Cr.P.C. but he does not know as to why the name of Ramzani has not been written by the Investigating Officer. He also stated that it is wrong to say that he is first time taking the name of Ramzani. Thus, he has supported the prosecution case.

- (19) P.W.-11, Shiv Kumar stated that the incident is of 13 - 14 months back. He had gone to the market of Unnao and was going back to his home after purchasing through Anwar Nagar at 09:00 in the night. When he reached ahead the hotel of Hiralal, Etwari and Ramzani were in very hurry and perturbation. He asked the Etwari as to where he is going, then he spoke nothing and both of them went with speedy steps. He knew Etwari and Ramzani since earlier and their shop of chicken is in front of the hotel of tea of Hiralal and he used to go to take tea at the hotel of Hiralal, therefore, knows them. On that night, there was a screaming and the police had reached there. He came to know that the 7 years' daughter of Hiralal has been raped. He had not gone at the place of incident in the night. He further stated that Etwari and Ramzani were going from the site where the rape of the girl was committed. In cross-

examination, he stated that his statement was recorded after 2 - 3 days of the incident, he had told the name of Etwari and Ramzani in his statement but he does not know as to why it has not been written. Thus, this witness has also supported the prosecution case to the extent of presence of the accused persons and their coming back from the place of incident. He has also denied the suggestion that he had any hot talk or any abusive language with Etwari.

(20) The written complaint for lodging the F.I.R. was written by Ashok S/o Ghunni Prasad. The P.W.-1, complainant has stated in his evidence that he had given the report at Kotwali after getting it written from Ashok, which was written by him and read over to him and the complainant had signed the said report and, thereafter, handed over at the Kotwali. His report was written and the Inspector had made enquiries from him. He proved the paper No. क-4/2, which was read over to him and stated that it is the same report, which was got written by Ashok and signed by him. It was marked as Ex. Ka-1.

(21) Ashok Kumar appeared as P.W.-14. He stated that about quarter to 2 years back between 08:00 PM to 08:30 PM on the date of incident, he came to know that misdeed has been committed with the victim. The brother of the victim, Jaipal had come to him. He was at the shop. Jaipal asked for help, and then he, alongwith Jaipal, took the victim to the hospital, where her brother got her admitted. Next day, the report of this incident was got written by Jaipal and gave at the Police Station Kotwali, District Unnao. He proved the written report as Ex. Ka-1.

Though he has been declared hostile but he proved that the written report was written by him as told by the complainant, Jaipal and thereafter it was given at the Police Station Kotwali. The victim was referred by the District Hospital, Unnao for G.S.V.M. Medical College, Kanpur. The learned Trial Court has recorded that though he has been declared hostile, however, he has proved in his examination-in-chief that he had written the report (Ex. Ka-1) as told by the complainant, Jaipal. He also accepted that he knows Hiralal and his daughter, who are of his Mohalla and that Etwari had done the wrong work, which was told by him before many persons, when he was caught by the police. He also clarified that when the wrong work was done with the victim, then brother of the victim, Jaipal had come to him for help, then he went to the hospital alongwith him taking the victim. As such, this witness has also proved the extra judicial confession made by the accused.

- (22)** The second Investigating Officer, Sri Kripa Shankar Saroj, Incharge Inspector appeared as P.W.-7. He stated that he was posted as Station House Officer at Police Station Kotwali, District Unnao on 16.02.2013 and he himself entrusted the investigation to him and perused the paper Nos.1, 2, 3 and 4 of the earlier Investigating Officer. He stated that on 22.03.2013, the father of the victim, Hiralal gave an application to him mentioning therein that after returning from Kanpur, his daughter told her that two persons have committed rape with her and their names are Kakua and Ramzani. After recording the same in C.D. and annexing the

application with the C.D., he recorded the statement of father of the victim, Hiralal on the same date and reached his house with him. He made enquiries from the victim but things were not being cleared and she was not able to speak clearly, therefore, her statement was recorded on the basis of question answers through her father. She told some things by mouth and some things by gestures. The videography of her statement was also got done and the same were recorded in the C.D., which is paper 6 क/4 and the same is signed by him and signed by the father of the victim and two witnesses and it was marked as Ex. Ka-6. Thus, the statement of victim under Section 161 Cr.P.C. was recorded, wherein she had supported the prosecution case. He further stated that the statements of two witnesses, namely, Shiv Kumar and Shahid were also recorded. Thus, on the basis of the statements of the victim and the complainant, the names of Ramzani @ Ramzan also came to light and on 24.03.2013, he arrested Ramzani @ Ramzan. The Sections 3/4 of the POCSO Act were added on 25.03.2013 and, on 09.04.2013, statement of the victim under Section 164 Cr.P.C. was got recorded. In the cross-examination, he explained as to how the statement of victim was recorded and the videography was got done and the name of Ramzani surfaced on the statement of the victim and nothing could be extracted, which may create any doubt about recording of the statement in the manner stated.

- (23)** Vivek Dubey appeared as P.W.-6. He proved that the video recording was made by him. He also told the name of the victim and told that she

was so much frightened that she was not able to speak properly and she was making replies slowly after understanding the things told by her father. The questions, which were being asked by the Inspector, were put to her by her father and she was replying them slowly. He also stated that he had given C.D. Cassette to the Inspector of Kotwali, which was prepared by him. The sealed C.D. was opened. He, after looking to it, admitted that it was prepared by him, which was marked as Material Ex.-1. No cross-examination was made from him. Thus, his statement remains unrebutted.

- (24) The victim appeared as P.W.-5. She was aged about 9 years and of feeble mind. The learned Trial Court has recorded that she was unable to understand the nature of questions and giving answers of them on repeated efforts and with the help of father. The Court tried to understand the facts through her language and appearance and no oath was administered to her. It has been recorded that she told her name and name of her father as Babu Papa. She further stated that Tiwari (Etwari) and Razana (Ramzani) both had pressed her mouth and neck and took her away in lap and inserted her in bush of berry (बेर). They tied the cloth on her mouth and neck and opened her underwear. The learned Trial Court has recorded that all the injuries are still present on her private parts, which are covered with cotton bandages. On account of weak mind, she was unable to tell anything further, therefore, the examination-in-chief was closed. In the cross-examination, she stated that the Investigating Officer had made queries from her. She

recognized the Etwari, who was present in the Court and stated that this is Tiwari (Etwari). A question was asked as to whether there is any enmity with the family of Etwari but the learned Trial Court has recorded that she was unable to understand the question. She further stated that she had gone to defecate. On a query as to whether it was day or night, she could not reply. Thus, with the help of father, she supported the prosecution case. In her further cross-examination on behalf of the accused, Ramzani, the Court has recorded that on being asked about the name of her brother, she only stated the name of Babu, by which name, she used to call her father, who had come with her. She told that she goes to school and studies in class-3. On being asked about the name of school, she denied by shaking her head. On being asked about the name of her mother, she stated Amma. She further stated that she has come from village today and she could not tell the name of village and number of members of the family. She also showed ignorance about the numbers. When she was asked 1, 2, 3, 4 and 5 then she told numbers 1, 2 and 3. About her sister, she stated that Didi has gone up. She also made replies to certain queries. On being asked as to how many persons had taken her away, she clearly stated that two persons had took away. In this regard she not only spoke from mouth but also told by sign by raising her hand and showing two fingers but the names could not be spelt out clearly. Thus, the victim has also supported the prosecution.

(25) Sections 118 and 119 of the Indian Evidence Act, 1872 provides as to who may testify, which are extracted here-in-below:-

***118. Who may testify.** — All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.*

Explanation. — A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

***119. Witness unable to communicate verbally.** — A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:*

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed.

(26) In view of above, unless the Court considers that any person is prevented from understanding the questions put to him or from giving rational answers to those questions whether due to weakness of body or mind, or any other cause of the same kind. etc, all persons shall be competent to testify. The explanation to the aforesaid Section 118 of the Indian Evidence Act clarifies that a lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them. According to the aforesaid Section 119 of the Indian Evidence Act, 1872, if a person is unable to speak, may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given

shall be deemed to be oral evidence. Thus, a person, who is of weak mind, his testimony cannot be ignored only on this ground, if he/she is able to give his/her evidence by any method and same can be understood by the Court.

(27) The Hon'ble Supreme Court, in the case of **State of Rajasthan Vs. Darshan Singh Alias Darshan Lal; (2012) 5 SCC 789**, has held that language is much more than word and like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey, but a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing if literate or through signs and gestures if he is unable to read and write. The relevant paragraph Nos.28 and 29 are extracted here-in-below:-

28. Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey. But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing if literate or through signs and gestures if he is unable to read and write. A case in point is the silent movies which were understood widely because they were able to communicate ideas to people through novel signs and gestures. Emphasised body language and facial expression enabled the audience to comprehend the intended message.

29. To sum up, a deaf and dumb person is a competent witness. If in the opinion of the Court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same

surrounding but should not have any interest in the case and he should be administered oath.

- (28)** In the aforesaid case, the statement was recorded with the help of father and an interpreter and the Court had found that he was interested witness and, therefore, assisted during trial and investigation, and acquitted the accused giving benefit of doubt. In the present case, the statement of the victim has been recorded with the help of father but in the presence of two witnesses under Section 161 Cr.P.C. and the videography of same was also done, which has been proved by videographer, who stated that she had answered slowly and no cross-examination was done from him. The victim has been examined before the learned Trial Court and before the learned Trial Court also, she has supported the prosecution case. Though a plea of enmity with the father has been taken but the same has not been proved, therefore, merely because the father is father of the victim, it cannot be said that he was an interested witness and the innocent persons would be roped in the case. It has also been noticed that the father had given the application naming the appellant and co-accused only after the victim told him after relieved from the hospital, i.e. after about a month, and came back to home and told him about the accused persons. If his intention would have been to implicate the appellant and co-accused only on account of some enmity, he could have done it immediately after the incident. Even otherwise, the enmity pleaded by the appellant could not be proved and this Court failed to comprehend as to how a father would

implicate innocent persons at the cost of reputation of daughter and social stigma, which may have been caused to her.

(29) The Hon'ble Supreme Court, in the case of **Baban Shankar Daphal and Others Vs. The State of Maharashtra; MANU/SC/0099/2025**, has held that credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy. The relevant paragraph Nos.28 and 29 are extracted here-in-below:-

"28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

29. The distinction between "interested" and "related" witnesses has been clarified in Dalip Singh v. State of Punjab, where this Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the

consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

i. Md. Rojali Ali and Ors v. The State of Assam Ministry of Home Affairs through secretary;

ii. Ganapathi v. State of T.N.;

iii. Jayabalan v. Union Territory of Pondicherry."

(30) The Hon'ble Supreme Court, in the case of **Ravasaheb Vs. State of Karnataka; MANU/SC/0248/2023**, has narrated some of the principles essential for the consideration in regard to testimony of close relatives. The Hon'ble Supreme Court observed that the witness being a close relative is not a ground enough to reject his testimony and mechanical rejection of an even "partisan" or "interested" witness may lead to failure of justice. The relevant paragraph No.17.4 is extrated here-in-below:-

"17.4 - A witness being a close relative is not a ground enough to reject his testimony. Mechanical rejection of an even "partisan" or "interested" witness may lead to failure of justice. The principle of "falsus in uno, falsus in omnibus" is not one of general application. "

(31) The Hon'ble Supreme Court, in the case of **State of Maharashtra vs. Bandu Alias Daulat; (2018) 11 SCC 163**, upheld the conviction made under Section 376 I.P.C. for rape of a minor victim considering that the victim is deaf and dumb and mentally challenged to some extent and she was lured away by the accused by offering some sweet meat and was taken to the market and she explained to her mother by gesture as to what happened, on the basis of which, F.I.R. was registered and investigation was carried out and medical examination of the victim

confirmed the commission of rape and the High Court had acquitted on the ground that the victim herself was not examined and factum of rape and involvement of accused could not be proved, whereas not only the victim had supported the prosecution case with her signs but also the medical supported the prosecution case.

(32) The first Investigating Officer, Incharge Inspector Kallu Singh Bharti appeared as P.W.-8. He stated that the F.I.R. of Case Crime No.249/2013, under Section 376 I.P.C. was registered at Police Station Kotwali, District Unnao in his presence and the investigation was entrusted to him on the direction of the Station House Officer. He proceeded from the police station alongwith the complainant to the place of occurrence and on his pointing out, inspected the place and prepared the site plan, which is paper No. 7 ऋ / 1 and marked as Ex. Ka-3. After recording the statements of witnesses and collecting the plain soil and blood stained soil and keeping them in separate boxes and sealing them and preparing the seal, he alongwith others proceeded towards the shop of tea of the complainant. He collected the clothes of the victim at the place of occurrence and kept them in a sealed cover. He further stated that on his prior information, the Dog Squad Unit had reached at the place of occurrence, who made the search with the help of trained dogs and the accused Etwari was searched but he was not found there. However, it was told by an informer that the witnesses Mahesh Kumar and Shiv Kumar have seen the Etwari going and coming from that side, therefore, their statements were recorded after

calling them. It was found during investigation that the Etwari was at the Commission Agency (आदत) of Chicken of Afzal at Khorat Bagh, therefore, he went there and arrested the Etwari, who accepted his crime and on his pointing out, he recovered clothes worn by him at the time of incident, however, Etwari told that he has kept those clothes after washing them. He has further stated that he recorded the statements of Incharge of the Dog Squad Nazrul Hasan on 14.02.2014, who had brought Brano Dog with him, who after smelling the place of incident, went towards the tea shop of Etwari and directly to the hen farm of Afzal. The accused was arrested on the pointing of Dog Brano and he had accepted his crime. No cross-examination has been made from him on behalf of the accused Ramzani and Etwari and no cross-examination was made in regard to the Dog Squad and the pointing out by the Dog.

- (33)** The Incharge of Dog Squad Constable Nazrul Hasan appeared as P.W.-
3. He stated that on telephonic information of the incident of misdeed, he had reached on the spot with the Brano Dog. The Brano Dog smelled the footprints of the accused, thereafter, it went to the place of incident and then to the main road and after crossing, he turned left and then right and from brick road to the hen farm of Afzal, which is about 200 meters away. After reaching on the hen farm, the Dog indicated towards the accused Etwari and the Etwari had accepted the crime of misdeed before the police. He also stated that the said hen farm is in Anwar Nagar. He had submitted the track report. In the cross-

examination, he stated that he has been given training of Dog Squad and guiding the Dog in the Dog Squad. He also stated that the Dogs understand his expression and works after smelling. He denied the suggestion that on the direction of higher officer, he, in collusion with the complainant, has wrongly guided the Dog to mark Etwari. In view of above, the accused Etwari was also pointed out by the trained dog of the Dog Squad of the police and the Incharge of Dog Squad proved as to how the accused was pointed out by the trained dog and extra-judicial confession made by the appellant and nothing could be extracted in the cross-examination, which may create any doubt about his testimony. The learned Trial Court, after considering the evidence of P.W.-3, Constable Nazrul Hasan, has recorded a finding that though the cross-examination has been made from him but no cross-examination has been made about his command to the Brano Dog and his veracity. The learned Trial Court, after considering the site plan and the proof thereof made by the prosecution witnesses, has recorded a finding that the place of incident as well as the place of arrest of the accused has also been fixed and proved. The same were fixed and proved by evidence of other witnesses also. However, the conviction of the appellant has not been made on the basis of report of the Dog Squad but after considering the evidence and material on record and finding that the chain of circumstances lead towards the guilt of the appellant only. Thus, the evidence of the Incharge of the Dog Squad is only supportive and proved only arrest of the accused. Even otherwise, the

conviction cannot be made independently on the basis of report of Dog Squad and tracking by the sniffer dog.

(34) The aforesaid issue has been considered by the Hon'ble Supreme Court, in the case of **Lalit Kumar Yadav Alias Kuri Vs. State of Uttar Pradesh; (2014) 11 SCC 129**, and the relevant paragraph Nos.34 to 38 of which are extracted here-in-below:-

34. It was lastly urged on behalf of the appellant that identification of accused by sniffer dog cannot be relied upon as it is not admissible in order to prove the guilt of the appellant.

35. Similar contention was raised in Abdul Rajak Murtaja Dafedar v. State of Maharashtra, (1969) 2 SCC 234, wherein this Court opined:

“11.....that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight.”

36. In Gade Lakshmi Mangaraju alias Ramesh v. State of A.P., (2001) 6 SCC 205, this Court noticed the criticism advanced against the reception of evidence pertaining to sniffer dog. The objection was that the life and liberty of human being should not be made to depend on animals sensibilities and that the possibility of a dog misjudging the smell or mistaking the track cannot be ruled out, for many a time such mistakes have happened. In the said case, this Court relying decision in Abdul Rajak Murtaja Dafedar (supra) case held:

“17. We are of the view that criminal courts need not bother much about the evidence based on sniffer dogs due to the inherent frailties adumbrated above, although we cannot disapprove the investigating agency employing such sniffer dogs for helping the investigation to track down criminals.”

37. In Dinesh Borthakur v. State of Assam, (2008) 5 SCC 697, while the same question was considered, referring to Gade Lakshmi Mangaraju (supra) case this Court held:

“40.....the law in this behalf, therefore, is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused.”

38. In the present case, the services of a sniffer dog was taken for investigation. The said dog traced the accused and he was formally arrested in the evening of the next day. The Investigating Officer; Ashok Kumar Yadav (PW-10) corroborated the evidence of Abdul Lais Khan (PW-4) to the effect that 'Raja' sniffer dog after picking up scent from the place of occurrence tracked down the house of the accused. What is relevant to note is that the accused has not been convicted on the ground that the sniffer dog tracked down the house of the accused and barked at him. The evidence of dog tracking only shows how the accused was arrested. The Trial Court and the Appellate Court noticed the motive of the accused. Ram Chandra Chaurasiya (PW-1) disclosed in his evidence that a few days before the date of occurrence, the accused has teased his daughter and also threatened her. Her daughter Km. 'x' complained about the misconduct of the accused to her cousin Ashok Kumar and the latter admonished the accused for the same. Ashok Kumar died subsequently but the evidence of the girl's father is quite convincing and worthy of credit. The aforesaid incident clearly reflects upon the motive of the accused.

(35) In view of above, though it is a case of circumstantial evidence but all the chain of the circumstances consistently indicate towards the guilt of the appellant and appellant only. The co-accused, Ramzani has died and his appeal has been abated.

(36) In the case of circumstantial evidence, the evidence and material on record is to be analyzed on the touch stone of 5 golden principles (Panchsheel) laid down by the Hon'ble Supreme Court, in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra; AIR 1984 SC 1622**, wherein while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by a false defence or plea. The said 5 golden principles are as under:-

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the-innocence of the accused and must show that in all human probability the act must have been done by the accused."

(37) In regard to P.W.-13, Saiyed Mohammad Azmeri, who has also been declared hostile, the learned Trial Court has recorded that after analysis of his evidence, it could not be said that he does not know accused Etwari and his evidence is believable.

(38) In view of above, the prosecution proved its case beyond reasonable doubt. In the statement under Section 313 Cr.P.C., the appellant stated that he has falsely and wrongly been implicated on account of enmity and stated that wrong and false statements have been given. On a query as to whether he will give any defense, he stated yes. The family members of the victim have registered the case in collusion with the police and intermediaries. On a query as to whether anything else is to be said, he stated that he had quarrel with the complainant at the Commission Agency (आदत) of chickens of Afzal, and on account of enmity, he has been implicated. The plea of enmity taken by the appellant has not been proved and no evidence has been adduced by the appellant. Even otherwise, no such enmity could be proved and even it

there was any such minor conflict, this Court fails to comprehend that a father and brother would implicate the appellant at the cost of reputation of daughter/sister and social stigma, which may cause to her.

(39) In view of above and considering the over all facts and circumstances of the case, we are of the view that the learned Trial Court has rightly and in accordance with law, after considering the evidence and material on record, convicted the appellant and sentenced him. There is no illegality or error in the impugned judgment and order, which has been passed by a reasoned and speaking order after considering the evidence and material on records and none of the grounds taken by the appellant are tenable in the eyes of law.

(40) The appeal is misconceived and is liable to be dismissed, which is accordingly **dismissed**, upholding the impugned judgment and order passed by the learned Trial Court. The conviction of the appellant for the offence punishable under Section 6 of the POCSO Act is upheld and the sentence awarded to him under Section 6 of the POCSO Act is confirmed.

(41) Let a copy of this judgment alongwith the Trial Court's record be transmitted to the Court concerned forthwith and in any case within two weeks from today for information and compliance.

(Zafeer Ahmad,J.)

(Rajnish Kumar,J.)

Order Date :- 26.02.2026
Saurabh/-