



2026:AHC:45364

Reserved on 19.2.2026

Delivered on 27.2.2026

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1550 of 2021

Surajpal

.....Appellant(s)

Versus

State of UP

.....Respondent(s)

Counsel for Appellant(s)	: Rajeev Sawhney, Veerendra Singh, Vipin Gangwar
Counsel for Respondent(s)	: G.A., Girja Shanker Sen, Krishna Dutt Awasthi

Along with :

Criminal Appeal No. 640 of 2021:

1. Udai Pal

Versus

State of U.P.

Court No. - 90

HON'BLE MANOJ BAJAJ, J.

1. Appellants namely, Surajpal and Udai Pal are aggrieved against the judgment of conviction and order of sentence dated 16.12.2020 passed by Additional Sessions Judge, Bareilly in Criminal Case No. 249 of 2020, arising out of Case Crime No. 217 of 2015, registered at Police Station Aonla, District Bareilly, whereby they have been convicted under Sections 376-D, 506 I.P.C., and sentenced to twenty years rigorous imprisonment under Section 376-D I.P.C. alongwith fine of Rs.25,000/- each; three years imprisonment under Section 506 I.P.C. along with fine of Rs.1,000/- each, and in the event of default, they have been ordered to undergo further imprisonment of three months, and fifteen days, respectively. The sentences have been ordered to run concurrently.

2. The subject F.I.R. was registered on the basis of a written complaint dated 9.6.2015 submitted by Dharmpal to Station House Officer Aonla, District Bareilly, who alleged that he is a resident of village Panvariya, Police Station Aonla, District Bareilly. On 8.6.2015 at around 5 p.m., his daughter was bringing fodder from the village, and on the way co-villagers namely, Surajpal s/o Dilsukh and Udai Pal s/o Kannhiya Lal being drunk had pulled his daughter with bad intentions in the fields of Rakesh. They both had forcibly torn the clothes of his daughter and raped her. When complainant's daughter cried and attempted to get herself released, Surajpal gagged her mouth with a cloth and after raping her, they both left his daughter naked in the fields, and also threatened her, if, she would disclose it to anyone, the consequences would be adverse. His daughter wearing torn clothes reached home and narrated the incident to him. The complainant described the age of the victim as 14 years and requested for registering a case. Broadly, on these allegations, F.I.R. bearing Case Crime No. 217 of 2015 was registered against the accused persons for alleged commission of offences punishable under Sections 376(2)(g), 506 I.P.C. and Section 4 Protection of Children from Sexual Offences Act, 2012.

3. After registration of the F.I.R., the investigation in the case was conducted by Investigating Officer namely, Anoop Singh Rathi, Sub Inspector, who recorded the statements of complainant-Dharmpal, his wife-Jeera Devi, prosecutrix and Rakesh. During investigation, the victim's medical report dated 11.6.2015 was collected and site plan was also prepared. The statements of other formal witnesses were also recorded and finally the charge sheet was filed against the accused persons under Section 173(2) Cr.P.C. thereby sending them to face prosecution for commission of offences punishable under Sections 376-D, 506 I.P.C. and Section 6 Protection of Children from Sexual Offences Act, 2012.

4. Thereafter, the case was committed to the Special Court and vide order dated 11.5.2016 the charges against the accused persons were framed for alleged commission of offences punishable under Sections

376, 506 I.P.C. and Section 6 Protection of Children from Sexual Offences Act, 2012. The appellants-accused pleaded not guilty and claimed trial

5. The prosecution in order to prove the guilt of the accused persons had examined seven witnesses namely, Dharmpal (P.W.-1), Victim (P.W.-2), Jeera Devi-mother of victim (P.W.-3), Dr. Shilpi Kesarwani (P.W.-4), Constable Ranveer Singh (P.W.-5), Dr. S.S. Chauhan (P.W.-6) and Investigating Officer Anoop Singh Rathi (P.W.-7). Besides, the prosecution also adduced documentary evidence i.e. written complaint (Exb.Ka-1), statement of victim under Section 164 Cr.P.C. (Exb.Ka-2), medical report (Exb.Ka-3), supplementary medical report (Exb.Ka-4), pathology report (Exb.Ka-5), FSL (Exb. Ka-6), check report (Exb.Ka-7), G.D. entry (Exb.Ka-8), age certificate (Exb.Ka-9), Site Plan (Exb.Ka-10), Charge Sheet (Exb.Ka-11).

6. After completion of the prosecution evidence, the separate statements of accused-appellants were recorded under Section 313 Cr.P.C. on 1.2.2020, who denied the prosecution evidence. However, no defence evidence was adduced by the accused persons. Later, vide order dated 19.10.2020 the charge under Section 376 I.P.C. was altered and substituted with Section 376-D I.P.C.

7. Upon analyzing the prosecution case, evidence and other material on record, the trial court proceeded to convict the appellants-accused under Sections 376-D, 506 I.P.C. and Section 6 Protection of Children from Sexual Offences Act, 2012 and awarded substantive sentence of twenty years rigorous imprisonment. Aggrieved against the judgment of conviction and order of sentence dated 16.12.2020, the appellants preferred these separate appeals.

8. Mr. Rahul Saxena, learned counsel for the appellants assisted by Mr. Vipin Gangwar, Advocate has argued that the alleged occurrence dated 8.6.2015 is proved by three witnesses, who are prosecutrix and her parents, but their testimones contain major discrepancies and the same have been ignored by the trial court while convicting the appellants.

Learned counsel submits that according to witnesses, P.W.-1, P.W.-3 (parents of the prosecutrix) and P.W.-2 (prosecutrix), the occurrence was witnessed by younger daughter of the complainant, but she was not examined as a witness. Learned counsel submits that ocular version of the prosecutrix-victim does not find any support from the medical evidence including the FSL report, therefore, under such circumstances it cannot be said that the prosecution has proved the charges against the accused-appellants beyond doubt.

9. Learned counsel for the appellants emphasized that the wife of complainant's nephew namely, Pappu had eloped with appellant-Surajpal, therefore, because of this enmity, the complainant falsely implicated Surajpal and his nephew Udai Pal. According to Mr. Rahul Saxena, learned counsel, the material witness prosecutrix (P.W.-2) admitted in her cross-examination that wife of Pappu (complainant's nephew) had eloped with Surajpal. Besides, learned counsel for the appellants has argued that though according to the prosecution witnesses, the clothes worn by the prosecutrix were torn by the accused persons, but during investigation, no such evidence was collected or produced before the trial court. Learned counsel for the appellants continued to point out the discrepancies in the prosecution case and finally submitted that the impugned judgment of conviction dated 16.12.2020 has been passed by the trial court by brushing aside the defects in the prosecution case. He prays that the impugned judgment of conviction as well as order of sentence dated 16.12.2020 be set aside, and the appellants be acquitted.

10. On the other hand, Mr. H.P. Gupta, learned A.G.A. assisted by Mr. Sanjeev Kumar Maurya, learned counsel for the complainant has argued that the offence committed by the accused-appellants is serious and the material witness P.W.-2 (prosecutrix) clearly testified to name both the accused persons as well as their involvement in commission of crime against her. Learned counsel for the complainant has argued that the deposition of P.W.-1 and P.W.-3 (parents of prosecutrix) has also supported the prosecution case and merely, because younger sister of the

prosecutrix was not examined as a witness, this alone would not be sufficient to doubt the prosecution version. Learned counsel for the complainant has referred to the testimony of P.W.-4 Dr. Shilpi Kersarwani and argued that she proved the medical examination report dated 11.6.2015 (Exb.Ka-3) and according to this witness, she found the evidence of sexual intercourse with the prosecutrix as her hymen was torn. Similarly, learned A.G.A. has also argued on the similar lines to contend that according to P.W.-6 Dr. S.S. Chauhan, the age of the prosecutrix was approximately 16 years, therefore, her testimony alone is enough to hold the accused guilty of the alleged offences committed against her. Lastly, learned counsel for the respondents submitted that the trial court has carefully analyzed the prosecution evidence in a proper manner and rightly drew the conclusion that the prosecution has proved the charges against the accused beyond doubt, therefore, according to learned counsel, the impugned judgment of conviction as well as order of sentence dated 16.12.2020 do not call for any interference by this Court in exercise of appellate jurisdiction. They prayed that both the appeals be dismissed.

11. Learned counsel for the parties have been heard and with their assistance, case file and the trial court record has been perused carefully.

12. According to the complainant-P.W.-1, when his 14 years old minor daughter (prosecutrix) after collecting fodder was returning back home, the accused persons namely, Surajpal and Udai Pal waylaid and dragged her in the fields of Rakesh and raped her in a pit. The alleged occurrence dated 8.6.2015 was reported to the police on 9.6.2015 by P.W.-1 through written complaint, and the entire case of the prosecution rests on the testimony of three witnesses i.e. complainant (P.W.-1), prosecutrix (P.W.-2) and mother of prosecutrix (P.W.-3). According to these material witnesses, the occurrence took place at 5 p.m. in an open place and Dr. Shilpi Kesarwani was examined as P.W.-4, who had medically examined the prosecutrix and proved the medical report (Exb.Ka-3). Mr. Ranveer Singh (P.W.-5) is a formal witness, who had registered the F.I.R. whereas

Dr. S.S. Chauhan (P.W.-6) gave medical opinion (Exb. Ka-9) about the age of the prosecutrix as approximately 16 years. Mr. Anoop Singh Rathi (P.W.-7) is the investigating officer, who conducted the investigation and collected evidence during investigation and finally submitted the charge sheet (Exb.Ka-11) against the accused persons.

13. The entire case of the prosecution is to be tested on the strength of the material witnesses P.W.-1, P.W.-2 and P.W.-3, and amongst them, the prosecutrix (P.W.-2) is the prime witness against whom the alleged crime was committed. A perusal of the deposition of P.W.-2 would show that she was accompanied by her younger sister-Shyamwati when the accused committed the crime, and according to the deposition of prosecutrix, the accused persons before committing rape had tied her sister. Thus, the sister of the prosecutrix was an eye witness, but strangely neither she was associated in investigation nor was later summoned as a prosecution witness to lend strength to the version of her elder sister (P.W.-2). The evidence on record including the testimony of investigating officer does not offer any explanation for not relying upon the material eye witness-Shyamwati.

14. Further, according to prosecutrix (P.W.-2), the clothes (Salwar, Kameej and Dupatta) worn by her were torn by accused persons before she was raped by both the accused. The prosecutrix in her deposition clearly mentioned that as a result of commission of crime by Surajpal, she had suffered injuries on her chest and back resulting in bleeding also, who further stated that the rape by Udai Pal too resulted in more injuries of similar nature to her. At this juncture, this Court deems it appropriate to analyze the medical evidence adduced by the prosecution to ascertain, if, it supports the prosecution case, but a reading of the medical examination report dated 11.6.2015 (Exb. Ka-3) does not indicate any mark of injury suffered by prosecutrix (P.W.-2). That apart, it also reveals that the hymen of the prosecutrix was old torn and healed.

15. A perusal of the evidence of Dr. Shilpa Kesarwani (P.W.-4) makes it abundantly clear that the prosecutrix had not suffered any injury as deposed by her. Thus, the contradiction between ocular version and the medical evidence also raises doubt in the prosecution case.

16. Most importantly, the clothes worn by the prosecutrix on the day of occurrence, which were torn by the accused persons were not collected by the Investigating Officer during investigation. According to prosecutrix (P.W.-2), she had left the torn clothes at the place of occurrence, who went back home naked and on the way, she was seen by approximately ten to twenty persons. As per the deposition of P.W.-1, the house of the prosecutrix is situated at a distance of 125 meters from the place of occurrence, therefore, it does not appeal to prudence that if, actually her younger sister accompanied her, she would not make any effort to cover the naked body of her elder sister.

17. The witnesses (P.W.-1 and P.W.-3) are at a variance with the version of prosecutrix as far as the clothes of the prosecutrix are concerned, who deposed before the trial court that she returned home wearing torn clothes. The investigating officer stated that the torn clothes of the prosecutrix were not handed over to him despite asked by him, therefore, this major discrepancy in the prosecution case also questions the truthfulness of the prosecution case.

18. The parents of the prosecutrix, who were examined as P.W.-1 and P.W.-3 are not the eye witness of the occurrence as they came to learn about the incident from the victim. Obviously, the place of occurrence was also not known to the complainant, but strangely the site plan (Exb.Ka-10) was prepared by Investigating Officer when he visited the spot with complainant (P.W.-1), and it is nowhere stated by him that he had earlier seen the place of occurrence with her daughter or her daughter had explained him about the place of occurrence. Besides, a careful look at the site plan (Exb.Ka-10) clarifies that point-B wherefrom the prosecutrix was pulled by accused persons is situated on a Kaccha

thoroughfare connecting with the main road, and was taken to point-A-the pit where rape was committed. It is also mentioned in the site plan that the distance between two points B and A is ten steps, and as per P.W.-3 the people would often roam around near Kaccha thoroughfare, therefore, it is not believable that the crime committed by accused went unnoticed. Although, it is the case of the prosecution as well as prosecutrix that her younger sister was accompanying her when accused persons committed the crime, but the site plan does not at all indicate the spot where the younger sister was tied by the accused persons before committing the crime.

19. Thus, in view of the above discussions, this Court has no hesitation in holding that the evidence adduced by the prosecution itself throws serious doubts on this case and the charges against the accused have not been proved beyond shadow of a doubt. At this juncture, this Court finds that the defence set up by the accused that the complainant falsely implicated them in the case, because Surajpal had eloped with Pooja, wife of Pappu (complainant's nephew) seems probable as the suggestion in respect of elopement is admitted by prosecutrix in her cross-examination.

20. Now while examining the prosecution case conversely, it also becomes clear that the prosecution evidence on record is not at all inconsistent to the innocence of the accused persons. A perusal of the impugned judgment of conviction and order of sentence dated 16.12.2020 would show that the trial court has failed to appreciate the prosecution evidence in a proper manner by ignoring the material discrepancies in the prosecution case, therefore, it would be unsafe to maintain the conviction of the appellant.

21. Resultantly, the appeals succeed and the impugned judgment of conviction and order of sentence dated 16.12.2020 are hereby set aside, and the appellants Surajpal and Udai Pal are acquitted of all the charges.

The accused-appellants are in jail, who shall be set free immediately, if, not required in any other offence/case.

22. The appeals are allowed. Record and proceedings be sent back to the trial court forthwith.

(Manoj Bajaj,J.)

February 27, 2026

P.S. Parihar

Lawchakra.in