UKHC010026012015

2026:UHC:8807-DB

JUDGMENT RESERVED ON: 10.09.2026

JUDGMENT DELIVERED ON: 29.09.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.309 of 2015

Umesh Ram --Appellant

Versus

State of Uttarakhand --Respondent

Presence:-
Ms. Manisha Bhandari and Mr. Akram Parvez, learned counsel for the appellant.
Mr. J.S. Virk, learned A.A.G. along with Mr. B.N. Molakhi, learned D.A.G. for the State.

Coram :Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Per: Hon'ble Pankaj Purohit, J.

The present appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure against the judgment and order dated 11.08.2015 passed by the learned Special Judge/Sessions Judge, Almora in Special Session Trial No.07 of 2015, State vs. Umesh Ram, arising out of FIR No.04 of 2015, Police Station Ranikhet, District Almora, whereby the appellant has been convicted under Section 376(2) read with Section 511 of the Indian Penal Code and Section 10 of the Protection of Children from Sexual Offences Act, 2012 and has been sentenced to undergo imprisonment for half of the period of life imprisonment along with fine of Rs.20,000/- under Section 376(2) read with Section 511 IPC, with a further sentence of three months' rigorous imprisonment in default of payment of fine, and seven years' rigorous imprisonment along with fine of Rs.20,000/- under Section 10 of the POCSO Act, with a further sentence of three months' rigorous

imprisonment in default of payment of fine. Both the sentences were directed to run concurrently. The learned Trial Court also directed payment of Rs.30,000/- to the prosecutrix from the Victim Compensation Fund and issued consequential directions for counseling of the prosecutrix and her mother.

2. On the basis of the First Information Report, Case Crime No. 04 of 2015 was registered at Police Station Ranikhet, District Almora, against the appellant in respect of the alleged incident. The facts of the case are that on 21.02.2015 at about 03:00 p.m., the prosecutrix, whose identity is withheld in view of the provisions of law, was at her house. According to the prosecution, the appellant, who is her father, was also present in the house. It is alleged that the appellant closed the door of the house, gagged the mouth of the prosecutrix, removed her clothes and attempted to commit sexual intercourse with her. On hearing her cries, her aunt and other family members reached the spot, whereafter the appellant allegedly fled from the place. The matter was thereafter reported to the police and the prosecutrix was medically examined. During investigation, her statement under Section 164 Cr.P.C. was recorded and the Investigating Officer collected the medical, school and other documentary evidence. After completion of investigation, charge-sheet was submitted against the appellant. On completion of the investigation and other necessary formalities, the Investigating Officer submitted the charge-sheet against the appellant before the competent court under the relevant provisions of the Indian Penal Code and the Protection of Children from Sexual Offences Act, 2012.

3. Thereafter, the learned Magistrate committed the case to the Court of Session, where charges under Section 376(2) read with Section 511 of the IPC and Section 10 of the POCSO Act, 2012 were framed against the appellant. The charges were read over and explained to the appellant, who denied the same and pleaded not guilty and claimed to be tried

4. To prove its case against the appellant, the prosecution has examined as many as nine witnesses. They are PW-1 the prosecutrix; PW-2 Babita, aunt of the prosecutrix; PW-3 Basanti, wife of the appellant and mother of the prosecutrix; PW-4 Munni Devi, aunt of the prosecutrix; PW-5 Dr. Sunita, who medically examined the prosecutrix; PW-6 Dr. Kamlesh Kumar Pandey, who medically examined the appellant; PW-7 Vishola Devi, Principal, who proved the school record and date of birth of the prosecutrix; PW-8 Constable Kanai Deewan Ram, a formal witness in respect of the chik FIR and G.D. entry; and PW-9 Hema Gupta, Sub-Inspector, Investigating Officer.

5. After prosecution evidence, the statement of appellant was recorded under Section 313 CrPC in which he denied the evidence of prosecution and stated that he has been falsely implicated.

6. After hearing the public prosecutor as well as the appellant accused, the trial court found the charges proved against the appellant beyond all reasonable doubts and convicted and sentenced him, accordingly as stated above.

7. During trial, PW-1, the prosecutrix, deposed

that on 21.02.2015, at about 3:00 p.m., she was present at her house along with the appellant, who is her father. According to her, the appellant closed the door of the room and gagged her mouth. He thereafter removed her clothes and pyjama and attempted to commit sexual intercourse with her by putting his penis into her vagina, causing her pain. She cried upon which the persons present in the adjoining portion of the house came there. She further deposed that about one year prior to the aforesaid incident also, the appellant had touched her body and had put his hand inside her pyjama. She stated that she had disclosed that incident to her mother and other family members. She also deposed regarding the circumstances in which the matter was subsequently reported to the police and her medical examination was conducted. Her statement under Section 164 Cr.P.C. was also recorded.

8. PW2, the aunt of the prosecutrix, deposed that on hearing her cries, she reached the house and found the appellant and the prosecutrix inside. She stated that the clothes of the prosecutrix were removed and the appellant was also without his clothes. The prosecutrix, who was crying, told her that the appellant had removed her pyjama as well as his own clothes and had attempted to commit a sexual act upon her.

9. PW-3 Basanti, wife of the appellant and mother of the prosecutrix, deposed regarding the occurrence as well as the circumstances prevailing in the family. Her testimony also contains statements concerning the conduct of the appellant and the events surrounding the alleged incident. She further stated that around one year

ago as well, the prosecutrix had told her about the misdeeds of the appellant, but she refused to believe her at that point of time.

10. PW-4 Munni Devi, the aunt of the prosecutrix and sister-in-law of the appellant, stated that at about 3:00 p.m. on 21.02.2015, she was present at her house. On hearing the cries of the prosecutrix, she immediately went to the house of the appellant, where Chandra, Mamta and Kamla were already present. She stated that she saw the appellant and the prosecutrix with their clothes open and in an unclothed condition. The prosecutrix was crying and told them that the appellant had opened her pyjama and his own pyjama and had lain upon her and was doing a wrongful act with her.

11. PW-5 Dr. Sunita, who medically examined the prosecutrix, proved the medical examination report, Ext. Ka-4. She stated that the hymen of the prosecutrix was intact and the vaginal aperture was normal. No injury was found in the vagina and there was no evidence of penetration. The vaginal swab also did not reveal the presence of spermatozoa. She further stated that had sexual intercourse taken place, injury to the vagina could have been present, which was not found in the present case.

12. PW-6 Dr. Kamlesh Kumar Pandey stated that on 22.02.2015, at about 7:30 p.m., he medically examined the appellant at the Government Hospital, Ranikhet. On examination, a bruise measuring approximately 4 cm × 2 cm was found below his right eye. The general examination was satisfactory and no external injury was found on his genital organs. He

opined that the injury found on the appellant could have been caused by a blunt object.

13. PW-7 Bisaula Devi, who was posted as Lecturer at Government Girls' Inter College, Ranikhet and was holding the charge of Principal on 23.02.2015, proved the age and date of birth of the prosecutrix on the basis of the school records. She stated that the date of birth of prosecutrix, as recorded in the school register, was 25.02.2003. She proved the certificate issued by her as Ext. Ka-6 and the relevant extract of the school register as Ext. Ka-7.

14. PW-8, the formal police witness, deposed regarding preparation and registration of the chik report and the relevant General Diary entry. He also stated regarding the presence of the persons who had reached the spot and the steps taken thereafter, including sending the appellant for medical examination. He explained the correction appearing in the chik report and stated that the same had been made by him.

15. PW-9 Hema Gupta, Sub-Inspector, who conducted the investigation, stated that on 21.02.2015, pursuant to the order of the Superintendent of Police, Almora, the investigation of the case was entrusted to her. She proceeded from Police Station Kotwali, Almora, at about 6:00 p.m. and reached Ranikhet at about 8:30 p.m., where she took over the investigation. She obtained the copies of the chik FIR, FIR, statements under Section 161 Cr.P.C. and medical documents. On 22.02.2015, she went to the house of the prosecutrix along with the woman constables, where she recorded the statements of the prosecutrix and the informant. At the instance of the

prosecutrix and the informant, she prepared the site plan of the place of occurrence and recorded the statements of other witnesses. She thereafter completed the investigation and submitted the charge-sheet against the appellant.

16. It is vehemently argued by learned counsel for the appellant that the conviction recorded by the learned trial court is not supported by the evidence on record and is based on presumptions and surmises. Learned counsel submits that there are material contradictions and inconsistencies in the statements of the prosecution witnesses, rendering their testimony unreliable. It is further contended that the prosecution has failed to establish the involvement of the appellant in the alleged occurrence beyond reasonable doubt.

17. Learned counsel further submits that the medical and pathological evidence does not corroborate the prosecution version, particularly in view of the intact hymen, absence of vaginal injury and absence of spermatozoa. It is also argued that the allegation regarding the earlier alleged misconduct is not satisfactorily established and that the defence plea of strained relations and false implication has not been properly appreciated by the learned trial court. It is, therefore, submitted that the appellant is entitled to the benefit of doubt.

18. *Per contra*, learned State Counsel has supported the impugned judgment and submitted that the prosecution has duly proved its case through the consistent testimony of the prosecutrix and other prosecution witnesses. It is argued that the minor age of

the prosecutrix and the nature of the occurrence have been duly proved on record.

19. Learned State Counsel further submits that the medical evidence does not negate the allegation of attempt and that the learned trial court, upon proper appreciation of the evidence, has rightly recorded the conviction. It is, therefore, submitted that no interference is warranted in the present appeal.

20. Having heard learned counsel for the parties and upon perusal of the evidence on record, this Court finds that the testimony of PW1, the prosecutrix, is consistent on the material particulars of the occurrence. Her deposition is also in consonance with her statement recorded under Section 164 Cr.P.C. and receives assurance from the evidence of PW2 and PW4, who reached the place of occurrence upon hearing her cries and found the appellant and the prosecutrix in the circumstances deposed by them. The date of birth of the prosecutrix, proved by PW7, is 25.02.2003 and, therefore, she was aged less than twelve years on the date of occurrence. There is no convincing reason brought on record which would furnish a plausible explanation for a minor daughter to falsely attribute such a grave allegation against her own father. The testimony of the prosecutrix, therefore, cannot be discarded merely on the ground that the appellant is her father, particularly when her version has remained consistent and receives assurance from the surrounding circumstances.

21. The submission that the medical evidence does not support the prosecution case also does not merit

acceptance. The absence of hymenal tear or vaginal injury, as also the absence of spermatozoa, cannot by itself discredit otherwise trustworthy testimony of the prosecutrix. In Ravindra v. State of Madhya Pradesh, (2015) 4 SCC 491, the Hon'ble Supreme Court, relying upon Narayanamma v. State of Karnataka, (1994) 5 SCC 728, held that absence of spermatozoa on the vaginal smear could not be allowed to tell against the version of the prosecutrix. In the present case, the testimony of PW1 is that the appellant removed her pyjama and his own clothes, lay upon her and attempted to commit the sexual act, which was interrupted when she raised cries and other persons reached the spot. Such conduct, coupled with the surrounding circumstances, travels beyond mere preparation. The Hon'ble Supreme Court in Chaitu Lal v. State of Uttarakhand, (2019) 20 SCC 272, while considering an attempt to rape, held that the conduct of the accused in pouncing upon the victim, sitting upon her and lifting her petticoat, in the face of her resistance and cries, constituted an attempt to commit rape. The facts proved in the present case disclose still further overt acts, including removal of the clothes of both the appellant and the prosecutrix and an attempt at penile-vaginal insertion. The fact that the intended act could not be completed on account of the prosecutrix raising cries and the arrival of other persons does not take the conduct of the appellant back to the stage of mere preparation.

22. The defence has also relied upon the alleged contradictions in the statements of the prosecution witnesses and the strained relations within the family. However, on a careful examination of the evidence, the

alleged discrepancies are not of such nature as to affect the core of the prosecution case. PW2 and PW4 have supported the immediate circumstances of the occurrence, whereas PW3, though not an eyewitness, corroborates the subsequent disclosure made by the prosecutrix. The mere fact that PW3 did not witness the occurrence, therefore, does not render the otherwise consistent testimony of PW1 unreliable. Learned counsel for the appellant has also placed reliance upon Chandrakant Vithal Pawar v. State of Maharashtra Criminal Appeal no. 780 of 2006 decided on 22.08.2011 and Suresh @ Pintya Kashinath Kamble v. State of Maharashtra in Criminal Appeal No. 272 of 2017 decided on 25.01.2018. However, the said decisions do not advance the case of the appellant. In Suresh @ Pintya Kashinath Kamble (supra), although the conviction for the completed offence was not sustained, the accused was ultimately convicted under Section 376(2) read with Section 511 IPC for an attempt to commit rape. Likewise, in Chandrakant Vithal Pawar (supra), the conviction was ultimately maintained for an attempt to commit rape. The said authorities, therefore, do not warrant interference with the conviction recorded against the appellant in the present case. Further, the conduct attributed to the appellant, namely, removal of the clothes of the prosecutrix and himself, lying upon her and attempting penile-vaginal insertion, clearly demonstrates commencement of the act towards commission of rape and cannot be characterized as mere preparation. The intervention of the persons who arrived upon hearing the cries of the prosecutrix prevented completion of the intended act. The conviction under Section 376(2) read

with Section 511 IPC is, therefore, fully justified.

23. In view of the aforesaid discussion, the prosecution has succeeded in proving the guilt of the appellant beyond reasonable doubt. The learned trial court has properly appreciated the evidence and the findings recorded by it do not suffer from any perversity or illegality warranting interference. The conviction of the appellant under Section 376(2) read with Section 511 IPC and Section 10 of the POCSO Act, 2012, therefore, calls for no interference.

24. Accordingly, the present appeal is dismissed. The judgment and order dated 11.08.2015 passed by the learned Special Judge/Sessions Judge, Almora in Special Sessions Trial No.07 of 2015, State vs. Umesh Ram, arising out of FIR No.04 of 2015, Police Station Ranikhet, District Almora, is affirmed. The sentence awarded by the learned trial court shall remain intact. The appellant shall be dealt with in accordance with law.

25. Let Trial Court Record be immediately sent back to the trial court for consignment.

(Pankaj Purohit, J.) **(Manoj Kumar Tiwari, J.)**

29.09.2026

SK

SHUBHAM KAPRUWAN