2026:AHC:149242

A.F.R
Reserved on 29.05.2026
Delivered on 21.07.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 686 of 2026

Swamideen

…..Appellant(s)

Versus

State of U.P. and 3 others

…..Respondent(s)

Counsel for Appellant(s) : Vijay Bahadur Shivhare
Counsel for Respondent(s) : G.A., Indrajeet

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Sri Vijay Bahadur Shivhare, learned counsel for the appellant and Sri Rajesh Kumar Shukla, learned A.G.A. for the State and perused the record.

2. This criminal appeal has been preferred by the appellant, **Swamideen,** against the judgment and order dated 10.12.2025 passed by the learned Additional District Judge/Special Judge, POCSO Act, Hamirpur ("the trial court") in Session Case POCSOACT No. 108 of 2022 No. 108 of 2022 (State vs. Swamideen), arising out of Case Crime No. 417 of 2021,

registered at Police Station Sumerpur, District Hamirpur by whereby the appellant was convicted under Section 6 of the POCSO Act and sentenced to undergo 20 years' rigorous imprisonment together with a fine of Rs. 10,000/-, and in default of payment of fine, to undergo further simple imprisonment for six month.

3. In view of the sensitivity attached to matters concerning sexual offences against children, and in keeping with the direction of the Hon'ble Supreme Court that the identity of a child victim of a sexual offence ought not to be disclosed, the victim is referred to in this judgment as "the victim" and not by name.

4. The prosecution case, in brief, is that on 10.12.2021, at about 10:48 a.m., an FIR was lodged at Police Station Sumerpur by Smt. Rani Prajapati (PW-2), on the written report (Tahrir) scribed at her instance, alleging that on 05.12.2021, at about 12:00 noon, her daughter, the victim, aged about four years, was playing at the door of the house when the appellant, a neighbour aged about eighty years, lured her with the offer of a toffee, took her inside his house, bolted the door, and committed obscene acts upon her private parts. It is alleged that on the victim raising an alarm, the appellant released her, whereupon she returned home and informed her mother, following which the informant went to the police station and lodged the report. On the strength of the said report, Case Crime No. 417 of 2021 was initially registered under Section 354 IPC and Section 10 of the POCSO Act. During investigation, upon the victim's age being ascertained as approximately four to five years on the basis of her birth certificate, an application was moved by the Investigating Officer for amendment of the sections applied,

which was allowed by the court, and a charge-sheet (Charge-sheet No. 384-A of 2021) came to be submitted against the appellant under Section 376-AB IPC and Section 6 of the POCSO Act. The appellant was arrested on 28.12.2021 and, upon commitment, charges under Section 376-AB IPC and Section 6 of the POCSO Act were framed against him by the trial court, to which he pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined six witnesses: PW-1, the victim; PW-2, Smt. Rani Prajapati, the informant and mother of the victim; PW-3, Dr. Anshu Mishra, the Medical Officer who examined the victim; PW-4, Head Constable Devlal Tiwari, the scribe of the computerised FIR; PW-5, Dr. Pushpendra Kumar, the Medical Officer in-charge who proved the delivery register and birth record of the victim; and PW-6, Inspector Rajkumar Verma, the Investigating Officer. The prosecution also relied upon documentary evidence, including the victim's statement under Section 164 Cr.P.C. (Exhibit Ka-1), the written report (Exhibit Ka-2), the medico-legal examination report (Exhibit Ka-3), the General Diary entry (Exhibit Ka-4), the FIR (Exhibit Ka-5), the delivery register (Exhibit Ka-6), the birth certificate (Exhibit Ka-7), the site plan (Exhibit Ka-8), the arrest memo (Exhibit Ka-9), the charge-sheet (Exhibit Ka-10), and the report of the Forensic Science Laboratory.

6. In his statement under Section 313 Cr.P.C., the appellant denied the prosecution version in its entirety and asserted that he had been falsely implicated on account of personal enmity, that the witnesses had deposed falsely at the instance of the police and the informant, and that he was elsewhere, undergoing medical treatment, on the date of the alleged occurrence.

7. In support of his defence, the appellant examined two witnesses: DW-1, Shivdayal, the Village Pradhan of Para Raipura; and DW-2, Smt. Sangeeta, the appellant's daughter-in-law. The defence also placed on record documentary evidence, including a notice/registration slip of Sadguru Netra Chikitsalaya, Janki Kund, Chitrakoot (Exhibit 41-Kha) and an out-patient registration record bearing code "DTDREF 2204", to demonstrate that the appellant was undergoing eye treatment at Chitrakoot between 05.12.2021 and 10.12.2021, and a representation dated 12.12.2021 addressed by the villagers of Para Raipura to the Station House Officer, Sumerpur, in support of the said defence.

8. By the impugned judgment, the trial court convicted the appellant, principally on the findings that (i) the five-day delay in lodging the FIR stood sufficiently explained; (ii) there were no material contradictions in the testimony of the victim (PW-1) and the other prosecution witnesses, and that the victim's testimony stood corroborated by her statement under Section 164 Cr.P.C.; and (iii) the appellant had failed to displace the prosecution case. Aggrieved thereby, the appellant has preferred the present appeal.

9. Learned counsel for the appellant has assailed the impugned judgment on the following principal grounds:

(i) The trial court has erroneously convicted the appellant under Section 6 of the POCSO Act, despite the fact that he stood charged, and was tried, for the graver offence under Section 376-AB IPC read with Section 6 of the POCSO Act; the manner in which the trial court has dealt with the two distinct charges discloses non-application of mind to the ingredients of the offences and to the evidence bearing upon each.

(ii) The delay of five days in lodging the FIR has not, in fact, been satisfactorily explained. The prosecution's own witnesses have given inconsistent and irreconcilable accounts of when, and by whom, information of the incident was received and communicated.

(iii) The FIR, as originally lodged, invoked only Section 354 IPC and Section 10 of the POCSO Act, offences of outraging modesty and sexual assault and contained no allegation whatsoever of penetrative sexual assault.

(iv) The testimony of PW-2 is riddled with material contradictions and improvements. She has, on the one hand, stated that the victim was at home with her between 12:00 and 1:00 p.m., the very time of the alleged occurrence, and that she did not see the victim go towards the appellant's house, while, on the other hand, maintaining that the occurrence took place at 12:00 noon an inherently self-contradictory position on a witness's own opportunity to observe the events she purports to describe.

(v) PW-2 denied being present when the victim's statement under Section 164 Cr.P.C. was recorded before the Magistrate, whereas the record of that very statement reflects her presence.

(vi) The victim's statement under Section 164 Cr.P.C. itself contains a material and unexplained discrepancy going to the very root of identification of accused, and furthermore, contradictory statement regarding time of occurrence.

(vii) The victim's description of the act, using the word Musanna", was never clarified, or explained either in the evidence or by the trial court in its judgment.

(viii) The medico-legal evidence of PW-3, Dr. Anshu Mishra and FSL report does not corroborate the prosecution case.

(ix) The trial court has failed to give due weight to the appellant's defence of alibi.

(x) The alibi defence is further reinforced by a representation 37-B dated 12.12.2021, made by several residents of the village to the Station House Officer, Sumerpur, even before the appellant's arrest on 28.12.2021, asserting his presence at Chitrakoot on the date of occurrence and alleging false implication. Being a document of a date prior to arrest, it cannot be dismissed as a post-facto fabrication, and the trial court has not considered it at all.

(xi) The defence version, supported by DW-1 and DW-2, that the informant was involved in an alleged illicit relationship with a person of the village, that the appellant had confronted and rebuked her on this account, and that she had thereafter threatened to falsely implicate him in a serious case, furnishes a plausible motive for false implication which the trial court has failed to examine or exclude.

10. Learned counsel for the State, per contra, has supported the impugned judgment and submitted that the testimony of a child victim of a sexual offence cannot be discarded merely on account of minor discrepancies natural to a witness of tender years; that the statement of the victim stood corroborated by her statement under Section 164 Cr.P.C.; that delay in lodging an FIR in offences of this nature is often explained by the trauma and social stigma attached thereto; and that the trial court, having had the advantage of observing the demeanour of the witnesses,

was best placed to assess their credibility, calling for no interference by this Court.

11. The short question that falls for determination is whether the prosecution has succeeded in proving the charge against the appellant beyond reasonable doubt, by cogent, reliable and consistent evidence, or whether the material contradictions, the unexplained delay, the possibility of tutoring, the absence of medical corroboration, and the unrebutted defence of alibi, cumulatively, entitle the appellant to the benefit of doubt and consequent acquittal.

12. This Court has gone through the entire evidence on record, including the depositions of PW-1 to PW-6 and DW-1 and DW-2, the documentary exhibits, and the medico-legal and forensic material, as also the impugned judgment.

13. Before proceeding to appreciate the evidence, it is apposite to notice the law laid down by the Hon'ble Supreme Court in three recent decisions bearing directly upon the standard to be applied where the testimony of a minor victim, or the statements relied upon by the prosecution, are shown to suffer from material contradictions:

(a) In **P. Yuvaprakash v. State rep. by Inspector of Police, (2024) 17 SCC 684**, the Hon’ble Supreme Court held that where the victim's own statement under Section 164 Cr.P.C. gives a version materially at variance with the graver charge levelled by the prosecution, and is not shown to have been obtained under tutoring, coercion, or compulsion, the courts below cannot simply discard it; the prosecution must, at the very least, examine the Magistrate who recorded it before asking the court to disbelieve it. Acting on this reasoning, the Supreme Court set aside the conviction under Section 6 of the POCSO Act.

(b) In **Nirmal Premkumar & Anr. v. State rep. by Inspector of Police (2024) 20 SCC 293** Hon'ble the Supreme Court held as under:

> *"23. In Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , this 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: (SCC p. 138, paras 31-32)*
>
> > *"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."*
>
> *24. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the*

prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."

Further Hon'ble Apex Court held that although the solitary testimony of a victim of a sexual offence is ordinarily sufficient to sustain a conviction, this rule cannot be stretched to sustain a conviction where that testimony is found unreliable on account of identified contradictions, flaws, and lacunae. The Court emphasised that evidence "damaged by inadequacies from the outset", evident in contradictions within statements and testimonies, cannot be permitted to imperil an accused's liberty and reputation, particularly given the severe and irreversible consequences of a POCSO conviction, and set aside the conviction accordingly.

(c) In **Manojbhai Jethabhai Parmar (Rohit) v. State of Gujarat (2025) SCC Online SC 2803** Hon'ble the Supreme Court held as under:-

"***65.*** *In the present case, it is manifest that the Investigating Officer had ample opportunity to secure and preserve crucial forensic material, particularly by securing samples necessary for conducting DNA profiling of the child victim and the accused-appellant. Such scientific examination, now an integral component of modern criminal investigation, would have provided objective corroboration and materially assisted in ascertaining the truth. However, no effort was made to obtain or preserve such forensic material. This omission, whether arising from negligence or otherwise, assumes significance in light of the seriousness of the allegations. The failure to pursue an available and reliable scientific avenue not only weakens the prosecution's case but also raises a legitimate apprehension that the investigation may not have been carried out with the requisite fairness and diligence. In the circumstances, the possibility that such inaction was*

intended, or at least operated, to shield the actual perpetrators of the offence cannot be ruled out. Such lapses ex facie undermine the credibility of the prosecution's case and strike at the foundational requirement that every investigation must be fair, diligent, and oriented solely towards the discovery of truth.

66. *The admitted sequence of facts narrated above clearly indicates something very fishy and unnerving in the manner in which, the entire prosecution story has been unfolded. In face of such grave allegations, the rank apathy of the Investigating Officers in not conducting expeditious and diligent investigation, should have been sufficient to put the Courts below on guard and become cognizant of the fact that something was really amiss in the case presented for trial. However, sadly, neither the trial Court nor the High Court, adverted to these glaring shortcomings in the case and mechanically accepted the case of prosecution even though the conduct of the material witnesses (of last seen together circumstance) was sufficient to raise a strong suspicion that they might have been the actual perpetrators of the crime.*

67. *It is imperative to state that during the trial, the child victim was herself examined as (PW-18) however, she could not give any evidence whatsoever to connect the accused-appellant with the crime. She could not even identify the accused-appellant as the assailant. She further stated that she was tutored by her mother. Hence, this significant point was also missed by the trial Court before convicting the accused-appellant.*

Thus, the material omissions in the FIR of facts admittedly within the informant's knowledge seriously erode the credibility of the prosecution case, and that contradictions and unnatural conduct in the witnesses relied upon by the prosecution render their testimony unreliable. The Court cautioned that sympathy for a child victim, however compelling, cannot substitute for proof beyond reasonable doubt, and set aside a conviction that had subsisted for nearly thirteen years.

14. The common thread running through these decisions is that the testimony of a minor victim, and the statements of witnesses relied upon to corroborate it, must be of "sterling quality" to sustain a conviction of the gravity contemplated by Section 6 of the POCSO Act and Section 376-AB IPC; that a statement under Section 164 Cr.P.C., where genuine, cannot be brushed aside merely because it does not suit the prosecution; and that the benefit of any real and unresolved contradiction must enure to the accused, however grave the offence alleged and however natural the court's sympathy for the victim. This Court is guided by these principles in evaluating the evidence in the present case.

15. On the question of delay, this Court is unable to accept the trial court's finding that the five-day delay in lodging the FIR stood satisfactorily explained. The explanation offered by the prosecution is internally inconsistent while the victim is said to have informed her mother on the day of occurrence or after one day,itself, the informant told the treating doctor that she learnt of the matter only two days thereafter; the identity and whereabouts of the informant's husband, said to necessitate the delay, remain unestablished by any reliable evidence; and the report itself was scribed not by the husband but by the informant's brother-in-law. Where the delay is sought to be explained by shifting and mutuallyinconsistent versions, it cannot be said to have been "duly explained" within the meaning attributed to that phrase by the trial court.

16. Equally significant is the fact that the FIR, as originally registered, made no allegation of penetrative sexual assault, invoking only Section **354 IPC and Section 10 of the POCSO Act.** The graver charge came to be added only during investigation. While this circumstance, by itself, may not be

conclusive, it is a material fact bearing on the truthfulness of the prosecution version which the trial court ought to have, but did not, take into account.

17. The contradictions in the testimony of PW-2, as to whether she witnessed the victim leave for the appellant's house, as to the precise time of occurrence, as to the date of lodging the FIR, and as to her own presence at the recording of the victim's statement under Section 164 Cr.P.C. (a fact falsified by the record of that very statement) are not minor lapses of memory. They go to the heart of the informant's reliability as a witness, and, more importantly, raise a real and substantial possibility that the victim, examined at the age of four and again, years later, at the age of six, had the opportunity to be tutored by her mother, with whom she remained in constant company. The discrepancy in the Section 164 statement as to the identity of the person named therein "Suraj", ***grandson of accused "Baladeen***" as against the accused, Swamideen, and the conflicting versions as to whether the occurrence took place by day or by night, reinforce rather than dispel this doubt. Applying the test laid down in ***Nirmal Premkumar*** (supra), this testimony cannot be said to be of the "sterling quality" required to sustain a conviction of this gravity; and, following ***P. Yuvaprakash*** (supra), the victim's Section 164 statement, not having been shown to be tutored or involuntary on any cogent material beyond the informant's own bare assertion, cannot be brushed aside where it detracts from the prosecution's case.

18. The word used by the victim to describe the act was never clarified in evidence, and the trial court's judgment is silent on what, precisely, this term was understood to mean or how it was found to satisfy the ingredient of penetration required to sustain a

conviction under Section 5/6 of the POCSO Act or Section 376-AB IPC. A conviction for so grave an offence, entailing so severe a sentence, cannot rest on an unclarified and ambiguous description of the act.

19. The medical evidence of PW-3 does not advance the prosecution case. The internal genital examination disclosed a normal hymen with no injury or swelling, and no corroboration is forthcoming from the forensic report. While the absence of injury is not, by itself, destructive of a POCSO prosecution, in the facts of this case, where the medical evidence stands entirely neutral, where there are serious contradictions in the ocular evidence, and where an unrebutted alibi has been set up, the absence of corroboration assumes considerable weight. As held in ***Manojbhai Jethabhai Parmar*** (supra), whatever sympathy the facts of a case involving a child victim may command, that sympathy cannot substitute for proof beyond reasonable doubt, and gaps of this nature in the prosecution's evidence cannot be filled by the gravity of the accusation alone.

20. This Court finds that the trial court has not accorded due consideration to the defence of alibi. The documentary evidence produced by the defence, the out-patient registration record of Sadguru Netra Chikitsalaya, Chitrakoot, bearing code DTDREF 2204 dated 05.12.2021 and others medical treatment papers of Sadguru Hospital, read with the corroborating testimony of DW-1 and DW-2, establishes a plausible and unrebutted case that the appellant was away from the place of occurrence, undergoing eye treatment at Chitrakoot, on the date of the alleged incident. The medical treatment was provided to the accused between 05.12.2021 to 10.12.2021 and number of papers/documents evidence has been submitted by the defence with list of

documents. It is well settled that defence evidence is not to be viewed with suspicion or treated as inherently inferior to prosecution evidence; where it is cogent, reliable, and unshaken in cross-examination, it must be weighed on the same footing as the evidence led by the prosecution, and it is enough if it renders the prosecution version doubtful, without the defence being required to prove the alibi to the hilt. Thus the presence of accused is said to be in the hospital at Chitrakoot, the distance between district Hamirpur and Chitrakoot is about 150 kilometers. The prosecution led no evidence in rebuttal of this documentary material, and the trial court's judgment does not reflect any independent evaluation of its evidentiary worth. This constitutes a serious infirmity in the impugned judgment. The representation 37-B, dated 12.12.2021, made by residents of the village to the police prior to the appellant's arrest, lends further, contemporaneous, support to the defence version and could not have been ignored.

21. In ***Yogesh Singh vs. Mahaveer Singh (2017) 11 SCC 195***, Hon'ble Supreme Court relying on Panchhi Vs. State of U.P. (1998) 7 SCC 177 held that:

> *"it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring."*

22. In ***Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793)***. the landmark observation of Hon'ble Apex Court is as under:-

> *"The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace*

> *every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community."*

23. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof, and that the prosecution is required to establish the guilt of the accused beyond reasonable doubt by cogent, credible and reliable evidence. Where two views are reasonably possible on the evidence on record, the view favourable to the accused must be adopted. This is precisely the position reaffirmed by the Supreme Court in **Nirmal Premkumar** (supra), **P. Yuvaprakash** (supra), and **Manojbhai Jethabhai Parmar** (supra), that a conviction of the gravity contemplated by the POCSO Act cannot rest on the testimony of a minor victim, or on statements relied upon to corroborate it, once that testimony is shown to be riddled with material, unresolved contradictions, that a genuine Section 164 Cr.P.C. statement cannot be discarded merely because it is inconvenient to the prosecution, and that sympathy for a child victim, however natural, cannot substitute for proof beyond reasonable doubt. In the present case, the cumulative effect of the unexplained and inconsistently explained delay in lodging the FIR, the absence of any allegation of penetrative assault in the original report, the material contradictions and improvements in the testimony of the informant, the real possibility of tutoring of a child witness examined years apart, the discrepancy of identity and time in the Section 164 statement, the unclarified description of the alleged act, the absence of medical or forensic corroboration, and the cogent and unrebutted defence of “alibi” supported by contemporaneous

documentary evidence, leads this Court to the conclusion that the prosecution has failed to prove the charge against the appellant by cogent and reliable evidence, and that the appellant is entitled to the ‘benefit of doubt.’

24. For the reasons recorded above, this Court is of the considered view that the prosecution has failed to prove the charge against the appellant beyond reasonable doubt, and that the finding of guilt recorded by the trial court, and the consequent conviction of the appellant under Section 6 of the POCSO Act, cannot be sustained in law.

25. The criminal appeal is **allowed.**

26. The judgment and order of conviction dated 09.12.2025 and the order of sentence dated 10.12.2025, passed by the Additional District Judge/Special Judge, POCSO Act, Hamirpur, in Session Case POCSOACT No. 108 of 2022 (State vs. Swamideen), arising out of Case Crime No. 417 of 2021, Police Station Sumerpur, District Hamirpur, are hereby **set aside.**

27. The appellant, Swamideen, is acquitted of the charges under Section 376-AB IPC and Section 6 of the POCSO Act, 2012. The appellant, if in custody in connection with the present case and not required in any other case, shall be released forthwith.

28. The fine, if already deposited by the appellant, shall be refunded to him in accordance with law. Any bail bonds/personal bonds furnished if any shall stand discharged.

29. The trial court record be sent back ‘forthwith’ to the trial court, along with a copy of this judgment, for information and necessary compliance.

30. The trial court is directed to submit its compliance report within two months from the date of receipt of this order. Furthermore, Registry is also directed to place the compliance report on record.

31. There shall be no order as to costs.

32. Register (compliance) is directly to communicate this order to the concerned trial court through district and Sessions Judge within 24 hour.

33. Before parting with this judgment, this Court records its appreciation for the sincere assistance rendered by the Research Associates, Mr. Shivansh Pandey and Mr. Sandeep Kumar Singh, in researching the legal issues involved and assisting in the preparation of this judgment. Their efforts are gratefully acknowledged.

(Santosh Rai,J.)

July 21, 2026
(Asha)

Digitally signed by :-
ASHA
High Court of Judicature at Allahabad