

**A.F.R.**

**Reserved** on 05.04.2022.

**Delivered** on 07.07.2022.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW BENCH, LUCKNOW

Case :- CRIMINAL APPEAL No. - 2422 of 2008

Appellant :- Shrawan Kumar Maurya

Respondent :- State of U.P.

Counsel for Appellant :- Mr. Anurag Shukla (Amicus Curiae)

Counsel for Respondent :- Government Advocate.

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Mrs. Saroj Yadav, J**

**(Per Mrs. Saroj Yadav, J. for the Bench)**

1. This Criminal Appeal has been filed against the judgment and order dated 16.09.2008 passed in Sessions Trial No.796 of 2006, arising out of Crime No.50 of 2006, under Section 376 of Indian Penal Code,1860 (in short I.P.C.), Police Station Machhrehta, District Sitapur passed by by Additional District and Sessions Judge, Court No.8, Sitapur whereby the convict/appellant was held guilty for the offence punishable under Section 376 of I.P.C. and sentenced to life imprisonment. The trial court also directed the convict/appellant to pay Rs.25,000/- as compensation to the victim.

2. The facts necessary for disposal of this appeal, shorn of unnecessary details are as under:-

(i) A First Information Report (in short FIR) was registered at Case Crime No.50 of 2006, under Section 376/452 of I.P.C. at Police Station Machhrehta District Sitapur on the basis of written report presented by the complainant Shyamlal. It was narrated in the written report that on 19.03.2006 at about 12:30 PM his daughter (x) aged about one year was playing on the platform situated in front of his house. Shrawan Kumar Maurya, resident of the village of complainant picked up her on the pretext of giving her toffee. He (convict) took the victim in his thatched house and committed rape on her. Upon hearing the cry of the girl Sharadendu Dixit, resident of the same village, Suman wife of the complainant and Ram Kishore, brother-in-law of the complainant reached on the spot, then the convict/appellant ran away. The condition of his daughter was serious.

(ii) The FIR was registered on 19.03.2006 on the date of incident at about 3:15 PM. Investigation started, the girl was medically examined on the same day at about 6:30 PM at Dufirin Hospital, Sitapur. After investigation a chargesheet under Section 376 of I.P.C. was submitted against the convict/appellant in the Court of Magistrate concerned. The Magistrate concerned took cognizance and committed the

case for trial to the Court of sessions. The Court of Sessions framed charge under section 376 of I.P.C. against the convict/appellant. He denied the charge and claimed to be tried.

(iii) The prosecution in order to prove its case examined nine witnesses in toto, which are as under:-

1. P.W.1 Shyamlal, complainant and father of the victim girl.
2. P.W.2 Smt. Suman, an eyewitness and the mother of the victim girl.
3. P.W.3 Sharadendu Dixit an eyewitness.
4. P.W.4 Head Moharrir Dinesh Bahadur Singh, who registered FIR and has proved the chick FIR and concerned G.D.
5. P.W.5 Sub-Inspector, Babau Upadhyaya, who is the 3<sup>rd</sup> Investigation Officer (in short I.O.) who finally submitted the chargesheet against the convict/appellant.
6. P.W.6 Dr. Suman Mishra, who medically examined the victim on the date of incident itself.
7. P.W.7 Sub-Inspector Abdul Haleem who initially investigated the case.
8. P.W.8 Inspector Harilal Kardam, who is the second I.O. of the case.
9. P.W.9 Dr. Ashish Wakhlu who performed surgery on the victim girl.

(iv) Apart from oral evidence, the relevant documents have also been proved by the prosecution which are as under:-

- a. Exhibit Ka-1 written report.
- b. Exhibit Ka-2 Chick FIR.
- c. Exhibit Ka-3 Carbon copy of the concerned G.D.
- d. Exhibit Ka-4 Chargesheet.
- e. Exhibit Ka-5 Medico Legal report of the victim girl.
- f. Exhibit Ka-6 Site plan of the place of occurrence.
- g. Exhibit Ka-7 Surgical report of the victim girl.
- h. Exhibit Ka-8 Letter to Superintendent Gandhi Memorial and Associate Hospital, Lucknow.

(v) After completion of prosecution evidence statement of the convict/appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.), wherein he denied the crime and has stated that all the evidence is false. He also stated that the case was registered due to the enmity at the behest of Sharadendu Dixit because Sharadendu Dixit wanted him to work, in his field forcibly, when he denied, some altercations took place then he (Sharadendu Dixit) said that he would implicate him (convict) in a false case. No defence witness was produced by the convict/appellant though opportunity was given by the trial court.

3. Heard Mr. Anurag Shukla, learned Amicus Curiae on behalf of appellant and Mr. Dhananjay Kumar Singh, learned Additional Government Advocate for the State-respondent.

4. Learned counsel for the convict/appellant argued that the trial court has erred in convicting and sentencing the convict/appellant, because the place of occurrence has not been proved. The FIR is ante *-time* as the alleged time of occurrence is 12:30 PM on 19.03.2006 and the FIR was lodged on the same day at 3:15 PM and victim was medically examined at 6:30 PM.. The conduct of family members of the victim was unnatural because no person shall leave her 10 months old child unattended at the platform. As per prosecution story the child was seriously injured, but she was not taken to the hospital first. She was taken to the hospital for medical aid after six hours. The victim who is so seriously injured would not survive for such a longtime. Injury report shows that there was fresh bleeding at 6:30 PM with clotted blood. In six hours blood would dry after coagulation. There is no whisper, how and when informant did receive information about the incident when he was on his field. He further argued that allegedly the rape was committed on earth, but not a single bruise or redness was found on the back of the child. The offence as has been alleged cannot possibly be committed by a man on such a

small child. He further argued that in the FIR there is nothing that anybody saw the convict/appellant committing the crime, but subsequently the witnesses have improved their versions before the trial court. No evidence is there on the record about giving the medical aid to the victim after six hours. The compliance of section 53 and 54 of Cr.P.C. was not made by the Investigating Officer. In fact the girl got injured after falling on a picket of roof of “Arhar Plant” and the convict was falsely implicated at the behest of Sharadendu Dixit. Hence the impugned judgment and order should be set-aside.

5. Learned Amicus Curiae, relied upon the following case laws:-

**1. *Brathi alias Sukhdev Singh Vs. State of Punjab 1991 (1) SCc 519.***

**2. *Nirmal Singh Kahlon Vs. State of Punjab 2009 (1) SCC 441.***

**3. *Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and another 2003 (7) SCC 749.***

**4. *Bhikari Vs. State of Uttar Pradesh 1966 AIR SC 1.***

**5. *Rahim Beg and another Vs. State of U.P. (1972) 3 SCC 759.***

6. Contrary to it, learned A.G.A. argued that the prosecution has proved its case beyond all reasonable doubts. The incident was

witnessed by the mother of the victim girl, an independent eye witness Sharadendu Dixit who reached at the place after hearing the cry of the victim girl. The ocular account given about the incident is consistent with the medical evidence. Medical examination of the victim girl was done on the same day and serious injuries were found on the private parts of the victim girl. The lady doctor who conducted the medical examination of the victim girl has been examined as P.W.6 and she has proved all the injuries found on the private parts of the victim girl and has also said in cross-examination that in her opinion the injuries found on the body of the victim girl would only be possible due to the rape committed on her and such injury cannot occur by fall on any article or sharp-edged object. The girl was so seriously injured due to the alleged criminal act of the convict that she was subjected to surgery and that has been proved by P.W.9 Dr. Ashish Wakhlu . Hence there is no error in the impugned judgment and order and the appeal should be dismissed.

7. Considered the rival submissions, perused the original record of trial court and gone through the case laws cited. The facts as well as the evidence available on record show that this unfortunate incident occurred with a girl aged about 11 months, who is unable to understand and speak anything about the crime.

Allegedly the incident occurred on 19.03.2006 at about 12:30 PM. The victim girl was playing at the platform situated in front of her house and she was picked up by the convict from there. The convict took her in his thatched house and committed rape on her. Hearing the cry of the innocent and helpless child the mother of the child P.W.2 and one independent witness Sharadendu Dixit, resident of the same village reached at the spot and witnessed the incident. An FIR of the crime was lodged on the same day at about 03:15 PM and the girl was medically examined on the same day at about 6:30 PM. In the medical report of the victim Exhibit Ka-5, the following observation has been made by the doctor:-

***"Physical exam.** 77 cm length, wt 9 kg. Teeth 4/4 No marks of injury present anywhere in body.*

***Local exam-** Hymen torn bleeding out. Post vag wall tear present at 8 O'clock position complete P tear at 6 O'clock position.*

***Internal Examination-** (1) Complete P tear size 3 cm x 1 cm x communicating with rectum clotted blood present with fresh bleeding at 6 O'clock position.*

*(2) Post Vag. wall torn extending up to post. fornix x 4 cm x 1 cm x muscle deep situated at 8 O'clock. Vag smear prepared. sent to pathologist for evidence of spermatozoa. Above examination done in presence of Surgeon Dr. Bhardwaj, a paediatrician, Dr. S.P. Singh and anaesthetist Dr. V.P. Singh.*



*Adv. She is referred to KGMC for further manggement adv  
X-ray elbow wrist with both hands for age determination.*

*Supplementary report is awaited."*

8. P.W.1 father of the victim girl and the complainant has proved his written report as Exhibit Ka-1. He stated before the trial court that incident occurred about ten and half months ahead at about 12:30 PM during day. His daughter was about one year old at the time and she was playing outside the house on the platform. His wife and brother-in-law Ram Kishore were present in the house. The convict took her daughter and committed rape on her. Upon hearing the cry of the girl, his wife Suman, brother-in-law Ram Kishore and independent witness Sharadendu Dixit reached at the spot, then Shrawan Kumar Maurya, convict ran away leaving his daughter in injured condition. His wife, bother-in-law and independent witness Sharadendu Dixit had told him the whole incident. Thereafter he got written the report Exhibit Ka-1 by Sharadendu Dixit, who wrote the report on his (complainant's) dictation and read-over the same to the complainant, then he affixed his thumb impression on that and lodged the FIR in the police station.

9. He has further stated that after registering the FIR his injured daughter was sent to hospital alongwith police personnel,

whereupon medical examination of the girl was conducted in the presence of his wife at female Hospital Sitapur. He has further stated that at the time of incident he was working in the field alongwith other family members and neighbours. He and other persons also reached at the spot and saw that his wife was weeping keeping the victim girl in her lap. When he asked, she told him about the incident and he saw that the blood was oozing out from the private parts of the girl. This witness is not the eye witness of the incident, he lodged the FIR of the crime upon the narrations made by the eye witnesses i.e. his wife, Sharadendu Dixit and his brother-in-law who reached at the spot after hearing the cry of the girl. Smt. Suman is the mother of the victim. She has stated in the Court as P.W.2 that at the time of incident her daughter was 11 months old, she could not speak. The incident occurred about 11 months ahead at about 12:00 O'clock in the day, her daughter was playing at the platform in front of the house and she (witness) was brooming in the courtyard of her house. The accused Shrawan Kumar Maurya, present in the Court took her daughter on the pretext of giving toffee and committed rape on her. The girl cried and when she heard the cry of the girl she came out of the house, at the same time Sharadendu Dixit and her brother-in-law was also reached at the spot after hearing the cry of the girl. All the three

persons reached the spot and saw that accused Shrawan Kumar Maurya was committing rape on her daughter. They all saw the accused committing the rape on her daughter and recognized him very well. When they reached at the spot, accused Shrawan Kumar Maurya ran away towards south, leaving the girl there. The condition of the girl was serious and she was unconscious. Thereafter she went to Police Station about after one to two hours alongwith her husband. Her husband presented an application at the police station and lodged the FIR. Her daughter was medically examined at female hospital Sitapur. Thereafter her daughter was referred to Medical College as her condition was serious. She remained admitted for eight days there. Thereafter her treatment continued for about 7 months. Her (witness') statement was recorded by the Investigating Officer. In the cross-examination of this witness no major contradiction has occurred. Witness has proved the incident and denied the suggestion that accused was implicated falsely at the behest of Sharadendu Dixit.

10. Sharadendu Dixit has been examined as P.W.3, who is an independent eye witness and resident of the same village. He has stated before the Court that on 19.03.2006 at about 12:30 PM during the day he heard a cry of the victim-girl. At that time he was coming back from his grove to his house. The cry was coming

from the house of Shrawan Kumar Maurya, the accused. After hearing the cry, he reached at the spot and saw that accused Shrawan Kumar Maurya was committing rape on the victim girl under the thatch of his house. At the same time, Suman mother of the girl and Ram Kishore the brother of Suman also reached there and they all witnessed Shrawan Kumar Maurya committing rape on the victim girl. When accused Shrawan Kumar Maurya saw them, he left the girl and ran away. The blood was oozing out from the private parts of the girl and she was in unconscious state. He has further stated that he scribed the report of the incident at the dictation of wife of Shyamlal. He wrote whatever was dictated to him by the wife of Shyamlal. Thereafter he read over the same to Shyamlal, thereafter Shyamlal affixed his thumb impression on that. Thereafter Shyamlal and his wife alongwith their girl went to police station. This witness has proved the written report Exhibit Ka-1 as written in his own handwriting. This witness has further stated that the I.O. recorded his statement about the incident. This witness has also been cross-examined at length by the learned counsel for the convict / appellant, but nothing adverse has come out in his cross-examination. This witness has also denied the suggestion put by defence counsel that he has deposed in the case

due to enmity with the accused. He has also denied the suggestion that the girl was injured by falling on a picket of root 'Arhar plant'.

11. Both these two witnesses of facts have proved the incident committed by the convict/appellant. In the lengthy cross-examinations made by the defence counsel nothing adverse can be brought in their evidence. The medical evidence is in corroboration of and consistent with the ocular evidence.

12. P.W.6, the lady doctor who medically examined the victim girl has proved its medical report as Exhibit Ka-5. In the cross-examination she has denied the suggestion that girl got injured by falling on some hard and sharp edged object. This witness has clearly stated that such type of injury could occur due to rape.

13. P.W.4 Head Moharir Dinesh Bahadur Singh has proved the chick FIR and concerned GD and stated before the Court that the case was registered by him on the basis of the written report presented by the complainant who came there to lodge the FIR. This witness has proved chick FIR as Exhibit Ka-2 and concerned GD as Exhibit Ka-3 written in his own hand writing. This witness has further stated that after lodging the FIR he gave the copy of the same to the complainant and sent the victim girl alongwith Constable 453 Shiv Sharma to Sitapur Hospital for medical

examination and thereafter handed over the 'Nakal Chick' and carbon copy of 'Nakal Rapat' to Sub Inspector Abdul Haleem for investigation who recorded his statement.

14. Sub Inspector Abdul Haleem who initially investigated the case has been examined as P.W.7. He has proved the part of the investigation conducted by him. He has stated in examination-in-chief that on 19.03.2006 he was posted at Police Station Machhrehta as Sub Inspector. On that day the Case Crime No.50 of 2006 under Section 376 and 452 of I.P.C. was entrusted to him for investigation. 'Nakal Chick' and carbon copy of 'Nakal Rapat' was given to him. The case was registered in his presence. The girl was sent for medical examination and treatment. He recorded the statement of Head Moharir Dinesh Bahadur Singh on the same day at the Police Station, thereafter he reached at the spot where the incident occurred.

15. Thereafter S.O. Harilal Kardam reached the spot alongwith force and he took over the investigation. Inspector Harilal Kardam has been examined as P.W.8. He has stated before the trial court that the case was registered in his absence for that reason Sub Inspector Abdul Haleem was entrusted with the investigation. When he came back at Police Station and took over the

investigation. He got the medical report of the victim girl on 20.03.2006. He made an entry of the same in the case diary. Inspected the place of occurrence and prepared the site plan in his own hand writing and signature, which is correct. This witness has proved the site plan as Exhibit Ka-6. He has further stated that he arrested accused Shrawan Kumar Maurya on 21.03.2006 and recorded his statement and he confessed the crime. After this stage of investigation he was transferred from the police station.

16. Thereafter the investigation was taken over by Sub-Inspector Babau Upadhyay who completed the investigation and submitted the chargesheet against the accused under Section 376 of I.P.C. and has proved the same as Exhibit Ka-4. Sub-Inspector Babau Upadhyay has been examined as P.W.5.

17. By the evidence of P.W.2 and 3 who are the eye witnesses of the incident and evidence of formal witnesses, the charge framed against the accused has been proved beyond reasonable doubt. The medical evidence is in corroboration of the ocular account given by the eye witnesses.

18. The argument raised by learned Amicus Curiae on behalf of the convict/appellant that the place of occurrence has not been proved is not tenable at all. The place of occurrence has very well

been proved by the eye witnesses P.W.1 & 2 as well as by Investigating Officer who prepared the site plan of the spot. The site plan as Exhibit Ka-5 is on the record, wherein the place of committing the crime has been shown and proved by the Investigating Officer who has prepared the site plan of the place of occurrence.

19. Learned counsel for the defence submitted that not a single drop of blood was found at the spot where the rape was allegedly committed. Mere absence of blood on the place of incident where the alleged incident took place will not make the whole incident untruthful when the trust-worthy ocular evidence as well as medical evidence is there, about the incident.

20. In the case *State of Rajasthan Vs. Satya Narain (1998) 8 SCC 404* the Hon'ble Apex Court has held that merely because of absence of blood at the place of occurrence, the occurrence of the incident itself cannot be doubted.

21. The contention of the learned Amicus Curiae that FIR is *ante -time* is also not tenable because as per the evidence available on record the incident occurred on 19.03.2006 at about 12:30 PM and the FIR was lodged on the same day at about 3:15 PM. The



FIR was well within a reasonable time and cannot be termed as *ante-timed*.

22. Learned counsel for the *Amicus Curiae* submitted that conduct of the family members of the child was unnatural and unbelievable because they did not take the injured girl to the hospital whose condition was serious instead they first went to the police station, this creates a serious doubt. This contention of the learned *Amicus Curiae* have no force, because generally in the cases where the injury has been received as a result of crime the person goes first to inform the police or lodge the FIR. So the conduct of the family members of the victim cannot be termed as unnatural, specially when they are of village and illiterate persons.

23. The argument of the learned *Amicus Curiae* that convict was not medically examined as is mandatory under Section 53 and 54 of Cr.P.C. and this goes against the prosecution. The mere non-examination of the accused medically after the incident cannot create the clouds of doubts on the evidence of eye-witnesses well supported with medical evidence specially when the accused was arrested after two days of the incident. Further more in Section 53, 53A and Section 54 of Cr.P.C. related provisions were amended

and made effective on 23.03.2006, while this incident occurred on 19.03.2006.

24. The case law cited by the learned Amicus Curiae in *Nirmal Singh Kahlon Vs. State of Punjab* (supra), wherein in paragraph 28 on which the amicus relied upon the following law has been laid down by the Hon'ble Apex Court, which reads as under:-

*"28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a central agency which has acquired specialization in such cases."*

This case law is of no help to the convict/appellant as there is nothing on record to show that fair investigation was not made or the accused was not afforded fair opportunity to defend himself or fair trial was not made. Rest of the case law cited by learned

Amicus Curiae is not applicable in the matter due to the difference of facts and circumstances of the case.

25. To sum up, in the present matter the incident has been proved by the eye-witnesses P.W.1 and P.W.-2 supported with medical evidence beyond all reasonable doubt against the convict/appellant. The trial court has committed no error in holding the accused guilty and sentencing him to imprisonment for life, coupled with a direction to give Rs.25,000/- to the victim girl as compensation. There appears no reason to interfere with the judgment and order passed by the learned trial court.

26. The appellant Shrawan Kumar Maurya is stated to be in jail, accordingly he shall serve out the sentence awarded by the trial Court.

27. The appeal is *dismissed*, accordingly.

28. Mr. Anurag Shukla, learned Amicus Curiae for the appellant shall be paid his remuneration from Legal Services Sub-Committee of this Court as permissible under the Rules.

29. Office is directed to send a copy of this order along with the lower Court record to the trial Court concerned for necessary information and compliance forthwith.

**(Mrs. Saroj Yadav, J.) (Ramesh Sinha, J.)**

**Order Date :- 07.07.2022**  
A.K.Singh