

(2025) 12 UK CK 0060

Uttarakhand HC

Case No: Criminal Jail Appeal No. 172 Of 2023

Manoj

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Indian Penal Code, 1860 - Section 323, 376(2), 506
- Protection Of Children From Sexual Offences, Act, 2012 - Section 5(l)(d), 6, 42
- Code Of Criminal Procedure, 1973 - Section 164, 313

Hon'ble Judges: Pankaj Purohit, J

Bench: Single Bench

Advocate: Sheetal Selwal, Pushpa Bhatt, S.C. Dumka, Sweta Badola Dobhal

Final Decision: Allowed

Judgement

Pankaj Purohit, J

1. This Appeal is preferred by appellant from Jail assailing the judgment and order dated 15.11.2023, passed by learned FTC/Additional Sessions/Special Judge POCSO, Rudrapur, Udham Singh Nagar in Special Sessions Trial No.150 of 2019, *State of Uttarakhand Vs. Manoj*, whereby, the appellant-Manoj was convicted under Sections 376(2) and 506 IPC, and sentenced to undergo ten years' rigorous imprisonment with fine of Rs.10,000/- with default stipulation further two months' additional rigorous imprisonment under Section 376(2) IPC; two years' rigorous imprisonment with fine of Rs.2,000/- with default stipulation further 15 days additional rigorous imprisonment under Section 506 IPC; the appellant was further convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, however, at the time of conviction, as per Section 376(2) IPC, the punishment prescribed for the offence is more severe than the POCSO Act, 2012 for similar aggravated offences; under Section 42 of the 2012 Act, where there is a conflict between punishments prescribed under IPC and POCSO Act, the greater punishment shall prevail. Therefore, since section 376(2) of IPC, 1860, prescribes a harsher punishment for the offence, the sentence has been imposed under

section 376 (2) and no separate punishment has been awarded for the offence under section 6 of the POCSO Act, 2012. All the sentences were directed to run concurrently and any period of incarceration during trial shall be set off with the punishment.

2. According to the prosecution case, the victim, a minor girl who was the step-daughter of the accused-appellant, lodged a First Information Report at Kichha Police Station on 18.04.2019, alleging that on the night of 17.04.2019, her step-father had quarreled with her and thereafter committed rape and aggravated penetrative sexual assault. She reported the incident promptly the next day, seeking legal recourse. The Investigating Officer, based on the FIR, carried out a careful investigation. During this process, the victim's clothes, vaginal swab, vaginal smear slide, and pubic hair were seized and sealed. The appellant was arrested, and his penile swabs, clothes and blood sample were collected under seal. A formal charge-sheet was filed under Sections 376(2), 323, 506 IPC and Section 5(l)(d)/6 of the POCSO Act. On 27.07.2019, the charges under Sections 376(2), 506 IPC and under Section 6 POCSO Act were framed upon appellant in the trial court and the appellant pleaded not guilty.

3. During trial, the prosecution examined as many as eight witnesses, *namely*, PW-1 Dr. Kanak Banodha, PW-2 the victim, PW-3 victim's mother, PW-4 victim's maternal uncle, PW-5 victim's grandmother, PW-6 Smt. Sunita Yadav (teacher), PW-7 Sub-Inspector Babita Goswami, and PW-8 Head Constable Naresh Singh Samant. Additionally, the prosecution produced documentary evidence: medical report (Exhibit P-1), FIR (Exhibit P-2), victim's statement recorded under Section 164 Cr.P.C. (Exhibit P-3), School/SR register (Exhibit P-4), arrest memo (Exhibit P-5), site-plan (Exhibit P-6), charge-sheet (Exhibit P-7), and the FSL / DNA report (Form 23A/6-23A/7).

4. Thereafter, the statement of accused-appellant was recorded under Section 313 Cr.P.C. in which he denied the allegations leveled against him by stating that he has falsely been implicated in a false case due to personal enmity and stated that he is innocent.

5. The following is a consolidated account of the testimonies of all the witnesses examined in this case:

- **PW-1, Dr. Kanak Banodha**, testified that she examined the victim on 18.04.2019. On external examination, she found no fresh external injuries but noted that the hymen was torn. With consent from the victim's grandmother, she conducted an internal examination but observed no internal injuries. She stated that she sealed the vaginal swab, smears slide, pubic hair, and the victim's clothes, and handed them over to a lady constable in the presence of other officials. Under cross-examination, she frankly admitted that a torn hymen could also result from certain sports or physical activity, but maintained that in this case her procedure for collection, sealing, and documentation was proper and regular.

- **PW-2, the victim**, initially gave a detailed account of her relationship with the appellant, describing domestic quarrels and conflicts while living with her mother and step-father and commission of rape against her by her step-father. However, in examination-in-chief, she

recanted material portions of her earlier statements and turned hostile. She stated, that the complaint she had dictated to a typist, which contained allegations of long-term sexual assault, was signed without her fully understanding the content, and that she never actually told the typist about any “evil intentions” or acts of rape by the appellant. She further asserted that her earlier Section 164 Cr.P.C. statement had been made under fear of the police and was not voluntary. She denied having consented to any physical intimacy, and despite repeated questioning, maintained that she was neither coached nor influenced by her grandmother or uncle to fabricate allegations. In effect, PW-2 disowned her prior incriminating statements and denied any occurrence of sexual assault by the appellant.

- **PW-3, the victim’s mother**, similarly turned hostile during her testimony. She acknowledged accompanying the victim’s grandmother to the police station but asserted that she had never been informed directly by her daughter about any sexual assault. She stated that although the appellant had insulted or threatened her in the past, she had no knowledge of him committing any physical acts against her daughter. Under cross-examination, she firmly denied any admissions or disclosures by the child regarding sexual misconduct. Her hostile stance further undermined the prosecution’s claim that the victim had confided the assault to her family.

- **PW-4, the victim’s maternal uncle**, gave corroborative testimony. He said that after the incident, he learned from neighbors (including the landlord) that something was amiss, and was later told by the victim that she had been sexually assaulted by the appellant. He accompanied the victim and her grandmother to the police station to lodge the report and later to the hospital for her medical examination. He testified that he never witnessed overt physical violence, but the victim’s emotional state convinced him that her allegations were genuine. On cross-examination, he denied that she was inventing the story or making it up to settle personal scores.

- **PW-5, the victim’s grandmother**, testified that she lived close to the appellant’s rented house, and that the victim confided her fears and allegations to her. She said that on at least one occasion, following a quarrel, the victim came to her house and disclosed that she had been beaten and sexually violated by the step-father. She admitted that she could not fully understand legal terms (being illiterate), but maintained that the victim’s account was sincere and consistent. Cross-examination did not shake her conviction in her granddaughter’s truthfulness.

- **PW-6, Smt. Sunita Yadav**, a teacher, testified about the victim’s academic record and age. She stated that the victim was admitted to her school in Class 9 on 17.05.2016, and produced the Transfer Certificate (TC) from her previous school, which recorded the date of birth as **24.04.2003**. She also referred to the school register (Exhibit P-4), which bore the same date. She acknowledged that she had not independently verified the earlier school’s records beyond what was presented, but insisted her testimony was based on genuine school documents, not recollection.

- **PW-7, Sub-Inspector Babita Goswami**, described the investigative process in detail. She testified that she registered the FIR on 18.04.2019, immediately arranged for the victim’s medical examination, recorded her statement and that of her uncle, and sealed the biological evidence

collected from both the victim and the appellant. She further testified that she personally supervised the packaging and dispatch of those sealed items to the Forensic Science Laboratory, under court orders, and obtained a proper FSL receipt. On being cross-examined, she denied any manipulation or fabrication in the statements, the site plan, or the seizure memos.

- **PW-8, Head Constable Naresh Singh Samant**, corroborated the chain of custody of the collected items. He personally transported these to the FSL in Dehradun, and testified that the seals remained intact throughout and no tampering occurred. Under cross-examination, he remained firm that he had no opportunity or motive to break or alter any seal.

6. Now, the appellant is before this Court, challenging his conviction and sentence.

7. Learned counsel for appellant submitted that during the trial, statement of the appellant-accused under Section 313 of the Cr.P.C. was recorded, in which the accused stated that he was married to the victim's mother and that the victim lived with him. The accused also stated in his statement under Section 313 of the Code of Criminal Procedure that *"When I was in Gujarat, my wife left Gujarat and the victim went to Delhi without informing her mother. My wife and I went to Delhi to pick up the victim, and with great difficulty, she returned from Delhi on 17.04.2019. I do not know what the victim, her grandmother, and her maternal uncle taught her. I have done nothing wrong; I have been falsely implicated."*

8. She further argued that the appellant-accused is innocent and has been falsely implicated. She also argued that the victim did not state in her evidence that the appellant had committed rape on her; she and her mother turned hostile; and that the FSL report was not legally proved, hence the FSL report could not be read into evidence. She also argued that the evidence presented by the prosecution did not prove the charges against the appellant beyond reasonable doubt and hence he should be acquitted. She also argued that the appellant's continued detention was unjust and that contradictions in the victim's testimony, her in court retractions, and alleged inconsistencies in the forensic report warranted his acquittal.

9. Per contra, learned State Counsel supported the conviction and sentence awarded by the learned trial court. It is submitted by learned State Counsel that the prosecution has proved its case against the appellant beyond all reasonable doubt. The case of the prosecution has shown consistency and been proved and supported by the victim from the stage of recording statement under Section 164 Cr.P.C. and the evidence before the Court. Learned State Counsel argued that the nature of offences, aggravated sexual assault on a minor, by a close relative is extremely grave, and that there exists a strong prima facie case supported by forensic (DNA) evidence and consistent testimony. She submits that the evidence on record has been rightly appreciated by the trial court, and that the conviction and sentence are justified in view of the seriousness of the offence, the nature of the allegations, and the corroborative material produced during trial.

10. Having heard the rival contentions of the parties and having gone through the records of the case, it is culled out that the case of the prosecution starts with the lodging of first information report on 18.04.2019 by the victim in police station Kichha, Udham Singh Nagar. From a careful

perusal of the First Information Report and medical report of the victim, it is reflected that no external injuries were found on her body. The doctor specifically recorded that there were no internal or external genital injuries. Regarding the condition of the hymen, the report states that the hymen was torn. However, the doctor clarified that such a condition may also arise due to non-sexual activities such as cycling or sports, and therefore, a torn hymen, in isolation, cannot be treated as conclusive evidence of sexual assault.

11. During the medical examination, the Victim's vaginal swab, vaginal smear slide, Pubic hair and clothes of the victim were collected and sealed. The sealed parcels were handed over to a lady constable for further investigation. The report also records the statement made by the victim to the doctor, wherein she alleged that her stepfather had been committing sexual intercourse with her for 5-6 years, and that on the intervening night of 17.04.2019, between 02:30 a.m. and 03:00 a.m., he again subjected her to sexual assault following a quarrel.

12. The doctor further opined that no definite conclusion regarding recent sexual intercourse could be drawn from the medical examination, since (a) no injuries were detected, and (b) a torn hymen, by itself, is not conclusive proof of sexual assault. In essence, while the medical report does not medically establish recent forcible sexual intercourse, it notes a torn hymen, absence of injuries, and importantly, records the victim's allegation of being raped by her stepfather. In the context of the case, it is also necessary to refer to certain portions of Form Nos. 23A/6 to 23A/7 of the Forensic Science Laboratory, Dehradun, which read as follows:

Result of examination for detection of semen and blood:

- 1. Human semen was detected on Exhibits-3, 5, 6, and 8.*
- 2. Semen was not detected on Exhibits-1, 2, 4, 9, 10, 11, and 12.*
- 3. Blood was not detected on Exhibits-1, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 12.*

13. Therefore, the DNA analysis conducted on the exhibits leads to the following conclusions:

- 1. DNA obtained from Exhibit-3 (underwear of victim) matches with DNA obtained from Exhibits-7 and 13 (blood samples of victim and accused).*
- 2. DNA obtained from Exhibit-6 (vaginal smear slide of victim) matches with DNA obtained from Exhibits-7 and 13.*
- 3. DNA obtained from Exhibit-8 (underwear of accused) matches with DNA obtained from Exhibits-7 and 13.*
- 4. DNA could not be obtained from Exhibit-5 (vaginal swab of victim).*

14. A perusal of FSL Report No. FSL-834/2019 (Bio/DNA), Dehradun clearly indicates that the DNA profile obtained from the victim's clothes (Exhibit-3) and the vaginal smear slide (Exhibit-6) corresponds with the DNA of both the victim and the accused. The report details the methodology

and scientific basis for the DNA examination. PW-1, Dr. Kanak Banodha, a public servant, has proved the report and deposed regarding the victim's medical condition and the collection of samples. However on a careful appraisal of the evidence on record and having meticulously perused the record of the case, this Court finds it necessary to evaluate the evidence in its entirety to determine the correctness of the conviction and sentence imposed by the learned trial court. The appellant, Manoj, was convicted under Sections 376(2) IPC, 6 of the Protection of Children from Sexual Offences Act, 2012, and Section 506 IPC, based primarily on the alleged statements of the victim recorded under Section 164 CrPC, corroborative testimony of family members, medical evidence, and DNA analysis. Upon careful scrutiny, this Court finds substantial gaps and inconsistencies in the prosecution case, which necessitate a reappraisal of the evidence.

15. The first and most significant factor is the hostile testimony of the victim and her mother during trial. The victim denied portions of her earlier statements, claiming that she had been influenced by fear, and the mother acknowledged having no knowledge of the alleged incidents. This retraction has a profound impact on the case, as the victim and her mother were the principal witnesses whose testimony was expected to substantiate the allegations. Judicial precedent consistently recognizes that when a key witness turns hostile, the evidentiary value of prior statements diminishes considerably; particularly where the accused is deprived of an opportunity to cross-examine in a manner that tests the veracity of earlier statements. The retraction creates serious doubt regarding the reliability of the prosecution's narrative.

16. The Section 164 Cr.P.C. statement of the victim, though detailed, cannot alone form the basis of a conviction. The Supreme Court has held that such statements must be corroborated by independent evidence and are insufficient when the principal witness disavows the allegations. In the present case, the victim's statements under Section 164 CrPC were detailed in respect of alleged sexual assaults over several years. However, in light of her turning hostile during the cross-examination and the hostile stance of her mother, reliance solely on the 164 statement would be legally unsustainable and would violate the principle that conviction must rest on proof beyond reasonable doubt.

17. The medical evidence further weakens the prosecution case. While the examination revealed a torn hymen, no external or internal injuries were found. The doctor explicitly stated that a torn hymen could result from non-sexual activities such as sports or accidental trauma. No other medical indicator confirmed recent sexual intercourse. Judicial guidance recognizes that the absence of injuries, especially in alleged cases of aggravated sexual assault, significantly reduces the probability of forcible sexual intercourse. The medical evidence here, therefore, cannot conclusively establish that the accused committed the offence. The DNA evidence, although scientifically credible and accurately reflecting the presence of biological material from the appellant on certain exhibits, does not by itself prove non-consent, penetration, or the timing of the alleged assault. DNA analysis establishes contact but does not substitute for evidence of criminal intent or sexual assault. The Supreme Court has repeatedly emphasized that DNA evidence must be considered in conjunction with corroborative evidence to form the basis of a conviction. In the present case, with the victim turning hostile, the DNA evidence remains

uncorroborated and cannot independently support a conviction for rape or aggravated sexual assault.

18. Hon'ble Supreme Court, in the case of **Akhtar Ali alias Ali Akhtar alias Shamim alias Raja Ustad vs. State of Uttarakhand**, reported in **2025 SCC OnLine SC 1949** emphasized that even scientifically reliable DNA evidence cannot be treated as conclusive in isolation and must be scrutinized in the broader context of the circumstances of collection, voluntariness, and corroboration by other evidence. In this regard, the Court observed as follows:

“45. In these circumstances, the very foundation on which the DNA evidence is sought to be projected stands gravely compromised, for if the arrest itself was illegal and stage-managed, the process of drawing samples from the accused-appellants cannot be regarded as either voluntary or reliable. The prosecution, however, urges that the scientific reports demonstrate a conclusive match for the DNA of accused-appellant No. 1-Akhtar Ali with the forensic material collected from the dead body of the victim girl. It is, therefore, necessary to examine the trustworthiness and credibility of the scientific/forensic evidence. While we examine the scientific/ forensic evidence, it is imperative to remain conscious of the very stark feature of the scientific evidence in the form of DNA profiling and its matching report, which bears directly on the adjudication of the matter.”

19. The DNA evidence, while scientifically accurate and showing the presence of biological material from the appellant on certain exhibits, cannot independently establish guilt in the absence of corroborative evidence. Mere genetic matching does not prove sexual assault, non-consent, or timing of the alleged act. The DNA evidence here, in conjunction with the hostile testimony of the victim and her mother, is therefore insufficient to sustain a conviction. The Supreme Court has consistently maintained that DNA evidence must be considered alongside corroborative circumstances and cannot form the sole basis of conviction (**Rajesh v. State of Haryana, 2019 6 SCC 368**).

20. Hon'ble Supreme Court in the same bench while deciding **Akhtar Ali (Supra)** also placed reliance on the well established principles governing circumstantial evidence laid down in **Sharad Birdhichand Sharda vs. State of Maharashtra (1984) 4 SCC 116**, which observed::-

*“10. It is a well-established principle of criminal jurisprudence that a conviction may be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases based purely on circumstantial evidence, it is imperative to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence. The law with regard to conviction based on circumstantial evidence has been crystallised by this Court in the case of **Sharad Birdhichand Sharda v. State of Maharashtra, (1984) 4 SCC 116**, wherein the following golden principles, governing cases based on circumstantial evidence, were laid down:*

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established...

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused...

(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.”

21. Further, Hon'ble Supreme Court in the same bench, while deciding **Akhtar Ali (supra)**, also placed reliance on **Pattu Rajan v. State of T.N., (2019) 4 SCC 771**, which observed:

“49. In these circumstances, one cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in Section 45 of the Evidence Act. Undoubtedly, an expert giving evidence before the court plays a crucial role, especially since the entire purpose and object of opinion evidence is to aid the court in forming its opinion on questions concerning foreign law, science, art, etc., on which the court might not have the technical expertise to form an opinion on its own. In criminal cases, such questions may pertain to aspects such as ballistics, fingerprint matching, handwriting comparison, and even DNA testing or superimposition techniques, as seen in the instant case.

52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on the facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party.”

22. In the present case, with the victim turning hostile and the retraction of the statements by her mother, the DNA evidence remains uncorroborated and cannot independently support a conviction for rape or aggravated sexual assault. The testimonies of other family members, including the maternal uncle and grandmother, while indicating that the victim may have confided in them, do not constitute direct evidence of the alleged acts. Procedural witnesses, including the investigating officer and constable, establish chain of custody and proper handling of samples but

do not advance the substantive case. Minor discrepancies in the timing of statements, procedural observations, and the absence of eyewitnesses further compound the doubt surrounding the prosecution's narrative. Considering the totality of the evidence, this Court finds that the prosecution has failed to discharge the burden of proof beyond reasonable doubt. The recantation by the victim and her mother undermines the credibility of the case, the Section 164 CrPC statement cannot alone sustain conviction, medical evidence does not support sexual assault, and DNA evidence, without corroboration, is insufficient to establish guilt. In such circumstances, the Court is bound to give the benefit of doubt to the appellant.

23. Accordingly, this Court holds that the conviction and sentence imposed by the learned FTC/ Additional Sessions/Special Judge POCSO, Rudrapur, Udham Singh Nagar, in Special Sessions Trial No.150 of 2019, is unsustainable in law.

24. The appeal is accordingly allowed and the impugned judgment and order dated 15.11.2023, passed by learned FTC/Additional Sessions/Special Judge POCSO, Rudrapur, Udham Singh Nagar in Special Sessions Trial No.150 of 2019, *State of Uttarakhand Vs. Manoj*, is hereby set-aside. The appellant shall be released forthwith, if not required in connection with any other case.

25. Let a copy of this judgment, along with the TCR, be transmitted to the Court concerned for information/compliance.