



2026:AHC:14508

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 7290 of 2025

Akash Yadav

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Prem Prakash Yadav, Satya Prakash
Yadav
Counsel for Opposite Party(s) : G.A.

AFR

Court No. - 87

HON'BLE ABDUL SHAHID, J.

1. Heard Sri Prem Prakash Yadav, learned counsel for the revisionist and learned A.G.A. for the State. None is present for the Opposite Party No. 2 despite service of notice.
2. The instant Criminal Revision has been preferred against the impugned judgment and order dated 20.9.2025 passed by the Addl. District & Sessions Judge, POCSO Act, (Exclusive) Jaunpur in S.S.T. No. 124 of 2024 (State Vs. Akash Yadav, arising out of Case Crime No. 78 of 2024, under Section 376 IPC and Section 5/6 POCSO Act, P.S. Mugrbadshahpur, District Jaunpur.
3. Learned counsel for the revisionist has submitted that the learned trial court has ignored the statement of the prosecutrix recorded under Section 161 Cr.P.C. and 164 Cr.P.C. which shows material contradictions regarding the alleged age of the prosecutrix. The medical report of the prosecutrix as stated, the age of the prosecutrix as approximately 18 years on the date of medical examination, although her age was 18 plus (1-2) is equal to 19-20 years. This contradicts the school certificate which suggest her date of birth dated 20.11.2007, mentioning her age nearly 18 years at the time of the

alleged incident i.e. on 6.3.2024. It creates a doubt as to her minor status under the POCSO Act.

4. Learned trial court while rejecting the discharge application of the revisionist has ignored the documents suggested prior to consensual relationship between them. The statement of the prosecutrix itself shows that she had met with him 3-4 times before the incident. The rejection of the discharge application had not adequately been considered that voluntarily relationship between the parties, close to the age of majority neither comes under the POCSO Act nor under Section 376 IPC is made out where the victim is major and the parties had entered into consensual relationship.

5. Learned counsel for the revisionist relied on the law laid down by the Division Bench of this Court in the case of **Rohini and another Vs. State of U.P. and others, 2025 LawSuit (All) 1263**. It is passed in the Habeas Corpus writ petition. In para-25 of the aforesaid case, the School Transfer Certificate was produced to prove the age of the child. The Hon'ble Supreme Court has held that the School Transfer Certificate cannot be relied upon to determine the age of the child under the Act of 2015. In this context, the observation of the Hon'ble Supreme Court in Para Nos. 14,18 and 19 of the aforesaid judgment are reproduced below:-

[25] In the aforesaid case, the school transfer certificate was produced to prove the age of the child. The Supreme Court held that a school transfer certificate cannot be relied upon to determine the age of child under the Act, 2015. In this context, the observation of the Supreme Court in paragraph nos. 14, 18 and 19 of the aforesaid judgment are reproduced below:-

"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997.

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Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

18. *Reverting to the facts of this case, the headmaster of M's School, CW-1, was summoned by the court and produced a Transfer Certificate (Ex.C-1). This witness produced a Transfer Certificate Register containing M's name. He deposed that she had studied in the school for one year, i.e., 2009-10 and that the date of birth was based on the basis of the record sheet given by the school where she studied in the 7th standard. DW-2 TMT Poongothoi, Headmaster of Chinnasoalipalayam Panchayat School, answered the summons served by the court and deposed that 'M' had joined her school with effect from 03.04.2002 and that her date of birth was recorded as 11.07.1997. She admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of horoscope. She conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded. It is stated earlier on the same issue, i.e., the date of birth, Thiru Prakasam, DW-3 stated that the birth register pertaining to the year 1997 was not available in the record room of his office.*

19. *It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate" from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating "that the age of the said girl would be more than 18 years and less 2015 than 20 years". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor". This finding is, in this court's considered view, incorrect and erroneous. As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94 (2) (i) mandates; nor are they in accord with Section 94 (2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage*

of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9. ""

6. Learned counsel for the revisionist has also relied upon the law laid down by the Hon'ble Supreme Court in the case of **P. Yuvaprakash Vs. State Rep. By Inspector of Police in Criminal Appeal No. 1898 of 2023** decided on 18.7.2023. The important aspect has been held as follows:-

"(1) It is only when there is penetrative sexual assault which implies sexual contact with or without consent of minor victim, that offences under POCSO Act are committed.

(2) Only in absence of birth certificate, age shall be determined by Ossification Test or any other latest medical age determination test conducted on orders of Committee or Board."

Whereas, in the present case, the trial is yet to begin. The application for the discharge has been rejected by the trial court. The final adjudication on the merit of the case would be held at the stage of trial. Opposite Party No. 2/ complainant had filed the objection against the application for discharge that he is the complainant. He is the father of the victim. Victim has passed Class-10th in the 2023-2024 from Sarvajanik Inter College, Mungra Badshahpur, District Jaunpur. The transfer certificate is available in the file. The date of birth, as per record, of the victim is 20.11.2007. The incident is dated 6.3.2024 hence, at the time of the incident, the age of the victim was 16 years, 3 months and 16 days. The victim had recorded her statement under Section 161 Cr.P.C. and she has stated herself that she studies in Sarvajanik Inter College, Mungra Badshahpur, District Jaunpur. She told her date of birth as 20.11.2007. She had also told that the revisionist had called her on phone several times and he made physical relationship with her. In her statement under Section 164 Cr.P.C. she supported the prosecution story. The complainant further objected that in the availability of the High School Certificate where the age of victim is 16 years at the time of incident, hence there is no reason for the admissibility of the local report, if any, at the stage of framing of charge. The victim is High School pass. The incident is dated 6.3.2024, whereas the medical examination of the victim took place on 15.3.2024. In the absence of any injuries on the private part of the victim, it could not be a reason that no offence of rape has been

committed.

7. During the investigation, statement of Principal of Sarvajanik Inter College, Mungra Badshahpur, District Jaunpur had also been recorded and he verified that the date of birth of the victim, as per the college record, is 20.11.2007.

8. The trial court had passed a detailed, reasoned and speaking order and refused to discharge the revisionist-accused. The learned trial court had relied upon the educational documents of the victim wherein her date of birth is 20.11.2007 and the incident is dated 6.3.2024. The victim had herself stated her age as 16 years in her statement under Sections 161 and 164 Cr.P.C.. She had recorded her statement that the revisionist had called her on phone and makes the physical relationship with her after removing her cloths.

9. The learned trial court had specifically held that it is settled law that at the stage of framing of the charge, meticulous appreciation of the evidence is not permissible. He has further relied upon the law laid down by this Court in the case of **Zakir Shaikh Vs. State of U.P., 2015 (90) A.C.C. 901** has held that if there is reasonable suspicion on the basis of the material available and collected during the investigation, it is sufficient for framing of the charge. It is held by the Division Bench of this Court in **Criminal Appeal No. 1594 of 2017** (Irfan Vs. State of U.P.). In para-75 of the said judgment it has been held that the injury to the private part of the victim is not always necessary as evidence, to establish the offence of rape. Learned Co-ordinate Bench of this Court had also referred on this issue the law laid down by the Hon'ble Supreme Court in **Vijay alias Chinee v. State of M.P., (2010) 8 SCC 191**, and Raju alis Umakant Vs. State of M.P., 2025 SCC OnLine SC 997 also a case of gang-rape, it was observed by the Supreme Court:

"Injury on the person of the prosecutrix

25. *In Gurcharan Singh v. State of Haryana [(1972) 2 SCC 749 : 1972 SCC (Cri) 793 : AIR 1972 SC 2661] this Court has held that : (SCC p. 753, para 8) the absence of injury or mark of violence on the private part on the person of the prosecutrix is of no consequence when the prosecutrix is minor and would merely suggest want of violent resistance on the part of the prosecutrix. Further absence of violence or stiff resistance in the present case may as well suggest helpless surrender to the inevitable due to sheer timidity. In any event, her consent would not take the case out of the*

definition of rape.

26. In *Devinder Singh v. State of H.P.* [(2003) 11 SCC 488 : 2004 SCC (Cri) 185] a similar issue was considered by this Court and the Court took into consideration the relevant evidence wherein rape was alleged to have been committed by five persons. No injury was found on the body of the prosecutrix. There was no matting on the pubic hair with discharge and no injury was found on the genital areas. However, it was found that the prosecutrix was used to sexual intercourse. This Court held that the fact that no injury was found on her body only goes to show that she did not put up resistance."

Hence, the submission made by the learned counsel for the revisionist that there was no injury to the victim does not possess any significance, more particularly at the stage of framing of the charge.

10. After perusing the impugned order, it appears that the learned trial court had mentioned the name of the victim. It is not appreciable. It is held by the Hon'ble Supreme Court in **Special Leave Petition (Criminal) Diary No. 7772 of 2021** dated 30.6.2021, wherein the Hon'ble three Judges Bench passed the order, " *However, we take excepting to the judgment of the Sessions Judge where the name of victim is mentioned. It is well established that in cases like the present one, the name of the victim is not to be mentioned in any proceeding. We are of the view that all the subordinate courts shall be careful in future while dealing with such cases.*" Hence, the law laid down by the Hon'ble Supreme Court is binding and it is complied with in toto without any exception. It has been held by the Hon'ble Supreme Court in the case **Nipun Saxena and another Vs. Union of India and others**, reported in (2019) 2 Supreme Court Cases 703, wherein it has been held by the Hon'ble Supreme Court that the law makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future. Moreover, discriminating the purpose of POCSO Act, the Court observed, " a bare reading of Section 24 (5) and Section 33 (7) makes it amply clear that the name and identity of the child is not to be disclose at any time during the course of investigation or trial and the identity of the victim is protected from the public or media. Furthermore, Section 37 provides that the trial is to be conducted in camera which means that the media cannot be present. The entire purpose of the POCSO is to ensure that the identity of the child is not disclosed unless the Special Court for reasons to be recorded in writing permits such disclosure. This disclosure can only be made if it is in the

interest of the child and not otherwise. It is absolutely clear that the closure of the identity can be permitted by the Special Court only when the same is in the interest of child and in no other circumstances. We are of the view that the disclosure of the name of the child to make the child a sample of protest cannot normally be treated to be in the interest of child. There are sufficient ingredients and the evidences are available before the learned court below and he has rightly rejected the application of discharge of the accused-revisionist.

11. The Hon'ble Supreme Court has passed an order that the directives issued by this Court in the case of **Nipun Saxena and another (supra)** as well as the directive was also issued by the Union of India, Ministry of Home Affairs on 16.1.2019 regarding the identity of victims of rape should be protected by the media including the press electronic and social media shall not reveal their identity in **Writ Petition (Civil) Diary No.(s) 37158 of 2024** (Kinnori Ghosh and another Vs. Union of India and others). The order is as follows:-

*"2 Plainly, this is in violation of the directives of this Court in **Nipun Saxena & Anr Vs Union of India & Ors**¹. This Court directed that the identity of victims of rape should be protected and the media including the press, electronic and social media shall not reveal their identity. A directive was also issued by the Union Union Ministry of Home Affairs on 16 January 2019.*

3 Reliance has also been placed on the provisions of Section 72(1) of the Bhartiya Nyay Sanhita 2023.

4 This Court is constrained to issue an injunctive order since the social and electronic media have proceeded to publish the identity of the deceased and photographs of the dead body after the recovery of the body.

5 We accordingly direct that all references to the name of the deceased in the above incident, photographs and video clips shall forthwith be removed from all social media platforms and electronic media in compliance of this order.

6 The Writ Petition is accordingly disposed of.

7 Pending applications, if any, stand disposed of."

12. It is absolutely clear that the disclosure of the identity can be permitted by the special court only when the same is in the interest of the child and in no other circumstances. We are of the view that the disclosure of the name of the child to make the child a sample of protest cannot normally be treated to be in the interest of the child. There are sufficient ingredients of the evidence available before the learned court below and he has rightly rejected the application of discharge of the accused-revisionist.

13. There is neither any illegality nor irregularity in the impugned order dated 20.9.2025 passed by the Addl. District & Sessions Judge, POCSO Act, (Exclusive) Jaunpur. The present criminal revision is liable to be dismissed and it is **dismissed** accordingly.

January 20, 2026
n.u.

(Abdul Shahid,J.)