

**In The Hon'ble High Court Of Judicature At Allahabad**  
**Sitting at Lucknow**

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**Neutral Citation No. - 2025:AHC-LKO:39542**

**A.F.R.**

**Court No. - 15**

**Case :- JAIL APPEAL No. - 1192 of 2020**

**Appellant :- Ram Sanehi**

**Respondent :- State of U.P.**

**Counsel for Appellant :- Jail Appeal, Rehan Ahmad Siddiqi A C**

**Counsel for Respondent :- G.A.**

**Hon'ble Subhash Vidyarthi J.**

1. Heard Sri Rehan Ahmad Siddiqui, the learned Amicus Curiae appearing for the appellant, Sri Mohd. Asif Khan, the learned Additional Government Advocate-I appearing for the State and perused the records.
2. By means of the instant jail appeal filed under Section 383 Cr.P.C., the appellant has challenged the validity of a judgment and order dated 03.11.2020, passed by Smt. Deepa Rai, the learned Special Judge, POCSO Act, Hardoi in Special Sessions Trial No.329 of 2016, arising out of Case Crime No.81 of 2016, under Sections 376, 342, 504 Indian Penal Code and Section 3/4 of Protection of Children from Sexual Offences Act, Police Station Harpalpur, District Hardoi.
3. The aforesaid case was instituted on the basis of an F.I.R. lodged on 18.03.2016 alleging that at about 9.30 p.m. on 17.03.2016 the informant had gone to attend the call of nature in the latrine constructed near her house, the appellant caught hold of her with evil intention, locked her inside his room and raped her. The appellant threatened that in case victim told about the incident to her parents he would kill her. The F.I.R. alleged that the door of the room was opened with the intervention of the family members of the informant and some neighbours. Thereafter, she could come out of the house after about six hours.

4. The appellant had filed an application for his release on bail but the said application was rejected by the trial Court by means of an order dated 17.10.2016.
5. The prosecution examined nine witnesses during trial and produced the statement of the victim under Section 164 Cr.P.C., medical examination report and the supplementary report, copy of F.I.R., transfer certificate of the victim issued by school, scholar's register, site plan, recovery memo of a tarpaulin and X-Ray examination report as documentary evidence.
6. The appellant denied the charges in his statement under Section 313 Cr.P.C. He stated that the Sub-Inspector of Police Sri Manoj Kumar Awasthi had called him from his home for checking his inverter and thereafter he challaned him in the present case. However, no defence witness was examined by the trial Court.
7. The learned trial court held that the incident took place on 17.03.2016 and the medico-legal examination of the victim was conducted on 20.03.2016. In these circumstances, the finding recorded in the medico-legal examination report that there was no evidence of recent sexual penetration, was merely an opinion and when the victim and other witnesses had stated that the appellant had raped her, those statements have to be given precedence over the medical report. It was contended on behalf of the appellant that the witnesses had stated that the latrine where the incident took place, is constructed in front of the victim's house whereas the site plan shows that it is constructed in front of house of Ram Gopal, and this contradiction in the statements of the witnesses and the site plan regarding the place of the incident shows that the accused has been falsely implicated. The trial Court rejected this contention stating that an accused person cannot be acquitted merely on the ground of some defects in investigation.
8. It was also submitted on behalf of the appellant that the victim (PW-1) has stated that she had gone to attend the call of nature at about 09:30 p.m., her father (PW-2) has stated that she had gone at about 10:00 p.m. whereas her mother (PW-3) has stated that she had gone between 08 and 09 p.m. PW-3 stated that no family member had gone to the

police station to lodge the report whereas the father of the informant (PW-2) has stated that the victim, her mother and her father had gone to lodge the report. The police constable – moharrir (PW-5) has stated that the victim had come to lodge the report alongwith her mother. The victim (PW-1) has stated that her legs had got swollen and her hands had turned red and her mother (PW-2) has stated that the victim had suffered injuries. However, the medico-legal examination report mentions no injury on any part of the victim's body. It was submitted that the aforesaid facts indicated that the accused has been falsely implicated due to animosity. The trial Court rejected this submission on the ground that the statements have been recorded about one year after the incidents and some minor discrepancies are natural to occur and these do not affect the prosecution case that the accused had raped the victim.

9. Regarding the allegation of animosity due to burning of the saree by the appellant, the trial court held that it was not such an incident as may lead the victim to falsely implicate the accused in a rape case. The learned trial court held the appellant guilty of offences under Sections 376 (3), 342 I.P.C. and Section 3/4(2) of POCSO Act and he was acquitted of the charges under Section 504 I.P.C. The appellant was sentenced to undergo twenty years rigorous imprisonment and to pay Rs.10,000/- as fine for the offence under Section 376(3) I.P.C. and to undergo simple imprisonment for an additional period of one and half years in case of failure to pay fine. He was sentenced to undergo imprisonment for one year for the offence under Section 342 I.P.C. No sentence was awarded for the offence under Section 4(2) of POSCO Act. The amount was fine was ordered to be paid to the victim and it was ordered that all the punishments will run concurrently.
10. As per the office report dated 16.03.2021, notice of the appeal was served upon the informant personally, but he has not put in appearance for opposing the appeal. On 09.08.2021, this Court had appointed Sri. Rehan Ahmad Siddiqui as Amicus Curiae for doing Pairvi on behalf of the appellant.

11. On 10.06.2021, the following order was passed in this appeal: -

*“Though the name of Sri Rehan Ahmad Siddiqui, learned Amicus Curiae for the appellant has been printed in the cause list but he is not present today.*

*Sri Manoj Kumar Singh, learned Additional Government Advocate is present.*

*It transpires from the record that there is no application for bail on behalf of the appellant.*

*Learned Amicus Curiae is permitted to file application for bail. However, taking into consideration that the appellant is confined in jail, affidavit in support of application for bail is dispensed with.*

*Office is directed to send the reminder to the Court concerned for transmitting the lower Court record in pursuance of the earlier order dated 09.08.2021.*

*Let the matter be listed in the month of July, 2022.”*

12. It appears from the record that Sri Rehan Ahmad Siddiqui, the learned Amicus Curiae, did not file any application for release of the appellant on bail in terms of the aforesaid order dated 10.06.2021 and the appellant continues to languish in Jail since 22.03.2016.
13. During hearing of this appeal, Sri Rehan Ahmad Siddiqui, the learned Amicus Curiae representing the appellant, did not make any submissions challenging the findings of the trial Court and he has confined his submission for reduction of the sentence awarded to the appellant to the period already undergone in custody stating that the appellant has been sentenced to undergo imprisonment for twenty years, he is languishing in jail since 22.03.2016 and he has already undergone about nine years and four months period in jail.
14. The learned Amicus Curiae has relied upon a judgment of Hon’ble Supreme Court in the case of **Raj Kumar @ Raju Yadav @ Raj Kumar Yadav Vs. State of Bihar**: (2006) 9 SCC 589, wherein the Hon’ble Supreme Court reduced the sentence of seven years rigorous imprisonment awarded to the appellant to the period already undergone in custody. He has also relied upon a judgment of Hon’ble Supreme Court in the case of **Manoj Mishra @ Chhotkau Vs. The State of U.P.**: (2021) 10 SCC 763, wherein the Hon’ble Supreme Court reduced the sentence to the period already undergone in

custody. The only other submission advanced by Sri. Siddiqui was that this Court should make an order for payment of his fee.

15. The learned Additional Government Advocate-I appearing on behalf of the State has responded to the limited submission made by the learned Amicus Curiae and he stated that in view of the aforesaid judgments passed by the Hon'ble Supreme Court he has no objection to the reduction of period of sentence of the appellant.
16. In this appeal filed from jail by the appellant himself, he has stated that he is a poor person and there is no one in his family to look after his case, a jail appeal should be filed and he should be provided with the services of an advocate by the Government.
17. As the aforesaid facts indicate that the appellant is a poor person and no person from his family has come forward to make any effort to get him out of jail and even the learned Amicus Curiae has not filed any application for the appellant's release on bail in spite of the order dated 10.06.2021 and he has not advanced any submissions in support of the appeal, this Court went through the record of the case to ascertain as to whether the order of conviction and sentence passed by the learned trial court deserves to be upheld or it needs any interference.
18. The record reveals that the F.I.R. was lodged on the basis of a written complaint filed by the victim herself on 18.03.2016 stating that when she had gone to attend the call of nature at about 09.30 p.m. on 17.03.2016 in a latrine constructed near her house, her neighbor Ram Sanehi (the appellant) forcibly caught hold of her with evil intention, locked her in a room and raped her. The appellant threatened her that in case she tells about the incident to her parents, he would kill her. The door was opened with the intervention of her family members and neighbors and she could come out of the room after about 6 hours and thereafter she came to the police station to lodge the F.I.R.
19. In the statement of the victim recorded under Section 161 Cr.P.C. she stated that she had gone to attend the call of nature at about 9.30 p.m. on 17.03.2016. The appellant is her cousin, he shut her mouth, took her to his house and raped her. She stated that the appellant kept her

locked inside his room for six hours and he raped her thrice during this period. Her mother started searching for her and got the room of the appellant opened with the help of neighbors. The appellant had hidden her beneath a tarpaulin upon the loft inside the room. The persons searching for her found her on the loft and made her get down from the loft. She went to the police station with her parents on the following day and lodged the report.

20. Strangely, the statement of the victim recorded under Section 161 Cr.P.C. bears her signature whereas the statement recorded under Section 161 Cr.P.C. should not be signed by the person making the statement.
21. The medico-legal examination report of the victim mentions that a Home-guard had taken her to the District Women Hospital, Hardoi for medical examination. The medico-legal examination was conducted on 20.03.2016 at 11.30 a.m., and the report mentions that the date and time of the incident was not known. No mark of injury was seen on any part of the victim's body. The genito-anal examination revealed that all the internal parts of her body were normal, the hymen was found old torn and healed and hemorrhage or any other discharge was not present. There were no signs suggestive of recent penetration of the vagina. The pathological examination report of the vaginal smear slides revealed that no spermatozoa or gonococci were present in the vaginal smear of the victim and the pregnancy test was also negative. As per radiological examination report, age of the victim was opined to be between 16-17 years.
22. In the statement of the victim recorded under Section 164 Cr.P.C. she stated that she was aged about 15 years, she had studied up to Class VIII, the appellant is son of the elder brother of her father. While she had gone to attend the call of nature in a latrine constructed in front of her house at about 09.30 p.m. on 17.03.2016 the appellant shut her mouth, dragged her to his room and raped her. When her parents came there the appellant tied her mouth with a cloth, wrapped her in a polythene sheet and put her upon a loft. Her brother and aunt Kajal brought her down the loft and they took the appellant to the police



station. She also stated that about ten days ago, the appellant had burnt her mother's saree and had entered into a quarrel. Her mother had given information of the incident to the police and the appellant was keeping animosity since then.

23. A site plan prepared by the Investigating Officer has been marked as Exhibit Ka-10, which shows that the latrine is constructed towards the south of the informant's house, in front of the house of Ram Gopal, whereas the appellant's house is situated towards the north of the victim's house after the latrine where the appellant is said to have caught hold of the victim and dragged her to his room. There is some open space. Thereafter, there is house of the informant, then there is a shop, thereafter there is some open space through which one can enter the house of the appellant which falls at the rear of the shop. The loft has been shown in the site plan and it is mentioned that it is the place where the appellant had made the victim ride up and had covered her with a tarpaulin after committing the misdeed. The room where the incident took place has a door in its northern wall.
24. The recovery memo of the plastic tarpaulin is Ex. Ka-11 and it mentions that the appellant had covered the victim with the tarpaulin on the loft after the incident. The only persons who have witnessed recovery of the tarpaulin from the appellant's room are the victim and her father.
25. On 02.06.2016 the appellant had given an application to the trial court requesting for safety and security of his family and property stating that he is lodged in District Jail Hardoi since 22.06.2016, the passage to his house has been closed, his father is being threatened to be killed, he belongs to a poor family and he requested that a case be registered against the persons who are harassing his father and who have implicated the appellant in the false case. The appellant further stated that he has absolutely no knowledge about the present case and the true purport of the appellant's writing appears to be that he has no knowledge about the allegations leveled in the present case.
26. The victim has been examined as PW-1 and she has reiterated her earlier version in her examination-in-chief. During cross-examination

PW-1 stated that the appellant is son of the elder brother of her father, the appellant would be presently aged about 45 years, father of the appellant is alone but he does not live with the appellant. Initially the house of the appellant and the victim was one. After partition it was divided into two separate houses. About 10-15 days ago a saree of her mother had flown to the house of the appellant and the appellant had burnt the saree. Since then an animosity was simmering amongst them and the parties were not on talking terms. They were on talking terms prior to the aforesaid incident. She stated that her portion of the house is larger and the portion of the appellant's house is smaller. The portion of the appellant consists of one room and a shop. She had gone to the room of the appellant only once when the incident took place. The room has its ingress and egress towards the East and West. The victim stated that at the time of the incident her mother had gone to sleep, but the other family members were awake. At the time of incident her mouth was shut so she could not shout. The appellant kept her mouth shut with one hand for 4-5 hours and he was holding her hands with his other hand. Initially the victim stated that the appellant was pressing her mouth with his hand but subsequently she stated that the appellant had tied a cloth on her mouth. She stated that she did not know after how long the appellant had removed his hand from her mouth but even after the appellant had removed his hand she could not shout. She stated that the appellant had tied her hands but he did not tie her legs. She had moved her legs in her defence and her legs had got swollen and hands had turned red. She further stated that first her mother, father and brother had come to save her. Then, she stated that her uncles Jitendra and Ram Gopal had also come to save her.

27. The father of the victim has been examined as PW-2 and he stated that the appellant is his nephew (son of his brother). About two years prior to the incident the appellant had enticed away a girl, whereafter the police had caught him and the appellant had to spend about 18 months in jail. The appellant suspected that PW-2 had got him arrested due to which he kept animosity. On the date of the incident his daughter had



gone to latrine at about 10.00 p.m. When she did not come back after quite some time his wife went to look after her in the latrine. When she could not find her there, PW-2 got suspicious against the appellant. He went to the appellant's house along with his neighbors Ram Gopal, Kamlesh, Kajal Kinnar and Jitendra. The appellant opened the door of his house after about ten minutes. The aforesaid persons entered the room and found that the victim was lying on the loft, wrapped in a tarpaulin. She told that the appellant had raped her. The girl was recovered at about 2.30 a.m. PW-2 stated that he had gone to the police station for lodging the F.I.R. at about 1.30 p.m.

28. During cross-examination PW-2 stated that he did not know particulars of the girl in relation to which the earlier F.I.R. was lodged against the appellant and he had not told this thing to the Investigating Officer. In the earlier incident the police had recovered the girl from the appellant's house after entering the same through the house of PW-2. He stated that the portion of his house consists of five rooms and a verandah. He did not know as to how many rooms were there in the portion of the appellant. PW-2 also stated that the appellant has a brother, his mother has died, his father is alive, his step mother is alive and his family lives in another house about 200 meters away. There is an agency of Parle-G in the house of the appellant and no person lives in it. The lock and key of the house remains with the persons running Parle-G agency. They do not stay there and they used leave the place after their work. He stated that about two to four days prior to the incident saree of his wife had fallen in the house of the appellant and the appellant had burnt it. He stated that he was not in talking terms with the family of the appellant for the past six months. PW-2 stated that there is only a wall between his house and the house of the appellant and in case any person makes a sound in his room it will be heard in the house of the appellant.
29. The mother of the victim was examined as PW-3 and she stated that her daughter had gone to latrine situated outside her house at about 9.00-9.30 p.m. on the date of the incident. When she did not come back for quite some time she and her family members had gone to

look for her but they could not find her. Thereafter, a police constable was called from the police station and they went to the house of the appellant and knocked his door. The appellant opened the door after ten minutes and her daughter was found wrapped in a tarpaulin lying on the loft. Some neighbors had gathered there. Her daughter told her that the appellant had shut her mouth, taken her to his home and had threatened her. Initially her husband had given a report of the incident at the police station but when no heed was paid to it, thereafter a report was registered by her daughter.

30. During cross-examination, PW-3 denied that earlier her house and the house of the appellant was one. She stated that about 10-15 days prior to the incident her saree had fallen from her rooftop in the house of the appellant and the appellant had burnt it, due to which an altercation had taken place. She stated that she did not know as to how many rooms are there in the house where the incident took place. She stated that when they were on talking terms she used to visit the said house. They were not on talking terms for about four to six months since prior to the incident. She stated that the appellant's mother has died. His step mother and father are alive. The appellant has two brothers and there are three houses. She stated that her daughter had gone to latrine between 8.00 to 9.00 p.m. She came back home between 12.00 and 01.00 in the night and the police persons had brought her home from the room of appellant. The police had gone there at about 11.00 p.m. PW-3 and Kajal (Kinner) had brought police from the police station. A constable and a chowkidar had come. The door was closed from the inside. The girl was recovered after getting the door opened. Nothing was done in writing at that time. The girl stayed at the house during night. Her daughter and some neighbors had gone to the police station and no family members had gone there. She did not know as to which of the neighbors had gone there. When the report was not registered at the police station, she took her daughter to Hardoi and stayed in the Mahila Thana for three days. The report was lodged at Hardoi. At the time of incident it was dark but

the neighbors had woke up and had gone to the police station. She stated that she did not know the names of neighbors.

31. The doctor who had medically examined the victim was examined as PW-4. She proved the medical report which has already been referred to above. During cross examination she stated that she cannot say whether the victim was used to sexual intercourse but there was no sign of recent sexual intercourse.
32. The Police Constable who had registered the F.I.R was examined as PW-5 and he stated that he did not know as to what clothes were worn by the informant. The police had not taken any clothes in possession. The informant had come to the police station along with her mother and father and there was no other person.
33. PW-6 had conducted the investigation of the case and he stated in his cross-examination that prior to him Sri Manoj Kumar Awasthi was the Investigating Officer. He had not visited the place of incident and he had not met the informant. He had met the victim in the Court on 07.06.2016. He had met the victim earlier also. The victim was always accompanied by lady police and no family members used to accompany her. Statements under Section 161 Cr.P.C. of the victim or any other person were not recorded by PW-6. He stated that he had forwarded the charge-sheet as per the statement of the victim recorded under Section 164 Cr.P.C.
34. The Principal of the school where the victim had studied was examined as PW-7 and she stated that as per the school records the victim's date of birth is 10.02.2000.
35. Investigating Officer Sub-Inspector Manoj Kumar Awasthi has been examined as PW-8 and he stated that he was entrusted with the investigation on 18.03.2016. On 19.03.2016 he had looked for the accused and the prosecution witnesses but could not meet any one of them. He had recorded statement of the victim. A lady constable and a lady home guard had recorded the statement of the victim's mother. The victim's mother was asked to hand over the clothes worn by the victim but she told that clothes had been washed away. He had recorded the statement of the informant's father and a witness Kajal

Kinnar on 20.03.2016. On 22.03.2016 he had inspected the place of incident on the pointing out of the victim and had prepared a site plan. During inspection of place of incident the police had taken possession of a tarpaulin with which the accused had covered the victim. The statement of the accused was recorded on 22.03.2016 in the lock-up of the police station.

36. The sealed packet containing the tarpaulin was opened in the court in presence of PW-8 and after seeing it he stated that although it was mentioned that the bundle contained a tarpaulin, in fact it was a tarpaulin of polythene. The sealed packet containing the tarpaulin/polythene had not been signed by any witness. He did not know the length and breadth of the tarpaulin and he stated that he had found it above the loft. The length of tarpaulin turned out to be lessor by one foot compared to height of PW-8. PW-8 denied the suggestion that he had procured the polythene from the market and had sealed the same at the police station.
37. The Radiologist who had conducted the radiological examination for ascertainment of the victim's age was examined as PW-9 and he stated that as per radiological examination age of the victim was about 16-17 years. During cross-examination he stated that X-ray examination reports of a healthy person and a sick person would be different. He did not remember whether the victim was healthy or sick. He stated that there can be a difference of two years on either side in the age opined by the radiological examination.
38. In the statement recorded under Section 313 Cr.P.C. the appellant denied the allegations.
39. From the testimonies of prosecution witnesses as referred to above, it appears that the victim has not disclosed the relationship between herself and the appellant in the F.I.R. and she later on disclosed that the appellant is son of her father's brother, who was aged about 45 years at the time of the incident. The victim has alleged that the appellant had shut her mouth, dragged her inside his house, kept on shutting her mouth with one hand and holding her hands with his other hand continuously for about 5-6 hours and during this period he

raped her thrice. However, her medico-legal examination report did not reveal any mark of injury on any part of her body. At one place the victim stated that the appellant had shut her mouth with his hand, whereas at another place she stated that the appellant had tied her mouth with a cloth.

40. After the incident the victim is said to have been recovered from a loft in the appellant's house and she was covered by a polythene sheet. Nobody has stated that when the victim was recovered from the loft, her mouth was shut or tied with a cloth and that she was not able to raise her voice. Nobody has stated that her hands were tied. The tarpaulin referred by several prosecution witnesses turned out to be polythene sheet, size of which was not stated by any witness and when the court measured it in comparison to the height of PW-8, it turned out that it was about a foot shorter than his height. At one place the victim has stated that the appellant had covered her with a tarpaulin and another place she stated that the appellant had wrapped her in the tarpaulin.
41. No reasonable person of ordinary prudence would believe that a person aged 45 years kept on shutting the mouth of his minor cousin with one hand and holding her hands with his other hand, continuously for 5-6 hours, he raped her thrice, thereafter he put her upon a loft, even after the victim was put on the loft, she did not raise her voice till her family members recovered her from the loft.
42. Keeping in view the nature of allegations, the finding recorded in the medico-legal examination report that there was no evidence of recent sexual penetration, cannot be brushed aside. Moreover, even if the aforesaid observation is merely an expert opinion, the finding that the pathological examination of the vaginal smear slide showed absence of spermatozoa and gonococci, is not an opinion and it is a finding recorded upon a scientific test.
43. When a 45 years old person is accused of raping his minor cousin, the allegations are not supported by the findings of the medico-legal examination report and the prosecution relies upon oral evidence of the victim, her father and mother only and no independent witness is

examined, although it is said that several neighbors had gathered at the time of the incident, it becomes necessary to scrutinize the oral evidence carefully. The victim (PW-1) has stated that she had gone to attend the call of nature at about 09:30 p.m., her father (PW-2) has stated that she had gone at about 10:00 p.m. whereas her mother (PW-3) has stated that she had gone between 08 and 09 p.m. PW-3 stated that no family member had gone to the police station to lodge the report whereas the father of the informant (PW-2) has stated that the victim, her mother and her father had gone to lodge the report. The police constable – moharrir (PW-5) has stated that the victim had come to lodge the report alongwith her mother.

44. PW-3 stated that the police had come to her house at 11.00 p.m. in the night, the girl was recovered by the police, whereas the victim and her father have not said so.
45. It is significant to mention that in the statement recorded under Section 164 it is written that “जब मेरे मां बाप पुलिस वालों के साथ आए, मुझे मुंह पर कपड़ा बांध कर, पन्नी में लपेटकर टांड पर डाल दिया” but the words “पुलिस वालों के साथ” have been struck out subsequently.
46. The victim stated in her examination-in-chief that her mother, brother and uncle had brought her down from the loft and they had caught hold of the appellant and had taken him to the police station, whereas the police claimed to have arrested the appellant on 22.03.2016.
47. The aforesaid discrepancies relating to the description of the offence are not minor discrepancies and these raise a serious doubt against correctness of the allegations leveled in the statements.
48. The motive about the incident alleged by the prosecution witnesses is that a saree of the victim’s mother fell down in the appellant’s house and it had been burnt by him. The victim and her father stated that the incident took place about 10 to 15 days ago, whereas the victim’s mother stated that the incident took place about 4 days prior to the incident. The trial court held that it was not such an incident as may lead the victim to falsely implicate the accused in a rape case, but at the same time, it was not such an incident which may lead the accused



to rape her minor cousin, particularly when there is no allegation that the accused had suffered any harm in that incident.

49. Although, it is correct that minor discrepancies in the statements of the witnesses are natural to occur and these should not lead to acquittal of an accused person, it is equally true that the prosecution has to prove its case beyond reasonable doubt and when there are serious discrepancies regarding important and crucial facts relating to the incident, the same would render the statements of the witnesses untrustworthy.
50. All the aforesaid discrepancies in the statements of the prosecution witnesses have been lightly brushed aside by the learned trial court, whereas these discrepancies clearly make the statements of the prosecution witnesses unbelievable, more particularly when the same are not corroborated by the findings of the medico-legal examination report of the victim and the pathological examination report of the vaginal smear slide.
51. The aforesaid facts indicate that the appellant has been falsely implicated by the informant and the police in the present case.
52. In view of the foregoing discussion, this court is of the considered opinion that the evidence on record does not prove that the appellant had raped the victim who is his cousin. The trial court has convicted the appellant without proper appreciation of evidence on record and without giving due weight to the medico-legal examination report and the pathological examination report of the victim. The findings of guilt recorded by the trial court are unsustainable in the eyes of law.
53. Accordingly, the criminal appeal is allowed. The judgment and order dated 03.11.2020, passed by Smt. Deepa Rai, the learned Special Judge, POCSO Act, Hardoi in Special Sessions Trial No.329 of 2016, arising out of Case Crime No.81 of 2016, under Section 376, 342, 504 Indian Penal Code and Section 3/4 of Prevention of Children from Sexual Offences Act, registered at Police Station Harpalpur, District Hardoi, whereby the appellant has been held guilty of offences under Sections 376 (3), 342 I.P.C. and Section 3/4(2) of POCSO Act and he has been sentenced to undergo twenty years rigorous imprisonment

and to pay Rs.10,000/- as fine for the offence under Section 376(3) I.P.C. and to undergo simple imprisonment for an additional period of one and half years in case of failure to pay fine and to undergo imprisonment for one year for the offence under Section 342 I.P.C, is set aside and the appellant is acquitted of all the charges. The appellant shall be set at liberty forthwith, subject to his submitting a personal bond for his appearance in case an appeal is filed against this order. The amount of fine paid by the appellant, if any, shall be refunded to him within a period of 30 days from the date of this judgment.

54. It is indeed very disturbing that a 45 years old person who had nobody to look after his interest was taken into custody on 22.03.2016 on the allegation of committing rape of his minor cousin. His bail application was rejected by the trial Court. Nobody came forward to do pairavi of his case on his behalf. He gave an application to the learned trial court requesting for protection of his family and property but it appears that no action was taken on this application.
55. The courts cannot shut their eyes to the ground realities apparent from the fact that now a days it has become very common to level allegation of commission of serious and heinous offences, including offence of rape or sexual abuse of a child by the family members, in petty disputes or in order to grab property. In one page jail appeal written in the handwriting of the appellant, he has stated that there is nobody to look after his interest and he is a poor person. It has come to light during evidence that the appellant used to reside alone. In these circumstances, there is a reasonable apprehension that the property of the appellant might have been taken possession of by the persons from the informant's side or by any other person.
56. As the appellant used to reside alone in his house and he has been lodged in jail and although he had sought protection of his property by the court, it appears that no action was taken in this regard. The appellant has been made to languish in jail for more than nine years in a case in which there is no evidence to prove his guilt. This court finds it appropriate to exercise its inherent powers to order that the

appellant would be released from custody forthwith and the Superintendent of Police, Hardoi shall ensure that after his release from the jail, the appellant is put in possession of his house from where he was taken in custody.

**(Subhash Vidyarthi J.)**

Order Date: 10.07.2025  
Ram.

*Jail Appeal No.1192 of 2020*  
*Ram Sanehi versus State Of U.P.*