

**HIGH COURT OF JUDICATURE AT ALLAHABAD****CRIMINAL APPEAL No. - 5563 of 2019**

Kuntesh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Ajay Singh Sengar, Kamlesh Kumar Tripathi, Vijay Singh Sengar
Counsel for Respondent(s)	: G.A.

In Chamber**AFR**Judgment reserved on 12.05.2026
Judgement delivered on : 03.06.2026**HON'BLE SIDDHARTHA VARMA, J.****HON'BLE JAI KRISHNA UPADHYAY, J.****(Per : Jai Krishna Upadhyay, J)**

1. The present criminal appeal has been preferred against the judgement and order dated 31.01.2019 passed by Additional Sessions Judge/Special Judge (POCSO Act), Court No. 1, Auraiya in Special Case No. 34P/2017 (State Vs. Kuntesh), arising out of Case Crime No. 121 of 2017, u/s 376, 323 IPC & $\frac{3}{4}$ Protection of Children From Sexual Offence Act, Police Station – Ayana, District – Auraiya. thereby convicting and sentencing the appellant for life imprisonment and fine of Rs. 50,000/- for the offence under Section 376 IPC, in default of payment of fine one year additional R.I, 01 year R.I. for the offence under Section 323 IPC, and of 10 years R.I and fine of Rs. 50,000/- for the offence under Section $\frac{3}{4}$ Protection of Children From Sexual Offence Act, in default of payment of fine 01 year additional R.I.. All the sentences were directed to run concurrently.

2. A brief narrative of the prosecution story, as discernible from the N.C.R., is that on 09.05.2017 at around 12:00 noon, the daughter of the informant had gone to buy some item from the shop of Kunwar Singh. After purchasing the item when she reached near the house of Kuntesh, the accused-appellant, he had pressed the throat of the victim due to

which she fell down and become unconscious.

3. On the basis of written report, an FIR bearing case crime no. 121/2017 under section 323, 354-B of IPC and 7/8 of POCSO Act was registered against accused Kuntesh on 10.05.2017 at 4:30 pm at police station – Ayana, District – Auraiya. During investigation on the basis of the statement of the prosecutrix recorded under Section 164 C.r.P.C. offence under Section 376 IPC was added to the matter. After completion of investigation, the Investigating Officer submitted charge-sheet against the accused, Kuntesh under Sections 323, 376 of IPC and Section 3/4 POCSO Act.

4. The case against accused Kuntesh being exclusively triable by the Court of Sessions was committed before the Trial Court. Accordingly, it was registered as Special Case No. 34P/2017 (State vs. Kuntesh).

5. The accused was charged for the offence punishable under Sections 323, 376 of IPC and Section 3/4 POCSO Act. He denied the charges and claimed to be tried.

6. In order to prove the prosecution case, the prosecution has examined seven witnesses i.e., P.W.-1, (the victim), PW-2, Daya Shankar, PW-3, Lady Constable, Mithlesh Kumari, PW-4, Dr. Seema Gupta, PW-5, Dr. Mrityunjay Kumar, PW-6, Smt. Amresh Kumari and PW-7, Sub Inspector Alma Ahirwar.

7. **P.W.1**, who was 8 years old at the time of incident in her oral testimony had stated that she had gone to a shop to buy Nirma Powder. While returning from the shop she found the accused Kuntesh on the way and he called out to her to his house and when she reached there Kuntesh locked the door from inside, removed her clothes, and then removed his own. Then, accused Kuntesh inserted his penis into her vagina. Blood oozed from her vagina. At that very moment, Kuntesh's brother, Rajesh, arrived and knocked the door then Kuntesh fled. By then, she had fallen unconscious. Rajesh poured water on her mouth, gave her water to drink, and called her father. When she regained consciousness, she told her father everything. Her father filed a report. Cross-examination of the victim had been done, but she had supported the prosecution story therein and stood firm.

8. **PW-2**, Daya Shankar, the informant, had stated that on 19.05.2017 at around 12:00 noon her daughter had gone to buy some item from the shop of Kunwar Singh. After purchasing the item when she had reached near the house of Kuntesh, the accused had pressed her throat due to which she fell down and become unconscious. In his cross examination he stated that he only narrated what her daughter had told to him.

9. **PW-3**, Constable Mithilesh Kumari, had recorded the statement of the victim under Section 161 Cr.P.C., which is Ex. Ka-1.

10. **PW-4**, Dr. Seema Gupta, Medical Officer, District Hospital, Auraiya who had prepared the medical report which is Ex-Ka-4, had stated that it is not necessary that rape had been committed with the victim.

11. **PW-5**, Dr. Mrityunjay Kumar, Medical Officer, Community Health Center, Ayana, District – Auraiya had medically examined the victim and he had reiterated the version of PW-4.

12. **PW-6**, Smt. Aamresh Kumar, Head Mistress, Primary School, Bhairapur Bhason, police station – Ayana, District Auraiya had appeared before the Court alongwith the school's record and submitted that the victim had taken admission in her school in class-1 on 09.07.2011 and studied up to class 5th, her registration number is – 241 and date of birth mentioned is 07.04.2005.

13. **PW-7**, Sub Inspector, had proved the investigation done by him and proved the documents in this regard.

14. After closure of prosecution evidence, accused Kuntesh was examined under Section 313 Cr.P.C. The accused, Kuntesh stated that the evidence tendered against him was false. He was not present at the place of occurrence. A false report was lodged and false charge-sheet had been submitted. The accused denied the statements of the witnesses and had stated that due to old enmity and village party bandi he had been falsely implicated in the present case.

15. No evidence in defence was led by the accused.

16. We have heard Sri Kamlesh Kumar Tripathi, learned counsel for the appellant, Sri Amit Sinha, learned AGA for the State and perused the

material available on record.

17. Learned counsel for the accused-appellant submitted that the appellant has been entirely falsely implicated in the present case due to an old enmity. He further contended that when the informant (the victim's father, PW-2) first approached the police to lodge the complaint, he was accompanied by the victim herself. Despite her presence, he only reported an incident of physical assault, which led to the registration of NCR under Section 323 of the IPC and later he reported incident of molestation which led to the registration of the FIR under Section 354B of the IPC rather than rape.

18. He added that during his examination before the Trial Court, the father of the victim strictly adhered to what he had stated in the complaint and did not raise any allegation regarding rape, proving the later fabrication.

19. He further submitted that there exist glaring contradictions in the victim's statements. In her initial statement recorded by the police under Section 161 Cr.P.C., the victim merely stated that the accused had done "gandi baat" (bad talk/behaviour) with her and did not allege any physical or sexual act. The allegation of rape was introduced as a gross improvement for the very first time much later, when her statement was recorded under Section 164 Cr.P.C. before the Magistrate.

20. Finally, he submitted that allegation of rape is completely unsupported by the medical evidence. The medical findings fail to conclusively establish or corroborate any act of sexual assault, thereby making the prosecution's case highly doubtful and the appellant's conviction unsustainable.

21. Learned AGA submitted that there is no illegality, infirmity, or perversity in the impugned judgment and order passed by the learned Trial Court, which correctly appreciated the entire evidence on record to convict the appellant. He further contended that the victim (PW-1) is a completely consistent, reliable, and sterling witness whose oral testimony before the court cannot be doubted. Furthermore, there is absolute consistency across her statements recorded under Section 161 Cr.P.C. and Section 164 Cr.P.C. Further, the learned AGA submits that it is settled

law that the testimony of a child witness can be safely relied upon if the child is found to be a competent and sterling witness. He added that it is also settled law that a conviction can be validly sustained on the sole testimony of such a sterling child witness even without extensive corroboration. Lastly, he submitted that the prosecution has successfully proved its case against the appellant beyond all reasonable doubt, and therefore, the present appeal lacks any merit and is liable to be dismissed.

22. We have carefully considered the rival contentions advanced by the learned counsel for the appellant, learned AGA for the State, and have meticulously perused the trial court record. The moot question before this Court whether the prosecution has established the guilt of the appellant beyond a reasonable doubt, particularly since the conviction rests predominantly on the sole testimony of a child witness. In evaluating this matter, two core principles of the Indian Evidence Act must be applied. First, under Section 134, the law prioritizes the quality of evidence over its quantity, establishing that no particular number of witnesses is required to prove any fact, meaning a conviction can legally rest on a single, wholly credible witness. Second, under Section 118, a child is recognized as a competent witness provided, they possess the capacity to understand the questions put to them and give rational answers, remaining unhindered by their tender years. It is a well-settled principle of law that while a conviction can be based on the sole testimony of a child witness, such evidence must be evaluated with great circumspection. The Hon'ble Supreme Court in the case of ***Panchhi and Ors. v. State of U.P. [(1998) 7 SCC 177]*** observed that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. Therefore, the court must seek adequate corroboration or be entirely convinced that the child's testimony is natural, un-tutored, and inspires absolute confidence.

23. Upon a critical analysis of the evidence on record, glaring infirmities surface which severely vitiates the prosecution's narrative. The legal machinery in the present case was set into motion by the victim's father (PW-2), who lodged the NCR alleging only that the appellant pressed the victim's throat, causing her to fall unconscious. This led to the initial registration of the case under Sections 323 of the IPC which was later

converted into case of molestation under Section 354B of the IPC by the father of the victim. It is imperative to note that the victim accompanied her father to the police station when this initial report was lodged. Yet, the initial report is conspicuously silent on any sexual assault.

24. This Court is mindful of the settled proposition of law laid down by the Hon'ble Supreme Court in ***State of Punjab v. Gurmit Singh [(1996) 2 SCC 384]***, wherein it was held that in cases of sexual assault, mere delay in lodging the FIR or the failure to report the incident at the very first instance is not necessarily fatal to the prosecution's case, given the social stigma and trauma involved for the victim and her family. However, the present matter presents a completely different factual matrix that goes beyond mere delay. Even if a margin is given for the initial reluctance to disclose a sexual offence, the father (PW-2) during his deposition before the Trial Court completely confined his testimony to his original written complaint and did not state anything regarding the commission of rape till the very end. More crucially, PW-2 stated before the Trial Court that he had only narrated that specific incident to the police which was told to him by his daughter (the victim) herself. This material omission at the earliest opportunity casts a heavy shadow of doubt on the genesis of the prosecution's case.

25. Further, this Court finds inconsistencies in the statements of the victim (PW-1). The allegation of rape was introduced for the very first time in her statement under Section 164 Cr.P.C. before the Magistrate, and subsequently in her court testimony. So, the central issue remains here is whether this 8-year-old victim can be safely relied upon as the sole basis for conviction. It is pertinent to note here that it is a well-settled principle of criminal jurisprudence that a conviction can be founded on the sole testimony of a witness, including a child, provided such a witness is a "sterling witness." The Hon'ble Supreme Court in ***Rai Sandeep @ Deepu v. State (NCT of Delhi) [(2012) 8 SCC 21]*** comprehensively defined a "sterling witness" as a witness whose version is wholly reliable, natural, and inspires absolute confidence, requiring no corroboration whatsoever. The Court observed that the testimony of a sterling witness must be of such impeccable quality that the court instinctively accepts it as the unvarnished truth. Upon an objective consideration of the factual matrix of the present case, it is highly doubtful that victim (PW-1) can be

elevated to the status of a sterling witness as improvements are made by her in her statements. In the latest case of *State (GNCT of Delhi) v. Vipin @ lalla 2025 SCC OnLine SC 78*, Hon'ble apex Court reaffirmed that although it is absolutely true that in the case of rape, conviction can be based on the sole testimony of the prosecutrix but the courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the court. In the case of *Urmila Devi vs State of H.P. and others 2025:HHC:34588-DB*, it was observed by the Court that in the cases where the prosecutrix made improvements in her statements step by step, it becomes difficult to ascertain that which of her version is trustworthy and reliable. Taking note of the law settled by courts in this regard, we find that the surrounding circumstances of the present case including the improvements in the testimony of the witness, and conduct and statements of the father of the victim,

26. Additionally, the case of the prosecution does not find firm corroboration from medical evidence. The Medical Officer (PW-4) conducted medical examination of the victim and explicitly stated that it is not necessary that rape had been committed against her. Therefore, medical findings on record fail to conclusively establish or medically corroborate the allegations of sexual assault as narrated by the victim. No internal and external injuries, intact hymen and complete absence of seminal fluids when considered with other circumstances of the case cast a shadow of doubt on the case of the prosecution.

27. In the absence of definitive corroborative medical evidence, and viewing the improvements in the child witness's testimony and other circumstances of the case including the statements of father of the victim, it becomes highly unsafe to sustain the conviction of the accused-appellant.

28. In view of the aforesaid detailed analysis, this Court is of the considered opinion that the prosecution has failed to bring home the guilt of the accused beyond a reasonable doubt. It is a law of criminal jurisprudence that when two views are possible on the evidence adduced in a case, the view favourable to the accused must be adopted. The appellant is therefore entitled to the benefit of the doubt.

29. Accordingly, the present Criminal Appeal is **allowed**. The impugned

judgment and order of conviction and sentence dated 31.01.2019 passed by the Additional Sessions Judge/Special Judge (POCSO Act), Court No. 1, Auraiya in Special Case No. 34P/2017 (State Vs. Kuntesh) is hereby set aside.

30. The appellant, Kuntesh, is acquitted of all the charges levelled against him under Sections 323 and 376 of the IPC and the relevant provisions of the POCSO Act. He is directed to be released from custody forthwith, provided his detention is not required in any other criminal case. His bail bonds are cancelled and sureties are discharged.

31. Let a certified copy of the judgment, along with the trial court record, be sent to the concerned Chief Judicial Magistrate/Trial Court for compliance.

(Jai Krishna Upadhyay,J.) (Siddhartha Varma,J.)

June 3, 2026
S.K.S.