



Order Reserved On:-17.12.2025.

Order Delivered On:-08.01.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3529 of 2024

Chandresh

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Dinesh Kumar Pandey, Manu Sharma, Randhir Jain, Sandeep Kumar Keshari
Counsel for Respondent(s)	:	Ashish Pandey, G.A.

In Chamber

HON'BLE SIDDHARTH, J.

HON'BLE PRASHANT MISHRA-I, J.

(Delivered by Hon'ble Siddharth J.,)

1. Heard Sri Randhir Jain, learned counsel for the appellant and learned Additional Government Advocate appearing for the State.
2. The criminal appeal has been filed against the judgment and order dated 06.03.2024 passed by Special Judge, Exclusive Court (POCSO Act), Maharajganj, in Special Sessions Trial No. 544 of 2021, arising out of Case Crime No. 89 of 2021, Police Station- Sinduriya, District-Maharajganj, convicting and sentencing the appellant, for seven years imprisonment and Rs. two thousand fine and one month's further imprisonment in default of payment of fine under section 363 of Indian Penal Code, seven years Imprisonment and Rs. two thousand fine and one month's further imprisonment, in default of payment of fine under section 366 of Indian Penal Code, one year's imprisonment under section 323 of Indian Penal Code, twenty years imprisonment and Rs. three thousand fine and further one month's imprisonment in default of payment of fine under section Section 6 of Prevention of Children from Sexual Offences Act and life imprisonment and Rs. three thousand fine and further one month's imprisonment in default of payment of fine under Section 3(2)(V) of Scheduled Caste and Scheduled Tribes Act.
3. Prosecution case is that on 22.02.2021, Chandresh son of Tribhuwan Gaur

(appellant) enticed away informant's daughter aged about 18-1/2 years with intention to marry. Her daughter returned to her house on 06.08.2021 and informed that Chandresh enticed her with intention to marry but he did not marry her and turned her out of his house. She could not approach the Police earlier because of shame. The date of birth of her daughter as per Aadhar Card is 01.01.2003.

4. After investigation of the case by the Police, chargesheet was submitted against the appellant. The trial court framed charges against the appellant under Section 323, 363, 366, 376 of I.P.C., 506 POCSO Act and Section-3(2)(V) of S.C./S.T. Act. The appellant denied the charges and sought trial.

5. To prove the prosecution case, the prosecution examined P.W.-1, Leelawati Devi(informant); P.W.-2, the victim; P.W.-3, Constable Durgesh Kumar Giri; P.W.-4, Dr. Satish Narain Pandey, Head Master; P.W.-5, Arun Kumar Singh; P.W.-6, Dr. Anuveshika Srivastava; P.W.-7, Dr. Sunil Kumar Paswan and P.W.-8, Ajay Singh Chauhan.

6. The appellant was examined under Section-313 Cr.P.C. wherein he stated that the F.I.R. was wrongly lodged against him and the charge sheet has been submitted on the basis of false evidence because of old enmity between the parties. He denied the medical evidence and alleged false allegation in the present case. He further stated that a case No.249 of 2017 under Sections 354-A, 504, 506 of I.P.C. and Section 7/8 of POCSO Act is pending between the parties wherein Chandresh(appellant) and his father Tribhuwan are accused. The informant Leelawati is habitual litigant and extracts money by lodging false cases against different persons. Apart from the case no.249 of 2017 stated above, she has lodged case crime no.42 of 2018 under Section 363, 366, 120-B of I.P.C. and 7/8 of POCSO Act. The present case crime no.89 of 2021 has also been lodged to falsely implicate the appellant who belongs to backward caste by the victim and her mother with intention to get compensation of Rs.8,25,000/- from Social Welfare Department.

7. P.W.-1, in her examination-in-chief stated that the incident is dated 22.02.2021 time, 11:00 P.M. At the time of incident, her daughter was aged about 17 years and was enticed away by the appellant on false promise of marriage to Bangalore. He

dropped her back on 06.08.2021 at Shikarpur Crossing at 10:00 P.M. in the night. Her daughter (P.W.-2) called her on phone and she went with her son to Shikarpur and brought on her daughter back to her house. She informed P.W.-1 that Kaushalya, mother of the appellant called her and then she went to her house, where her husband, Tribhuwan, was also present. Brother of appellant, Vikram, directed her to go with the appellant who will marry her and keep her properly. Vikram took her and Chandresh on Motor Cycle and dropped them at Shikarpur Crossing. The appellant took her daughter to Bangalore, made physical relationship with her and kept her as his wife. Her daughter became pregnant. After coming to know about the conduct of the appellant, P.W.-1, from the P.W.-2, she along with P.W.-2 went to the house of the appellant and asked his family to keep her daughter as their daughter-in-law in their house. Chandresh, his mother, father and brother abused them and pushed his daughter saying that she belongs to lower caste and she can not live in their house. Her daughter fell down and suffered miscarriage.

8. P.W.-2, in her statement before the court admitted that she left her house on her own and went to the house of appellant. On the assurance of the brother of the appellant, Vikram that appellant will keep her properly and will also marry her, if she goes with him, she went with the appellant to Bangalore. In her statement she has admitted coming across number of policemen and public in the way to Bangalore. She traveled in public transport of Government Bus and also Train but at no point of time she raised any alarm or cried for help. She has admitted being dropped back by the appellant from Bangalore to Shikarpur crossing.

9. P.W.-3, P.W.-5 and P.W.-8 are formal police witnesses.

10. P.W.-4, the Head Master of the School has been able to prove that P.W.-2 was admitted in his School in Class-VI on the basis of the date of birth informed by her guardian. No documentary evidence of her age was produced at the time of her admission in the School of P.W.-4, therefore, the date of birth of the victim stated by P.W.-4 in his statement as 07.07.2003 is without any documentary basis.

11. As per the statement of P.W.-6, the victim was found to be pregnant on 17.08.2021 and had complaint of stomach ache and bleeding.

12. P.W.-7, Dr. Sunil Kumar Paswan , proved that the victim was aged about 20 years at the time of her ossification test. As per Ossification Test Report dated 23.08.2021 she was about 20 years of age.

13. After considering rival submissions, the material available on trial court record and perusal of the judgment of the trial court, we are of the view that the trial court has not properly considered the evidence on record while passing the judgment and order of conviction against the appellant.

14. As per the Rule-12 of Juvenile Justice (Care & Protection of Children) Rules, 2007, the certificate from the school first attended was required. Even as per Section-94(2) of Juvenile Justice (Care & Protection of Children) Act, 2015, the certificate from school or matriculation certificate was required. In this case the victim has not appeared in matriculation examination.

15. We find that the trial court has not considered the age certificate of P.W.-2 issued by C.M.O. Maharajganj which proves her age to be about 20 years on 19.08.2021. She eloped from her house willingly on 22.02.2021, as per the statement of P.W.-1 and also the prosecution case as per the FIR. In the F.I.R. P.W.-1 mentioned the age of P.W.-2 as 18-1/2 years, but it appears that later on legal advice she mentioned age of P.W.-2 as 17 years in her statement before the Court.

16. Clearly P.W.-2 was major and eloped from her house to the house of the appellant and from there she went through Public Transport to Gorakhpur and from there to Bangalore, She can not be said to have been forcibly abducted for the purpose of forcible marriage with the appellant. She lived with the appellant in a locality full of other houses for 6 months before returning to her place of residence with the appellant. Therefore, the conviction of the appellant under Sections-363, 366 I.P.C. is absolutely unwarranted as per the Law.

17. In case the victim was major the conviction of the appellant under Section-6 of the POCSO Act is also unjustified. The conviction under section-376 of I.P.C., is also not proper because the victim was major and had consenting relationship with appellant for six years.

18. Her overall conduct of leaving her house on her own and living with the appellant for 6 months, having physical relationship with him, never making any call to her mother or anyone in her family during this period and making call to her mother only after the appellant left her at Shikarpur Crossing on 06.08.2021 proves that P.W.-2 entered into physical relationship with the appellant, became pregnant. Thereafter, for reasons best known to them, the appellant and P.W.-2 returned from Bangalore and both parted their ways. While, P.W.-2, went to her mother after calling her on phone, the appellant went to his home. It is alleged that subsequently P.W.-1 and P.W.-2 went to the appellant's house where his and the family members refused to allow P.W.-2 to stay in their house on the ground of her caste. The family members of the appellant pushed her, she fell down and suffered miscarriage.

19. The punishment under Section-3(2)(V) of S.C./S.T. Act is not independent provision and is applicable only where the accused is punished with imprisonment of 10 years or more under the provision of I.P.C., therefore the conviction of the appellant under Section-3(2)(V) of S.C./S.T. Act is also not sustainable and is hereby **set aside**.

20. The conviction and sentence under Section 323 I.P.C. is also unwarranted since the role of pushing P.W.-2 has not been assigned to appellant but to his family members.

21. Before parting, we find that this case is an example of increasing tendency of the youth living together without solemnization of marriage under the influence of western ideas and the concept of live-in. After such relationships fail, F.I.R. is lodged and the laws being in favour of women, the boys/men get convicted relying upon the laws which were made when the concept of live-in was nowhere in existence.

22. In view of the above consideration the Judgment and Order passed by the learned trial court can not be sustained and is hereby **set aside**.

23. The appellant is in jail, he is directed to be set free, if not wanted in any other case.

24. Criminal Appeal is **allowed**.

25. Office is directed to return the trial court record and notify this judgment to the trial court within two weeks.

January 8, 2026
Abhishek

(Prashant Mishra-I,J.) (Siddharth,J.)