

COURT OF ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE,
POCSO ACT (FIRST), GAUTAMBUDDHA NAGAR

PRESENT:- ABHISHEK PANDEY (HJS) JO CODE: UP06262

UPGB010050942020



1. SPECIAL TRIAL NO.183 OF 2020
CNR No.UPGB01-005094-2020

State of U.P. Prosecution	Versus	Ajay s/o Rajaram Resident of J.J. Colony, Sector 16, Noida P.S.-Sector 20, Noida District- Gautam Buddha Nagar. Accused
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Case Crime No.172/2020
U/S 376 IPC &
Section 5/6 POCSO Act
P.S.- Sector 39, Noida
District- Gautam Buddha Nagar

Date of Registration: 22.07.2020
Date of Argument:12.08.2026
Date of Judgement: 19.08.2026

UPGB010023572021



2. SPECIAL TRIAL NO.149 OF 2021
CNR No.UPGB01-002357-2021

State of U.P. Prosecution	Versus	Radha w/o Ajay Resident of Village- Sadarpur, Sector 45 P.S.-Sector 39, Noida District- Gautam Buddha Nagar. Accused
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Case Crime No.172/2020
U/S 201 IPC
P.S.- Sector 39, Noida
District- Gautam Buddha Nagar

Shri Jai Prakash Bhati, Ld. SPP for Prosecution.
Present:-
Shri Pramod Kumar, Advocate for Defence.

Date of Registration: 29.01.2021
Date of Argument: 12.08.2026
Date of Judgement:19.08.2026

JUDGEMENT
(19.08.2026)

1. Accused Ajay is put to trial in Special Trial No. 183 of 2020 on the charge for the offences under section 376 IPC & Section 5/6 POCSO Act, arising out of Case Crime No. 172 of 2020, Police Station- Sector 39, Noida,

District- Gautam Buddha Nagar. Accused Radha is put to trial in Special Trial No. 149 of 2021 on the charge for the offences under section 201 IPC, arising out of Case Crime No. 172 of 2020, Police Station- Sector 39, Noida, District- Gautam Buddha Nagar.

2. The above mentioned two special trials i.e. Special Trial No. 183 of 2020 and Special Trial No. 149 of 2021 are related with same crime number and incidence, hence these both special trials are being decided by a common judgment. The judgement passed on the file of Special Trial No. 183 of 2020 and copy whereof is to be kept on the file of Special Trial No. 149 of 2021 also.
3. The name of victim and her parents name, family details and school details are not disclosed in the light of sub section (7) of section 33 of Chapter VIII of Protection of Children from Sexual Offences Act, 2012. In the light of observations of Hon'ble Supreme Court in the case of Nipun Saxena Vs. Union of India, decided on 11th December, 2018 and in the light of Section 33 (7) of Protection of Children from Sexual Offences Act 2012, the term victim "A" is used in place of name of victim.
4. Briefly stated, the case of prosecution unfolded on the basis of written "*Tehreer*" Ex. Ka-1 of complainant/mother of victim "A" moved at 08:38 p.m. on 16.03.2020 at Police Station- Sector 39, Noida, District- Gautam Buddha Nagar is that- on 15.03.2020, complainant's minor daughter/victim "A" who is mentally challenged, when came to the house, she saw blood stains on her clothes. When she enquired about it from her daughter then she told that she went to Ajay's house and he did this wrong act with her and because of fear she has not told this incidence to anyone else. The first information report was registered against accused- Ajay and investigation started.
5. On the basis of written "*Tehreer*" of complainant/father of victim "A", the Police of Police Station- Sector 39, Noida, registered a First Information Report as Case Crime No. 172 of 2020, under section 376 IPC and section 3/4 POCSO Act against accused- Ajay.
6. The investigation was handed over to SI Shailesh Tomar, posted at the Police Station- Sector 39, Noida. The Investigating Officer, SI Shailesh Tomar copied the Chik FIR as Ex. Ka-2 and its corresponding GD Entry Ex. Ka-3. The Investigating Officer recorded statements of scribe of FIR, H.M. 207 Kishan Singh, complainant and victim "A". The Investigating

Officer inspected place of occurrence and sketched site-map as Ex. Ka-8. Thereafter the Investigating Officer got victim medically examined and victim's medical examination reports copied in the case diary. Accused was arrested and his statement was recorded. The the Investigating Officer got statement of victim "A" recorded under section 164 Cr.P.C. and copied it in the case diary.

7. Medico legal examination report of victim "A" , Ex. Ka-5 prepared at 01:55 p.m. on 16.03.2020 at C.H.C., Bhangel, District- G. B. Nagar. The Emergency Medical Officer, CHC, Bhangel, G.B. Nagar, recorded that no external injury noted during examination. Victim's supplementary medical examination report- Ex. Ka-7 prepared at 10:10 a.m., on 09.05.2020, in which the Emergency Medical Officer recorded that- no spermatozoa seen in vaginal smear slides.
8. After collecting evidence of involvement of accused persons- Ajay and Radha, the Investigating Officer filed Charge-sheet against them in this Court on 19.06.2020 for the trial of accused persons- Ajay and Radha, for the offences under sections 376, 201 IPC and section 5/6 POCSO Act. This Court took cognizance against accused- Ajay on 19.06.2020 for the offences under section 376 IPC and section 5/6 POCSO Act and also took cognizance against accused- Radha on 19.06.2020 for the offence under section 201 IPC. Thus, the Special Trial No.183 of 2020 and Special Trial No. 149 of 2021 got registered respectively.
9. Vide order dated 05.01.2021, this Court charged accused- Ajay for the offence under section 376 IPC and section 5/6 POCSO Act. Accused- Ajay pleaded not guilty to the charge and claimed to be tried. Vide order dated 13.05.2022, this Court charged accused- Radha for the offence under section 201 IPC. Accused- Radha pleaded not guilty to the charge and claimed to be tried.
10. To bring home the charge against the accused persons- Ajay and Radha in this special trial, the prosecution examined following five witnesses and produced following documentary evidence-

Oral Evidence			
No.	Witness Number	Name of Witness	Witness Particulars
1.	PW-1	Smt. Sunita	Victim's mother
2.	PW-2	H/C 207 Kishan Singh	Scribe of FIR and GD Entry

3.	PW-3	victim "A"	the victim
4.	PW-4	Dr. Kajal Jain	the medical expert
5.	PW-5	Inspector Shailesh Tomar	the Investigating Officer
Documentary Evidence			
No.	Document Number	Document Particulars	Witness who proved the Document
1.	EX KA-1	<i>Tehreer</i> (Complainant)	PW-1
2.	EX KA-2	Chik FIR	PW-2
3.	EX KA-3	General Diary Entry	PW-2
4.	EX KA-4	Statement u/s 164 Cr.P.C.	PW-3
5.	EX KA-5	Victim's medical examination report	PW-4
6.	EX KA-6	Victim's supplementary medical examination report	PW-4
7.	EX KA-7	Victim's supplementary medical examination report	PW-4
8.	EX KA-8	Site-map	PW-5
9.	EX KA-9	Charge-sheet	PW-5

The gist of above mentioned evidence produced by the prosecution in brief is as under-

11. PW-1- the mother of the victim "A" deposed in her examination-in-chief that-

"The alleged incidence is approximately one year old. It was around 07:30 p.m. My daughter/victim "A" was playing outside while playing she went into the house of the accused. When my daughter came back from the house of the accused there were blood stains on her clothes. When I asked her then she told me that Ajay has committed rape on her. She took her daughter to the police station, there was got the "Tehreer" typed which she has identified as Paper No.4A/3, exhibited as Ex. Ka-1. Her daughter's medical got conducted in the presence of police. Her statement was also recorded in the Court. Her statement was taken by the police. Ajay lives near her house. In her cross-examination, she has categorically denied that her daughter ever told her that some wrong act had been performed her by the accused. When she went to the police station, she was accompanied by some people of her village. She does not know how to read and write. She puts her thumb impression. "Tehreer"

was never read to her. The police never took her any statement. She can not tell how the police wrote about the incidence relating to her daughter. She never told this incidence to the police personnel. At this stage, witness was declared hostile by the learned SPP who has cross examined the witness where she has accepted that she went to the hospital alongwith her daughter. Nobody asked her about internal check-up of her daughter. From the above evidence of PW-1, it is clear that she has not supported the prosecution story.

Thereby, this witness is the mother of victim "A" who has not supported the prosecution story in her evidence and this witness is declared hostile by the prosecution. Critical appreciation of evidence of this witness shall be done in forthcoming paragraphs of this Judgement.

- 12.** PW-2, H/C 207 Kishan Singh- the scribe of FIR and its corresponding GD Entry, has deposed in his examination-in-chief that-

"On 16.03.2020, I was posted at the post of Head Moharrir, at P.S.- Sector 39. On the basis of written "Tehreer" of the complainant as well as oral order of SHO concerned, Case Crime No.172 of 2020, under section 376 IPC and section 3/4 POCSO Act was registered against accused- Ajay. I got Chik FIR typed on Computer word by word by giving dictation to the Computer Operator."

Seeing Paper No.4A/1 available on file, this witness verified the "Tehreer", which is exhibited as Ex. Ka-2. This witness further deposed that- *"The said case was disclosed on Rapat No.14, time 08:38 hrs. dated 16.03.2020 which is mentioned on Rapat/G.D. (Paper No.9B/6). I identify it which is exhibited as Ex. Ka-3. 'Darogaji' recorded my statement."*

Thereby, this formal witness has merely proved the veracity of FIR and entry in GD.

- 13.** PW-3, the victim "A" deposed in her examination-in-chief that-

"I do not go to any school. I live at my house. I was alone in my house when I fell down and blood stains came on my clothes due to injuries of my falling on the ground. Ajay never pushed me. I fell down on my own. My mother thought that somebody done something wrong act with me and got the FIR lodged. When this witness was shown her statement recorded under section 164 Cr.P.C., she recorded her photographs on which Ex. Ka-4 was put in her cross-examination. She has said that when she was presented before the Magistrate whatever statement she was

given was given at the instance of the police personnels accompanying her. She got injury while playing and because of that injury there were blood stains on her clothes. Radha never changed her Payjami.

With the permission of the Court when a sealed envelop pertaining to the victim's statement under section 164 Cr.P.C., was opened and read over to this witness then this witness identified her photo, which is exhibited as Ex. Ka-4. This witness further deposed that- "*Darogaji recorded my statement at the police station concerned. Radha did not change my Pyjami.*"

On cross-examination of Defence-Counsel, this witness further stated that-

The statement which I deposed before the Magistrate Sahab, that statement I deposed on saying of the police persons. The police did not record my any statement....."

This is the key witness of prosecution who is the victim "A" of the case, who has not supported the prosecution story in her evidence. Critical appreciation of evidence of this witness in relation to other documentary and oral evidence shall be done in forthcoming paragraphs of this Judgment.

- 14.** PW-4, Dr. Kajal Jain- the medical expert has deposed in her examination-in-chief that-

"On 16.03.2020 at 01:55 p.m., victim "A" was brought before me by L/C 2988 Preeti, P.S.- Sector 39, Noida for conducting victim's medical examination. I conducted victim's medical examination externally as well as internally. Victim's mother's consent was obtained for conducting victim's medical examination and her right thumb impression was also put on the concerned papers and also certified it. For identification of victim, one black mole on victim's nose was marked for identification of the victim. At that time, victim "A" was in her full senses, but victim was found to be mentally weak. During victim's medical examination, victim's pulse rate was 76/- per minute, blood pressure- 100/60, temperature- 37'c and her breathing rate was 16/per minute were found to be present. No external mark of injury was found to be present during victim's external examination. Victim was feeling pain on touching in lower part of the stomach and blood was oozing out from victim's private part. During victim's internal medical examination, her private part was found to be freshly torn and blood was oozing out and victim was feeling pain in her

private part. Victim's samples i.e. two blood samples, nail clippers, one vaginal swab, one anal swab, one perineal swab, one vaginal washing were collected for sperm testing. After collecting all samples were sent to Pathology Centre for DNA test. On 09.05.2020, victim's supplementary medical examination report was prepared in which no spermatozoa seen."

Seeing Paper No.6A/2 available on record, this witness said that- "*this is that victim's medical examination report which is prepared in my handwriting and signature. I identify it which is exhibited as Ex. Ka-5."*

Seeing Paper No.6A/4 available on record, this witness said that- "*this is that victim's medico legal examination report which is prepared in my handwriting and signature. I identify it which is exhibited as Ex. Ka-6."*

Seeing Paper No.6A/5 available on record, this witness said that- "*this is that victim's supplementary medical examination report which is prepared in my handwriting and signature. I identify it which is exhibited as Ex. Ka-7."* This witness further stated that- "*the injury which were found during victim's internal examination that injuries were occurred by rape. Victim told that victim was sexually assaulted by her friend's 'Jeeja'. On 15.03.2020 at 04:00 p.m. which victim was playing then victim's friend's Jeeja came there, he carried victim to his home and also committed rape with the victim. When victim cried then victim's friend's Jeeja's wife came there and also saved victim. Accused is victim's neighbour. Darogaji recorded my statement regarding the alleged incidence. In my opinion the injuries which were caused in victim's private part, that injuries can be caused by sexual assault mainly.*"

This witness PW-4, has deposed in her cross-examination that-

"No blood was found to be present on victim's external clothes. Blood was found to be present on victim's Pad which was used by the victim. I do not remember that on which date Darogaji recorded my statement.On 09.05.2020 victim's supplementary medical examination report was prepared. No spermatozoa seen in victim's supplementary medical examination report."

This formal witness has proved the veracity of Victim's medical examination report. Thorough examination of evidence of this witness with respect to evidence of witnesses of fact shall be done in following paragraphs of this judgement.

15. PW-5, SI Shailesh Tomar- the Investigating Officer has deposed in his examination-in-chief that-

"On 16.03.2020, I was posted at the post of Sub-Inspector at P.S.- Sector 39. During my posting, I conducting investigation proceedings of Case Crime No.172 of 2020, under section 376 IPC and section 5/6 POCSO Act. CD No.1 was prepared by me on 16.03.2020 and CD No.13 was prepared by me on 07.06.2020. The entire investigation proceedings was conducted by me."

Seeing Paper No.5A/1 available on record, this witness said that- *"This is that site-map map which is prepared in my handwriting and signature. I identify it which is exhibited as Ex. Ka-8."* Seeing Paper No.3A/17 available on record, this witness said that- *"This is that charge-sheet which is prepared in my handwriting and signature. I identify it which is exhibited as Ex. Ka-9."*

This witness is Investigating Officer of the case who has proved the above mentioned prosecution papers and justified his investigation. Critical appreciation of evidence of this witness with respect to evidence of witnesses of fact shall be done in later part of this judgement.

16. After the process of recording evidence of the prosecution, this Court examined accused persons- Ajay and Radha under Section 313 of Code of Criminal Procedure. accused persons- Ajay and Radha did not lead any evidence in their defence and pleaded innocence.
17. At the stage of final arguments heard learned SPP Shri Jai Prakash Bhati for the State of U.P. and learned Advocate Shri Pramod Kumar for accused persons- Ajay and Radha-

Opening the case for the prosecution, learned SPP submitted that the case of the prosecution is proved beyond all reasonable doubts. Learned SPP also submitted that the prosecution heavily relies upon all the evidence in support of its case, leaving no room for any doubt that the accused persons- Ajay and Radha are the perpetrators of the crime of charge framed against them. Hence, accused persons Ajay and Radha be punished with maximum sentence prescribed under the statute.

Per contra, learned Advocate for accused persons Ajay and Radha has submitted that accused Ajay and Radha are innocent and falsely implicated. That no offence beyond reasonable doubt is proved against them and hence they are liable to be acquitted.

Having heard above mentioned arguments of both the parties, this court reaches to following conclusion-

CONCLUSION

18. So as to reach to the conclusion that whether the charged offences are proved against the accused or not it is necessary to draw following points of determination-

(i). Whether the victim "A" was minor at the time of incident according to the provisions of section 2(d) of the Protection of Children from Sexual Offences Act, 2012 ?

(ii). Whether the accused- Ajay at sometime on 15.03.2020 at Village- Sadarpur committed offence of rape and aggravated penetrative sexual assault on victim "A" and co-accused- Radha caused disappearance of evidence of an offence committed, or gave false information touching it to screen the offender in the alleged offence ?

19. Disposal of point of Determination No.(i).

"Whether the victim "A" were minors at the time of incident according to the provisions of section 2 (d) of the Protection of Children from Sexual Offences Act, 2012 ? "

So as to reach to the conclusion, following point is important:-

- i.** Age Certificate No.CAGC2003265 dated 19.03.2020 of victim "A", issued by the Office of Chief Medical Officer, Gautam Buddha Nagar is available on record, in which age of victim "A" is shown as about 15 years.
- ii.** Victim's statement recorded under section 164 Cr.P.C. (Ex. Ka-4) is available on record, in which victim's age was mentioned as 09 years.
- iii.** Victim's Medical Examination Report- Ex. Ka-5 is also available on record, in which victim's age is mentioned as 12 years. Victim's Medico-Legal Examination Report of Sexual Violence- Ex. Ka-6 is also available on record, in which victim's age is mentioned as 12 years.
- iv.** The Defence has not rebutted this fact at any stage with some solid evidence that victim "B" was a minor child of below 18 years of age on the alleged date of incidence. Defence has not even tried to produce any evidence stating that victim was not a minor on alleged date of commission of offence. Therefore, on the basis of above mentioned

unrebutted evidence and in absence of any contrary evidence by defence side, it is liable to be held that victim "B" was a minor child of below 18 years of age when the said offence is alleged to have been committed. Hence this point of determination is liable to be decided in 'Affirmative' as in favour of prosecution.

Concludingly, on the basis of above evidence, it is held that victim victim "A" was a minor child of below 18 years of age at the time of alleged incident. Thus, this point of determination is liable to be decided in "Affirmative". Thereby decided accordingly.

20. Disposal of points of Determination No. (ii).

Whether the accused- Ajay at sometime on 15.03.2020 at Village-Sadarpur committed offence of rape and aggravated penetrative sexual assault on victim "A" and co-accused- Radha caused disappearance of evidence of an offence committed, or gave false information touching it to screen the offender in the alleged offence ?

To arrive to the just conclusion, following appreciation of evidence is relevant:-

- (a) Victim's mother when examined as PW-1 has not supported the prosecution story in her evidence and this witness is declared hostile by the prosecution. This witness has categorically stated that her daughter/victim "A" did not tell her regarding the commission of rape. This witness went to the police station on saying of villagers.**
- (b) The victim "A" when examined as PW-3 has also not supported the prosecution story in her evidence. Victim "A" has categorically stated that she was alone at her home at the time of alleged incidence. She fell down on the earth. Due to falling she sustained injuries and blood stained on her clothes. She fell down herself. Victim's mother got nervous. Victim's mother thaught that someone committed wrong act with the victim. Thereafter victim's mother got registered report. In her cross-examination this witness stated that she deposed her statement before the Magistrate Sahab on saying of the police persons. The police did not record her any statement.**
- (c) On case diary also, no medical examination report of victim is available which supports the prosecution story of alleged commission of rape upon the body of the victim. Moreover victim's**

supplementary medical examination report is available on record as Ex. Ka-7, in which no spermatozoa seen in vaginal smear slide is mentioned.

- (d) It is worth mentioning that the prosecution witness- PW-1- the mother of the victim "A" has not supported the prosecution story in her evidence and this witness is declared hostile by the prosecution. PW-3- the key witness who is the victim of the case has given contradictory statements in her evidence and also not supported the prosecution story in her evidence and this witness is also declared hostile by the prosecution.**

If above points are summarized then it appears that witnesses of fact have not supported the prosecution story in such a manner that at sometime on 15.03.2020 at Village- Sadarpur accused- Ajay committed offence of rape and aggravated penetrative sexual assault on victim "A" and co-accused- Radha caused disappearance of evidence of an offence committed, or gave false information touching it to screen the offender in the alleged offence. In these circumstances, this Court can not hold with certainty that it was accused- Ajay who at sometime on 15.03.2020 at Village- Sadarpur committed offence of rape and aggravated penetrative sexual assault on victim "A" and co-accused- Radha caused disappearance of evidence of an offence committed, or gave false information touching it to screen the offender in the alleged offence. Concludingly, this point of determination is liable to be decided in 'Negative' as against the prosecution. Thereby decided accordingly.

- 21.** The combined disposal of points of determination nos. (i) and (ii) lead to this Court to the conclusion that on the basis of evidence produced before this Court, it is not proved beyond reasonable doubt that at sometime on 15.03.2020 at Village- Sadarpur accused- Ajay committed offence of rape and aggravated penetrative sexual assault on victim "A" and co-accused- Radha caused disappearance of evidence of an offence committed, or gave false information touching it to screen the offender in the alleged offence. Hence, charged offences of sections 376, 201 IPC & Section 5/6 POCSO Act, do not appear to have proved beyond reasonable doubt as against accused persons- Ajay and Radha. Hence, accused persons Ajay and Radha are liable to be acquitted of the charged offences.

ORDER

22. **Accused- Ajay is hereby acquitted of the charge of offences under section 376 IPC and section 5/6 POCSO Act in Special Trial No.183 of 2020, arising out of Case Crime No.172 of 2020, P.S.- Sector 39, Noida, District- Gautam Buddha Nagar.**
23. **Accused- Radha is hereby acquitted of the charge of offence under section 201 IPC, in Special Trial No. 149 of 2021, arising out of Case Crime No.172 of 2020, P.S.- Sector 39, Noida, District- Gautam Buddha Nagar.**
24. **Accused persons- Ajay and Radha are on bail. Their Personal Bonds and Surety Bonds are hereby cancelled and Sureties are hereby discharged.**
25. **In compliance of the provisions of Section 437-A of Code of Criminal Procedure, accused persons- Ajay and Radha are directed to execute a Personal Bond each for a sum of rupees 50,000/- and furnish One-One Surety each of the like amount within next seven days.**
26. **A Misc. Case be registered against PW-1, the complainant- Smt. Sunita under section 383 B.N.S.S.**
27. **After the expiry of the period of appeal and if the appeal is not preferred then physical objects/exhibits be disposed of in accordance with law. If an appeal is preferred then such disposal will be done as per the directive of the Appellate Court.**
28. **The copy of judgment passed on the file on Special Trial No. 183 of 2020 and copy whereof is to be kept on the file of Special Trial No. 149 of 2021 respectively.**

Dated 19.08.2026

(Abhishek Pandey)
J.O. Code- UP06262
Additional Sessions Judge/
Special Judge, POCSO Act (First)
Gautam Buddha Nagar

This Judgement signed, dated and pronounced in the open Court today on 19th day of August-2026.

Dated 19.08.2026

(Abhishek Pandey)
J.O. Code- UP06262
Additional Sessions Judge/
Special Judge, POCSO Act (First)
Gautam Buddha Nagar

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