

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Appeal No. 306/1997

CNR: RJHC020016551996 | URN: CRLA / 595U / 1997

State of Rajasthan

----Appellant-Petitioner

Versus

1. Smt. Sharda widow of Shri Radhey Shyam.
 2. Deen Dayal Son of Shri Radhey Shyam
- Both resident of Agarsen Colony, Hindaun City, Distt. Sawai
Madhopur.

---Accused-Respondents

For Appellant(s)	:	Mr. Vivek Sharma, PP
For Respondent(s)	:	Ms. Surbhi Agarwal for Mr. S. K. Gupta, Sr. Advocate

HON'BLE MR. JUSTICE SANDEEP TANEJA

Judgment

10/09/2026

1. The instant criminal appeal has been filed by the State of Rajasthan under Sections 378(1) and (3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), against the judgment dated 16.01.1996 passed by the learned Additional District and Sessions Judge, Hindaun City (hereinafter referred to as the 'Trial Court') in Sessions Case No.28/1995, whereby the accused-respondents were acquitted of charges framed against them.
2. Briefly stated, the facts of the case are that on 02.09.1993, a written report was submitted at Police Station Hindaun City by Smt. Kiranti Devi along with her daughter, Smt. Anguri Devi. It was stated in the report that the victim (hereinafter referred to as

'X'), who was her granddaughter, had left for school at about 7:00 A.M. with her school bag. When she did not return even two hours after the school hours were over, they went to the school to search for her. The school teacher informed them that 'X' had not attended school that day. Thereafter, they searched for her at the residences of their relatives, but no information could be obtained. It was further stated in the report that the complainant had a strong suspicion that her neighbour, Deen Dayal S/o Radhey Shyam (accused-respondent No.2), had enticed 'X' away.

2.1 On the basis of the aforesaid report, a First Information Report was registered at Police Station Hindaun City for the offence punishable under Section 363 of the Indian Penal Code (hereinafter referred to as 'IPC'), whereafter investigation was conducted. The victim 'X' was recovered on 04.09.1993. Her statement was recorded under Section 161 Cr.P.C., and she was subjected to medical examination in relations to the allegations of rape, as well as for determination of her age. Thereafter, her statement was recorded under Section 164 Cr.P.C., and a charge-sheet was filed against the accused-respondents under Sections 363 and 376 of the IPC.

2.2 The case was subsequently committed by the Court of the Additional Chief Judicial Magistrate, Hindaun City, to the learned Trial Court and was registered as a Sessions Case. Charges were framed against accused-respondent No.1 under Section 376 read with Section 109 of the IPC, whereas accused-respondent No.2 was charged under Sections 363 and 376 of the IPC. Both the accused-respondents pleaded not guilty and claimed trial.

2.3 The prosecution examined ten witnesses (PW-1 to PW-10) and exhibited seven documents as Exhibits P-1 to P-7. Thereafter, the statements of the accused-respondents were recorded under Section 313 Cr.P.C.

2.4 Upon appreciation of the evidence available on record, the learned Trial Court, vide the impugned judgment, acquitted both the accused-respondents by extending the benefit of doubt.

3. Being aggrieved by the judgment of acquittal, the State has preferred the present appeal.

4. At the outset, the learned Public Prosecutor informs the Court that accused-respondent No.2, namely Deen Dayal, has died on 16.12.2005. In this regard, a report dated 15.02.2026 issued by the SHO, Police Station Hindaun City, District Karauli, has been produced and is taken on record. Accordingly, on account of the death of accused-respondent No.2, the present appeal stands abated as against him and survives solely against accused-respondent No.1, namely, Smt. Sharda.

5. Learned Public Prosecutor further submits that the learned Trial Court erred in holding that the victim was above 16 years of age. He also submits that the learned Trial Court committed a grave error in disbelieving the testimony of the victim, who, in her statement, clearly deposed regarding the commission of the alleged offence by accused-respondents. He, therefore, prays that the present appeal be allowed against accused-respondent No.1.

6. On the other hand, learned counsel for accused-respondent No.1 supports the impugned judgment of acquittal passed by the learned Trial Court, submitting that the prosecution had failed to

prove its case beyond reasonable doubt. She further submits that since the main accused, i.e., accused-respondent No.2 has already died on 16.12.2005, the charge of abetment against accused-respondent No.1, does not survive independently, rendering the appeal infructuous against her as well. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Eknath Yeshwant Pagar & Anr.**, reported in **(1981)2 SCC 299**.

7. Heard learned counsel for the parties and perused the material available on record.

8. A perusal of the learned Trial Court record reveals that accused-respondent No.1 was charged for abetting the principal accused, i.e., accused-respondent No.2. Undisputedly, accused-respondent No.2 was the main accused and accused-respondent No.1 was the abettor. Vide the impugned judgment, both the accused-respondents were acquitted by the learned Trial Court.

9. The Hon'ble Supreme Court, in **Eknath Yeshwant Pagar** (supra), rendered the appeal against the abettor infructuous after the appeal against the principal accused had abated. The observations of the Hon'ble Supreme Court are reproduced below:

"It is stated by the counsel for the respondents that Respondent 1 is dead. According to the prosecution, Respondent 1 is the main accused and the second respondent was merely an abettor. Both were acquitted by the High Court. Hence, this appeal to this Court. Since the appeal abates against the first respondent on account of his death and the second respondent has already been acquitted, appeal against the second respondent becomes infructuous. The appeal is accordingly disposed of."

10. Further, a Division Bench of this Court, in **State of Rajasthan Vs. Laxman**, reported in **2010 (4) RLW 3127 (Raj.)**, relying upon the aforesaid judgment in **Eknath Yeshwant Pagar** (supra), dismissed the appeal filed by the State insofar as it related to the abettor, holding that the appeal had become infructuous consequent upon the death of the main accused. The relevant paragraph of the judgment is reproduced below:

“10. Since main accused Jeewan Singh had died and appeal abated against him. Respondent Laxman Singh is merely an abettor. Both were acquitted by the trial court. In these circumstance, in view of the above referred authoritative pronouncement by the Hon'ble Apex Court, the present appeal against abettor i.e. respondent Laxman Singh has become infructuous and the same is accordingly disposed of.”

11. In the instant case, accused-respondent No.2, namely, Deen Dayal, who was the principal accused, has died and the appeal stands abated as against him. Accused-respondent No.1, namely, Smt. Sharda, was charged under Section 376 read with Section 109 of the IPC, i.e. for abetment of the offence alleged against the principal accused. Thus, in view of the law laid down in the aforesaid judgments, the appeal against accused-respondent No.1 has also become infructuous.

12. Even otherwise, it is well-settled that, while dealing with an appeal against acquittal, an appellate Court is required to exercise greater caution and interfere with the findings recorded by the Trial Court only when they are found to be perverse, illegal, based on a complete misreading of evidence, or otherwise unsustainable in law. The Hon'ble Supreme Court, in the case of **Chandrappa and Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC**

415, while dealing with the powers of an appellate Court in an appeal against acquittal, observed that where two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the Trial Court.

13. In light of above, this Court has independently examined the evidence available on record, the testimonies of the prosecution witnesses and the impugned judgment, and finds that the learned Trial Court has passed a detailed and reasoned judgment of acquittal and has rightly extended the benefit of doubt to the accused-respondents. The impugned judgment does not suffer from any perversity, illegality or legal infirmity so as to warrant interference of this Court.

14. Resultantly, the impugned judgment dated 16.01.1996 passed by the learned Trial Court is affirmed. The appeal stands abated as against accused-respondent No.2, namely, Deen Dayal, and is dismissed as against accused-respondent No.1, namely, Smt. Sharda.

15. Pending application(s), if any, stand disposed of.

16. Office is directed to send back the record of the case to the concerned Trial Court forthwith.

(SANDEEP TANEJA),J