

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl A(S) No. 26/2025
CrlM No.2114/2025
CrlM No.2115/82025

Reserved on: 30.07.2026
Pronounced on: 12.08.2026
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*Operative part or Full judgment: **Full***

Brahmanand Saraswati, Age 84 years

S/O Khacher Mal @ Ramanand Saraswati

R/O Serkhada, Tehsil Gokal Mahwan,

District Mathura, State of U.P.

A/P District Jail, Jammu.

.....Petitioner(s)

Through: Ms. Vasudha Sharma, Adv.

Vs

1. **State (now Union Territory) of J&K**

through SHO Police Station Reasi.

2. Superintendent, District Jail,

Jammu

..... Respondent(s)

Through: Mr. Sumeet Bhatia, GA

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

01. Appellant herein feeling aggrieved of the judgment of conviction dated 29.03.2024 and order of sentence dated 02.04.2024 passed by learned Principal Sessions Judge, Reasi ('Trial Court') in Sessions Trial case No.61/2018 titled '*State Versus Brahmanand Saraswati*', whereby he has been convicted for the commission of offence punishable under Section 376 RPC and sentenced to rigorous imprisonment for ten years and a fine

of Rs.5,000/- and in default of payment of fine, to undergo further simple imprisonment for a period of one month.

02. The judgment and order impugned have been assailed on the ground that there was no reliable evidence on record to establish the guilt of the appellant with the alleged crime; that the evidence of the material prosecution witnesses was full of contradictions, exaggerations and improvements; that there was a delay of almost 8 months in lodging the impugned FIR which casts doubt on prosecution story; that as per the statement of the prosecutrix under Section 164 CrPC, she alleged that she was unconscious at the time of alleged incident is a huge contradiction in the story of prosecution; that the learned Trial Court has failed to appreciate there was one more suspect namely Vipin, whose house was also adjacent to the house of the prosecutrix; that the delay in recording the statements of witnesses including the statements of the prosecutrix and other witnesses projected in the case has remained unexplained, but despite clear position of law that the delay, if unexplained, is fatal to the prosecution case; that none of the witnesses, on whose evidence the appellant has been convicted, have ever supported the prosecution version of the story.
03. Further grounds of challenge are that the circumstantial evidence which has been relied upon by the learned Trial Court while convicting the appellant is not legally tenable; that the learned Trial Court has relied upon statements of the relative witnesses without any regard to the guarded mechanism as provided by the Supreme Court; that the supporting evidence in the case has miserably failed to connect the appellant with the

commission of the crime; that the DNA report relied upon by the trial court is also infructuous, as the same has not been substantially proved by the prosecution from where it could be ascertained that the DNA sample of the accused matched with the DNA sample of the alleged dead child, delivered by the prosecutrix.

04. The factual matrix of the case, as per the charge sheet, is that appellant namely Brahmanand Saraswati S/O Khacher Mal @ Ramanand Saraswati R/O Serkhada Tehsil Gokal Mahwan District Mathura, State of U.P. who used to live the house of Romel Singh, adjacent to the house of prosecutrix; that the prosecutrix and her family had adopted him as their guru and she used to provide milk and food to him; that one day, when, as usual, she went to give milk and food to appellant, he found her all alone in room and committed rape upon her and thereafter many times; that appellant person threatened prosecutrix that in case she discloses anything to her family, he will eliminate the whole family; that she became pregnant and one day when she was having pain in her belly, on asking of her parents, she narrated the whole incident to her parents, where in the intervening night of 6th/7th of October 2018 prosecutrix gave birth to a dead female baby.
05. On the basis of aforesaid, FIR No.177/2018 for commission of offences under Sections 376 RPC 4 POCSO Act was registered at P/S Reasi, against the appellant; that investigation was entrusted to SI Qamar Din, who took the prosecutrix to Reasi Hospital for medical examination, where the doctor told that she was pregnant and after delivery medical can be conducted; that she was referred to SMGS Hospital Jammu where she gave birth to one dead female child, in the intervening night of 6th/7th of October 2018,

thereafter, Sh. Tribhawan SI was deputed to get the post-mortem conducted and other formalities of baby; that I.O. visited the spot at Sulla Panassa and prepared the site plan; that DNA test of the dead baby and appellant was got conducted which matched; that I.O. obtained the post-mortem report of deceased baby, recorded the statement of witnesses under Section 161 CrPC, got recorded the statement of the prosecutrix, her mother and her brother under Section 164-A CrPC before Judicial Magistrate, procured birth record of the prosecutrix from the school and as per the birth certificate, the prosecutrix was found to be sixteen years and nine months old, as such, offences under Section 376 RPC 4 POCSO Act were established against the accused and the charge sheet was presented before the court of Principal Sessions Judge Reasi for judicial determination and the trial court vide impugned judgment dated 29.03.2024, held the appellant guilty, recording conviction for the commission of offence punishable under Section 376 RPC and vide impugned order dated 02.04.2024, sentenced him to undergo rigorous imprisonment for ten years and a fine of Rs.5,000/- and in default of payment of fine to undergo further imprisonment for a period of one month.

06. Heard learned counsel for both the sides, perused the impugned judgment and order and considered.
07. Learned counsel for the appellant argued that this is a case where the appellant was falsely implicated for the reasons best known to the prosecutrix and her family. It has also been argued that there was delay of about 8 months in lodging FIR; that there is contradiction in the date of birth of the prosecutrix, recorded in school certificate as well as in

horoscope; that DNA report is the sole evidence, which alleged the connection of accused with the crime, however, DNA report of accused was not placed on file; that sample taking documents were also not placed on record; that blood sample witnesses were neither arrayed nor examined as prosecution witnesses; that there is no eye witness though residents were in adjacent houses; that the mother of the prosecutrix in her statement stated that prosecutrix narrated the incident to her after 10/12 days of occurrence, which means that family had knowledge of the incident and there is delay in lodging FIR; that the charge of rape cannot be constituted as there was no conclusive age of proof, moreover, the statement of prosecutrix is not of sterling quality. It was finally prayed that the impugned judgment and order be set aside and the appellant be acquitted of the charge.

08. Learned counsel for the respondents, on the other hand, vehemently argued that the appellant had ravished and sexually assaulted a minor girl, whereby impregnated her, and that there was sufficient evidence to connect the accused with the commission of offence, particularly so, in view of the statement of the prosecutrix who has vividly described the sequence of occurrence and very clearly stated that the appellant had repeatedly raped her firstly by offering tea made her unconscious and then by intimidating of dire consequences if she speaks up of the incident to anyone. He further argued that it cannot be said that the prosecutrix, would implicate and involve an old man, who was revered as guru by many people of the locality, at the risk of her honour for the commission of such a heinous offence. He further argued that though the sole statement of prosecutrix

was sufficient to record conviction in a rape case, however, there was corroboration of evidence and the DNA report established the fact that appellant has committed such a heinous offence of rape. It was prayed that the appeal having no merit be dismissed and the conviction and sentence recorded by the trial court, be maintained and upheld.

09. The prosecution after investigation of the case has laid a chargesheet against the appellant/convict who was stated to be a person of more than 70 years of age to have sexually ravished a girl below the age of 16 years for over a period as a godman and living in the house of one-Romel Singh, adjacent to the house of the prosecutrix and her family. The family of the prosecutrix had adopted him as their Guru and the prosecutrix used to serve him with milk and fruits; that one day, she was raped and under the threats of eliminating her entire family in case she discloses it to anybody, she was repeatedly subjected to sexual intercourse and that she had become pregnant and when she was taken to District Hospital Reasi, wherefrom she was shifted to SMGS Hospital Jammu on 16/17 October 2018, she delivered a dead female baby; that after investigation of the case, the appellant was charged of the commission of offences punishable under Section 376 RPC and Section 4 of POCSO Act. After trial, he was convicted of the offences punishable under Section 376 RPC only as the trial court was of the opinion that the POCSO Act was not applicable to the State of Jammu & Kashmir as on date of occurrence. It appears that trial court was oblivious of the fact that before enforcement of the POCSO Act to the State of Jammu & Kashmir, there was a piece of legislation initially in the form of Ordinance promulgated by the Govt. of Jammu & Kashmir

containing almost similar provisions and which was applicable to the State of Jammu and Kashmir as on date of occurrence. It appears that trial court was oblivious of the fact that before enforcement of the POCSO Act to the State of Jammu & Kashmir, there was legislation initially in the form of Ordinance promulgated by the Govt. of Jammu & Kashmir containing almost similar provisions and which was applicable on that date of the occurrence. Since the respondent State (now UT) of Jammu & Kashmir has not challenged the judgment, as such, no view is required to be taken in that matter. Reverting to the challenge thrown to the conviction recorded of the appellant under Section 376 RPC and sentencing him to ten years of rigorous imprisonment with fine of Rs. 5,000/- and in default of payment to undergo further imprisonment of one month. This Court has to appreciate the rival submissions made in this behalf in the context of the evidence recorded before the Trial Court.

10. The prosecution had examined almost all the witnesses including the prosecutrix. The prosecutrix stated that the appellant/convict, whose name was Brahmanand Saraswati was known to her, and that he had tattooed Banwari on his arm; that he was residing in their locality in the house of one Romel Singh; that the people including her parents had made him as their guru; that she would also go to give milk, food, etc. to the accused; that on one evening when there was none else, the appellant convict offered her tea and soon after taking tea, she fell unconscious and he committed rape with her and that on regaining consciousness after about two hours, he scared and threatened her that in case she would disclose this incident at her home and that thereafter she would go to the accused and he would

commit rape with her on a daily basis, for a period of ten days; that she got conceived and after eight months, she disclosed it to her mother and she was taken to police station Reasi on 06.10.2018 for lodging report. However, on becoming unconscious she was taken to Reasi Hospital wherefrom she was referred to Jammu Hospital, where she was operated and a dead female child was born; that on 24.10.2018, her statement was recorded in Reasi Court, she admitted the contents of her application (Ext.P-1) and her statement (Ext.P-1/1) as correct. On cross examination, nothing tangible could be extracted so as to demolish her version with regard to the rape committed by the appellant/convict. She had stated that had she not been pregnant, the matter would not have gone to this extent; She stated that a boy Vipam S/O Sham Lal who resides adjacent to her house was student of 8th class, had no connection with this case and his name, had been given by the people, in order to screen Baba (convict). She also stated that though she had narrated with regard to being unconscious while being raped for the first time but does not know why it has not been recorded in her complaint.

11. PW-2 Kanta Devi, mother of the prosecutrix stated that the appellant/convict was residing in the house of one Romel Singh in the locality and all the villagers including her family had adopted him as guru; that the prosecutrix would go to give him milk, food and water and one day she told her that she was having pain in the belly and started crying; that on being asked, she divulged that Baba had committed wrong with her threatening not to disclose it; thereafter they went to the court and lodged FIR; that the prosecutrix delivered a dead female child at Jammu Hospital.

She admitted the contents of her statement (Ext.P-2) as correct. On cross examination, she stated that she does not remember the date of birth of the prosecutrix; that the prosecutrix was of small height; that the appellant/convict would call prosecutrix and she would go there with food; she however does not remember date, month and year, however, she was told after 10/12 days by the prosecutrix and then they lodged the complaint.

12. PW-3 Shotu Sharma stated that the people of the locality would go to the appellant/convict in Village Panasa in the house of Romel Singh as the people including his parents made him guru; his sister prosecutrix would go to give milk and fruit to him who committed rape with his sister and threatened her that in case she would disclose it to anyone, he would kill her; that his aunt Maknu Devi told his mother that the prosecutrix was having pregnancy from appellant; that the prosecutrix on being operated, delivered a dead female baby at Jammu Hospital and the next day, police initiated the proceedings, the post-mortem of the dead baby was conducted at Bakshi Nagar Hospital.
13. PW-4 Ram Dass, father of the prosecutrix stated that the appellant/convict was residing in a house adjacent to his house and whenever the accused was not having anything to eat, while clapping would call his daughter loudly telling '*I have not got food*' and his daughter would take food for him, thereafter, he committed rape upon his daughter which was disclosed by his daughter after $\frac{3}{4}$ days; that the prosecutrix delivered a dead female baby at Jammu Hospital and that baby was that of the appellant/convict; many people would visit to the appellant/convict as pilgrims and he with his family would also sometimes go to him; he denied that his daughter was

having illicit relation with one-Vipan, who had been detained by the police.

14. PW-5 Romel Singh stated that appellant/convict Brahmanand was known to him; that he was residing at his house as he had given one room to him through one Mohan Lal, however, one or one and a half years ago, appellant/convict fled from there, as he had committed rape with the prosecutrix; he denied having any personal knowledge about the rape and that he had been told by the villagers regarding the same.
15. PW-6 Inspector Tribhawan stated that he had been deputed in the year 2018 to go to Shalamar Hospital Jammu for getting conducted the DNA test of the baby of the prosecutrix; that he went there and the DNA test of the female baby of the prosecutrix was conducted and was shifted to mortuary room of GMC Jammu; he informed the Magistrate who came on spot and the DNA was conducted; two samples one of bone and one of hair of child were taken in presence of Magistrate and the dead child was handed over to the brother of the prosecutrix for performing the last rites; he admitted the contents of DNA form marked as 'T' and custody memo (Ext. P3) of the dead child and receipt of its dead body (Ext.P-3/1) as correct. On cross examination, he stated that he was not IO in the case; that the sample of DNA was taken to GMC Jammu, on 09.10.2018 whereas the dead child had been born on 07.10.2018.
16. PW-7 Mohd Saleem Executive Magistrate stated that on request he had been deputed by ADC, as Magistrate to GMC Jammu Hospital with regard to the investigation of a case FIR No.177/2018, registered at Police Station Reasi for the commission of offences under Section 376 RPC and 4 POCSO Act; that the sample for DNA profiling was taken by the Doctor in

his presence and sealed, identified the photocopy of the report on file marked as Mark MS-7/20.09.2022. On cross examination, he denied having any knowledge who was the doctor who prepared the samples for DNA profiling and that he had only sealed the samples.

17. PW-8 Jamal Din, Naib Tehsildar stated that he had gone to Reasi Hospital along with police in connection with case FIR No.177/2018 for conducting DNA of the appellant/convict herein; that he had resealed the sample; that he had attested the photo of the accused with DNA form, which was also resealed by him; he admitted the contents of DNA form (EXTP-8) as correct. On cross examination, he denied having knowledge that who had sealed the sample which was resealed by him.
18. PW-Dr. Devinder Kumar, Gynecologist deposed that on 06.10.2018, he had examined prosecutrix (aged 15 years) at District Hospital Reasi with alleged history of sexual assault; he admitted the contents of his certificate (EXTP-9) as correct. On cross examination, he stated that the USG of the patient was conducted, however, there is no mention of the same in the record; that at the time of his examination, the foetus was alive; the USG had been conducted by Dr. Bhawna; as per the record the prosecutrix had been discharged from SMGS Hospital Jammu, on 23.10.2018; he had neither seen the prosecutrix nor the still born baby after her medical examination at District Hospital Reasi. PW-10 Rakesh Kumar Headmaster had been examined with regard to date of birth of the prosecutrix and had admitted the contents of his certificate (EXTP-10) as correct; however, on his cross examination, he stated that he had not entered the date of birth in the school register.

19. PW-Dr. Kamal Chauhan, forensic expert from CFSC New Delhi stated that as per the DNA profiling of the accused Brahmanand Saraswati (source of exhibit-1, Liquid Blood sample) was found to be consistent as biological father of the newly still born baby (source of exhibits-1: Hair and 2: Piece of bone) submitted to the laboratory vide forwarding letter No.Rdr/21/2018 dated 12.10.2018 (Refer CFSL Report No.CFSL-2018/B-1097 dated 7.03.2019); that he had issued the Report No. CFSL-2018/B-1231 dated 20.03.2019 (EXTP-KC) under his seal and signatures and admitted its contents as correct; he also admitted the contents of Genotape table (EXTP-KC-1) as correct. On his cross examination, he deposed that he had done the detailed procedure of DNA profiling mentioned in Sr. No.7 of the report. The analysis was carried by him personally; he had opened the sample himself and there was no requirement of any Magistrate in the procedure; his Lab was an accredited lab and the procedure is followed as per SOP.
20. PW-11 Qamar Din, IO, deposed that he had investigated the case on hand; he had taken prosecutrix to Reasi Hospital for medical examination wherefrom she was referred to Jammu and on 6-7/10/2018, she delivered a dead female child. Thereafter PW SI Tribhawan was deputed to Jammu for post-mortem and other formalities of the baby; that he visited the place of occurrence and conducted the investigation and as per his investigation, the prosecutrix was aged about 17 years and 9 months old as per the school record; that the DNA test of the baby and appellant Brahmanand was conducted which matched. After collecting various records, the charge sheet was laid; that as per his investigation the appellant had come to

Panasa village and would tell the people that he is Swami; that he had kept one room in the house of Romel Singh; that the prosecutrix would go to the accused for giving tea, milk where rape was committed upon her. On cross examination, he deposed that in her initial report, the victim had not recorded the date of occurrence. He further deposed that prosecutrix was a dwarf and her parents and brothers were also of short height as compared to other common people. He admitted that the matter came to light due to pregnancy of the victim which was of 8/9 months at the time of reporting by the prosecutrix. The distance between the house of the prosecutrix and the place of occurrence was 50 feet. The age of the appellant/convict at the time of his arrest could be more than 70 years.

21. On completion of the evidence by the prosecution on 26.12.2023, the accused was examined in terms of Section 342 CrPC on 22.02.2024 with regard to the incriminating evidence. The appellant/convict opted not to lead any evidence in defense and the case was posted for final hearing; that the trial court on the basis of the evidence led by the prosecution came to the conclusion that the offence punishable under Section 376 RPC had been committed by the appellant/convict and recorded his conviction vide impugned judgment dated 29.03.2024 and was sentenced to imprisonment and fine vide order dated 02.04.2024.
22. Reverting to the arguments of learned counsel for the appellant to challenge the impugned judgment and order, that there was a delay of about 8 months in lodging FIR. In this case when the prosecutrix was a minor child of less than 17 years and was also suffering a deformity of being a dwarf as against the appellant/convict, who was a godman in the locality, who has a

considerable influence in the society and having been threatened by him, the delay in lodging the FIR can be understandable and does not seem to be fatal for the prosecution case. The contention that there was contradiction in the date of birth of the prosecutrix recorded in the school certificate as well as in horoscope is of no consequence when offence under Section 4 of the POCSO Act was stated not to have been proved against the appellant/convict. The contention that the DNA report of the accused had not been placed on file seems to be incorrect as the report was very much on file which had been proved by the forensic expert as well. The DNA of the dead baby delivered by the prosecutrix and the accused had matched and the forensic expert was for the confirmed view that the appellant/convict was the biological father of the dead child delivered by the prosecutrix. The contention that the witnesses to the documents with regard to blood samples not been arrayed or examined as PWs also seems to be irrelevant in view of there being no plea as to how the convict is suffering on account of this.

23. The contention that the statement of the prosecutrix was not of a sterling quality so as to base conviction, the legal principle of such a nature is required when there is no supporting evidence. In view of there being a conclusive medical and DNA tests and the other evidence led by the prosecution with regard to the presence of the convict and the visiting of the prosecutrix to him for providing milk and food, the statement of the prosecutrix even if not of sterling quality has to be relied upon. This court is, however, of the view that there was nothing to suggest that the statement of the prosecutrix was lacking in its evidentiary quality, in any manner.

24. It is a case, where a godman/guru/swami, revered by the inhabitants of the village, that too in his advanced age, had sexually ravished a girl of a tender age suffering from the deformity of being a dwarf and there being sufficient and credible evidence in the form of ocular as well as documentary and expert evidence, it can safely be held on the basis of prosecution evidence that the appellant/convict had committed the offence punishable under Section 376 RPC upon the prosecutrix. The Trial Court has rightly recorded the conviction, based on the evidence recorded. The Trial court, while sentencing observed that the accused was liable to be sentenced in terms of clause (i) of sub section (2) of Section 376 RPC. However, having regard to the age of the victim above 16 years, clause (i) is not attracted in the matter, whereas in view of repeated acts of sexual intercourse/rape by the convict against the person of the minor victim, he is liable to be sentenced in terms of clause (n) of sub section (2) of Section 376 RPC.
25. Coming to the sentence part, the Trial Court sentenced the appellant vide order dated 02.04.2024, to ten years of rigorous imprisonment and fine of Rs.5000/- and in default of payment of fine to further imprisonment of one month. Appellant was accused and proved to have subjected the minor dwarf girl to repeated acts of rape. He, as such, is liable to be convicted and sentenced under clause (n) of sub section (2) of Section 376 RPC, to rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of the convict's natural life and shall also be liable to fine.

26. The Trial Court, on consideration of various factors of the case, though observed that no lenient view can be taken towards the convict on the ground of his advanced age as he should have thought about it before resorting to such a shameless act and that commission of such an offence by the convict in his age makes the offence committed by him more diabolical and is more odious having been committed by an elderly person on a minor and helpless girl leading to her pregnancy, sentenced him to the aforesaid sentence, which was minimum in the context of imprisonment. Since the State/UT of J&K has not filed any appeal to assail the inadequacy of the sentence, this court, in absence of such a challenge, cannot venture into the field of enhancing the sentence though this Court is of the opinion that the convict should have been sternly dealt with in the case of sentence. Be that as it may, the sentence awarded by the Trial Court in the case is, thus, ordered to be maintained.
27. For the foregoing reasons and observations made hereinabove, the appeal filed by the appellant/convict is found to be without any merit and substance and is liable to be **dismissed**, alongwith application(s). As a result, the impugned judgment dated 29.04.2024 is upheld. The Trial Court Record is directed to be sent down along with copy of this Judgment for record.

(MA CHOWDHARY)
JUDGE

JAMMU
12.08.2026
Raj Kumar

Whether the order is reportable: Yes/No