Neutral Citation No. - 2025:AHC:88702-DB

**Judgment reserved on-15.05.2025**

**Judgment delivered on-26.05.2025**

**Court No. - 45**

**Case :-** CRIMINAL APPEAL No. - 1711 of 2011

**Appellant :-** Bhagwandeen
**Respondent :-** State of U.P.
**Counsel for Appellant :-** A.K.Prajapati,Anand Priya Singh
**Counsel for Respondent :-** Govt. Advocate

**Hon'ble Saumitra Dayal Singh,J.**
**Hon'ble Sandeep Jain,J.**

1. Heard Mr. Sanjeev Kumar Saxena, learned counsel for the appellant and Ms. Archana Singh, learned A.G.A. for the State.

2. Present Criminal Appeal arises from the judgment and order dated 04.03.2011 passed by Sri Rakesh Kumar, Special Judge (SC/ST Act), Ramabai Nagar in Special Sessions Trial No. 293 of 1998 (State Vs. Bhagwandeen) arising out of Case Crime No. 184 of 1996, under Section 452, 376 IPC and Section 3(1)(XII) SC/ST Act, Police Station Sajeti, District Kanpur Dehat, whereby the appellant has been convicted for offence under Section 376 IPC and sentenced to undergo rigorous imprisonment of ten years and fined Rs. 10,000/; to

undergo two year rigorous imprisonment and fined Rs. 2000/- for the offence under Section 452 IPC and to undergo life imprisonment and fined Rs. 10,000/- for the offence under Section 3(2)(5) SC/ST Act. All the sentences are to run concurrently.

3. The appellant was on bail during trial. Upon is conviction, in the instant appeal, he was enlarged on bail, vide order dated 29.08.2011. Thus, he may have remained confined for about six months (in all).

4. The criminal prosecution arose on the FIR dated 09.11.1996 registered in Case Crime No. 184 of 1996 under Sections 452, 376 IPC read with Section 3(1)(xii) SC/ST Act at about 6.30 p.m. with reference to the occurrence of rape reported by 'R' (P.W.-1 at the trial) - the husband of the victim 'S' (P.W.-2 at the trial). The FIR is Ex. Ka-2 at the trial. It emerged on the Written Report submitted by 'R' (P.W.-1) dated 08.11.1996. The FIR narrates that the first informant lived with his family including his wife 'S'/victim and their two minor children. While 'R' had gone out for work of loading sand on a truck, during the intervening night of 26/27.10.1996, at about 2.00 a.m., the present appellant forcibly entered the house of 'R'; caught 'S' by her throat and threw her down from her bed and forcibly committed rape on her. On 'S' crying for help, the two children woke up from sleep. Hearing that commotion, certain villagers including Ramsewak, Mohan Lal and Om Prakash arrived at the place of occurrence. At that moment, the appellant climbed on the terrace of the house and fled. In that melee, his bicycle key fell inside the house of 'R'.

5. After describing that occurrence, 'R' further narrated that no FIR could be registered with respect to that occurrence upto 31.10.1996,

though he kept approaching the Police Station for that purpose. At that stage, 'R' approached the Circle Officer, Kanpur Dehat who assured, he would take action after making due enquiry. However, no FIR came to be lodged, still.

6. 'R' further narrated, the appellant is a dangerous person having links with criminals and that he had threatened 'R' that no action would be taken against him. In such circumstances, he further disclosed, no action had been taken against the appellant. He also complained that no action was being taken against the appellant because 'R' was a person belonging to the oppressed class of the society and he was now being threatened to leave the village. In such circumstance, the FIR came to be lodged on 09.11.1996 at Police Station Sajeti, District Kanpur Dehat, at about 6.30 p.m.

7. During investigation, statements of P.W.-1 and P.W.-2 were recorded. The Investigating Officer Paras Pandey, the then Circle Officer Ghatampur (P.W.-4 at the trial) submitted the Charge-Sheet.

8. Upon the case being committed for trial to the Court of Sessions, following charges were framed against the appellant:

> *"यह कि दिनांक 26-10-95 की रात्रि में लगभग 2 बजे जब वादी मुकदमा मौरंग भरने हेतु घर से चला गया तो उसके पश्चात आप वादी मुकदमा के घर स्थित ग्राम अनपर थाना सजेती कानपुर देहात में घुसे जहां पर उसकी पत्नी 'S' व दो मासूम बच्चे थे एवं बुरी नियत से उसकी पत्नी का गला दबाकर चारपाई के नीचे गिराया। इस प्रकार से आपने गृह अतिचार का अपराध किया है जो कि भारतीय दण्ड संहिता की धारा 452 भा०दं०सं० के अन्तर्गत दण्डनीय अपराध है एवं इस न्यायालय के प्रसंज्ञान में है।*
>
> *यह कि उपरोक्त दिनांक, समय व स्थान पर आपने वादी मुकदमा की पत्नी श्रीमती 'S' को बुरी नियत*

*से जब वह अकेली मासूम बच्चों के साथ अपने घर पर थी, चारपाई के नीचे गिराकर एवं गला दबाकर उसकी मर्जी के खिलाफ बलात्संग किया। इस प्रकार से आपने भारतीय दण्ड संहिता की धारा 376 के अन्तर्गत दण्डनीय अपराध किया है जो इस न्यायालय के प्रसंज्ञान में है।*

*यह कि उपरोक्त दिनांक, समय व स्थान पर आपने बुरी नियत से वादी मुकदमा के घर में घुसकर उसकी पत्नी जो अकेली थी एवं हरिजन महिला थी, उसके साथ जोर जबरदस्ती की एवं उसका गला भी दबाया एवं जान माल की धमकी दी। इस प्रकार से आपने धारा 3(1)(5) अनुसूचित जाति/अनु० जनजाति अत्याचार निवारण अधिनियम के अधीन दण्डनीय अपराध किया है जो इस न्यायालय के प्रसंज्ञान में है"*

9. At the trial, besides the above documentary evidence, prosecution examined four witnesses. The first informant 'R' who is the husband of the victim 'S' was examined as P.W.-1. He proved submission of the Written Report and also the delay in the FIR being registered by the police. The victim 'S' was examined as P.W.-2. She proved the occurrence of rape suffered by her. Constable Clerk Alok Kumar Singh was examined as P.W.-3. He proved the registration of criminal case with reference to G.D. entries and also preparation of check FIR. The Investigating Officer, Paras Pandey was examined as P.W.-4. He proved the investigation.

10. In such facts and evidence led by the prosecution, the present appellant has been convicted for the heinous offence of rape under Section 376, offence of house trespass under Section 452 IPC and Section 3(2)(v) SC/ST Act. He has accordingly been sentenced for life together with fine, as noted above. Against that sentence awarded, the appellant may have remained confined for about six months (actual).

11. Submission of learned counsel for the appellant is, FIR is wholly belated. It was lodged 13 days after the occurrence. No plausible or justifiable explanation exists for that inordinate delay. The first informant 'R' and the victim 'S' are adults. Neither they lodged the FIR within time nor 'S' was medically examined to establish the occurrence. Thus, the prosecution story is inherently false and improbable. Next, it has been submitted, a wholly incredible account has been offered wherein the present appellant is described to have barged inside the house of 'S' in the dead of the night and committed rape on her in the presence of her two children. Though, the prosecution story narrates that the appellant had caught hold of 'S' by her throat and thrown her off her bed - to the ground and thereafter committed rape on her, it is unbelievable that absolutely no external injury whatsoever was received by her, in that occurrence. Yet, it is not the case of the appellant that there existed consensual relationship between the parties. Rather, it is his case that he has been falsely implicated for reason of party politics and bad relations arising from business dispute wherein 'R' had stolen his bricks and sand and sold those goods. Next, it has been submitted, absolutely no corroboration exists to the incredible story offered by the victim 'S'. Though, Ramsewak, Mohan Lal and Om Prakash were described to have reached the place of occurrence (after it had been caused), and upon their responding and reaching the place of occurrence (according to the prosecution story) the appellant fled, those persons were never examined at the trial. Therefore, the prosecution version is unreliable.

12. Next, it has been submitted, inconsistencies exist in the prosecution story inasmuch as in the FIR, 'R' described that the appellant climbed on the terrace and fled from there whereas at the

trial P.W..-2 described that the appellant jumped over the wall on the backside of the house and fled.

13. Learned counsel for the appellant has relied on the Supreme Court decision in **State (GNCT of Delhi) vs Vipin @ Lalla, Criminal Appeal No. 94 of 2025**.

14. Further, he has relied on the decision of this Court in **Rajjan Lal & Anr. vs State of U.P., Neutral Citation No.- 2017:AHC-LKO:12963**.

15. On the other hand, learned A.G.A. would submit, in the present case, the statement of victim 'S' (P.W.-2 at the trial), is wholly truthful and reliable. She has not made any material improvement to the prosecution story as narrated in the FIR and as proven at the trial. The FIR wholly corroborates the occurrence as proven at the trial. Despite lengthy cross-examination, the victim 'S' (P.W.-2) has not introduced any material inconsistency in the prosecution story. No effective cross-examination exits to doubt the occurrence. The prosecution story cannot be disbelieved on the minor discrepancy as to whether the appellant fled from the terrace of the house and or by jumping over the back-wall of the house. To the extent, the defence failed to cross-examine P.W.-1 and P.W.-2 whether the wall at the back of the house was on the terrace or the ground floor, the minor discrepancy in that regard may always remain inconsequential.

16. As to lack of external and internal injuries, it has been submitted, the prosecution story in the FIR did not narrate - that extensive injuries, were caused. It may not be forgotten that the victim 'S' was a married lady and a mother of two children. Therefore, the lack of

internal injuries may remain an extraneous issue. Since the FIR was not registered for 13 days, simple external injuries that may have been noticed if the victim 'S' had been promptly offered medical examination, could not be proved, for that reason. Even in that regard, the victim 'S' made an honest statement - since the FIR was lodged with the delay of 13 days, she did not get herself medically examined. There is no evidence to either justify the presence of the appellant inside the house of 'R' and 'S' at midnight of 26/27.10.1996 or non-consensual penetrative sexual assault committed by him. No element of consent was either claimed or proven. The bald assertion of pre-existing political and other rivalry between the parties was not proven, at all.

17. On the issue of delay, learned A.G.A. has sought to rely on the Case Diary material to submit that there exist various documents to explain the delay in lodging the FIR. In that regard he would submit, there exists an application dated 06.11.1996. He has referred to the Case Diary material to indicate that 'R' and 'S' had been making their best efforts to lodge the FIR soon after the occurrence. They approached the Police Station, the Circle Officer/Superintendent of Police. For that reason, time was consumed and the FIR came to be lodged 13 days after the occurrence. Those, facts were also duly proven at the trial. No cross-examination exists to doubt that reason for the delay and no defence evidence exists to doubt that explanation.

18. Having heard learned counsel for the parties and having perused the record, so far as reliance placed by learned counsel for the appellant on the decision of the Supreme Court in **Vipin @ Lalla (supra)** is concerned, facts were materially different. There, before

lodging the F.I.R., it was first reported to the police that a minor assault including physical assault, had taken place involving the victim girl. Later, F.I.R. was lodged making exaggerated allegation of rape. In those facts, the F.I.R. was found to be lodged with the delay of two days. It was found wholly unexplained. The Supreme Court further noted, though medical examination of the victim was conducted on the date of the F.I.R. being lodged, no injuries were detected. Further, the Supreme Court noted that the victim had made contradictory statement. During her statement recorded under Section 164 Cr.P.C., she had asserted that she had been hit on her head with a stick but during her examination-in-chief, she described that she hit the accused on his foot. In such facts, the testimony of the victim did not inspire confidence with the Supreme Court, resulting in acquittal.

19. Further in respect of reliance placed on the decision of this Court in **Rajjan Lal (supra)**, it is noted, in that case a learned single judge found that the F.I.R. was lodged with delay of six days, though the occurrence of rape on the daughter of the first informant came to his knowledge, the next day. Such are not the facts in the present case.

20. As discussed above, here, there was no delay on the part of the first informant 'R' (P.W.-1) and the victim 'S' (P.W.-2). They had gone to the Police Station promptly, at about 8.00 AM, on 27.10.1996 itself. They were turned away. They kept pursuing the police authorities till the F.I.R. came to be lodged, on 09.11.1996. Second, in **Rajjan Lal (supra)**, material inconsistencies were also noted by the learned single judge in the statement of the victim, in that case. Here, as noted above, there are neither any material inconsistencies nor other doubt exists as may allow for any interference.

21. The delay in lodging the FIR is to be looked at pragmatically. No hard and fast rule is to be applied by Courts to doubt or disbelieve the FIR for reason of delay. Numerous circumstances exist in which delays may arise. Therefore, the individual facts of each case are required to be seen on the strength of own evidence to examine the issue of delay.

22. In **State of Punjab Vs. Gurmit Singh, (1996) 2 SCC 384**, in the context of delayed disclosure by the victim having suffered sexual assault and the appreciation of that evidence by Courts, the Supreme Court observed as below:

> *"8. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case."*

23. Then in **State of H.P. Vs. Gian Chand, (2001) 6 SCC 71**, again in the context of delay in lodging the FIR in cases arising from sexual assault, the Supreme Court cautioned against "ritualistic formula" being adopted by Courts to discard the prosecution case, on ground of delay. The Supreme Court observed:

> *"12. ... Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case. ..."*

24. In the facts of the present case, though the FIR was lodged after about 13 days of the occurrence, at the same time, in that FIR itself it was clearly narrated that 'R' was a manual labourer, who worked as a loader on trucks used to transport sand. Also, he is a member of Scheduled Caste. He further narrated, 'R' made regular efforts to lodge the FIR, upto 31.10.1996. He met the Circle Officer, Ghatampur, Kanpur Dehat along with 'S', on 31.10.1996. Then, he was assured that FIR would be lodged after making due enquiry. However, no FIR came to be lodged despite such assurance. The FIR also contains narration that 'R' continued to receive threats from the appellant to not lodge the FIR. 'R' further disclosed that the appellant had links with many powerful people and criminals.

25. The above FIR came to be lodged on the Written Report submitted by 'R' dated 08.11.1996 to the Circle Officer, Ghatampur, Kanpur Dehat. Thus, the fact of all efforts made by 'R' and 'S' to lodge the FIR promptly, after the occurrence are also disclosed in that Written Report itself. The Written Report is duly proven by 'R' (P.W.-1). Also, Alok Kumar Singh, Constable Clerk, P.S. Sajeti (P.W.-3 at the trial) proved that the FIR (lodged on 09.11.1996) was registered on the Written Report (Ex.Ka-1) submitted by 'R'. The FIR (Ex.Ka-2) contains the narration of the Written Report (Ex.Ka-1 at the trial).

26. That corroboration apart, at the trial, 'R' (P.W.-1) substantively proved during his examination-in-chief that he returned home at about 6 a.m. on 27.10.1996. At that time, 'S' told him about the occurrence. He further proved that on that date itself he went to the Police Station along with 'S', to lodge the FIR. However, the FIR could not be lodged till 31.10.1996 due to police inaction. He further proved that in

such circumstances he approached the Circle Officer to lodge the FIR. At that time he was assured that the FIR would be lodged after due enquiry. Since no FIR came to be lodged despite such assurance, ‘R’ (P.W.-1) then approached the Superintendent of Police/Circle Officer, Ghatampur through an application (paper 9). When no action was taken on that application as well, he again approached that Circle Officer/Superintendent of Police on 08.11.1996, through the typed Written Report. During his cross-examination, he maintained that he had visited the Police Station on 27.10.1996 at about 8 a.m. along with 'S' and met the Inspector and the Station House Officer but no report came to be lodged. On being questioned, he further clarified that he visited the Police Station on five occasions. Though the written application submitted by him was received by the Inspector but the police authorities did not make any enquiry on his complaint. Thereafter, he approached a lawyer and got prepared the typed written application (Paper 9).

27. In that regard, during her examination-in-chief, the victim 'S' (P.W.-2) also proved that she told her husband 'R' (P.W.-1) about the occurrence at 6 a.m. on 27.10.1996, when he returned from work. On such disclosure, 'R' (P.W.-1) took her to the Police Station, to lodge the FIR but instead of lodging the FIR the police personnel turned them away from the Police Station. Since no such report came to be lodged, in the meanwhile she washed her clothes. Also, since the FIR came to be lodged much later, she never got herself medically examined at that late stage. During her cross-examination, she maintained that she had gone to the Police Station at about 8-9 a.m. on 27.10.1996 along with her husband ‘R’. She sat outside the Police Station under a *'Peepal'* tree while her husband 'R' (P.W.-1) went

inside the Police Station, to lodge the FIR. In that, she further clarified that thereafter she did not visit the Police Station, to lodge the FIR.

28. Thus, the prosecution witnesses consistently stated and thus proved at the trial that the victim 'S' (P.W.-2) was alone at her home with her two children during the intervening night of 26/27.10.1996 when the occurrence was caused. 'S' told her husband 'R' (P.W.-1) about the occurrence when he reached home at about 6 a.m., on 27.10.1996. Both P.W.-1 and P.W.2 proved that they promptly reached the Police Station at about 8 a.m. on 27.10.1996, to lodge the FIR. However, the police personnel did not act on their complaint. While 'R' (P.W.-1) claimed that he reached the Police Station at 8 a.m., 'S' (P.W.-2) claimed that they were at the Police Station between 8-9 a.m. In that, she further disclosed that she sat under a *'Peepal'* tree outside the Police Station while 'R' (P.W.-1) went inside. 'R' (P.W.-1) also proved that he continued to make efforts to lodge the FIR by visiting the Police Station about five times but such FIR could not be lodged. He further proved, when no FIR came to be lodged upto 31.10.1996 then he met the Circle Officer, who assured him that a report would be lodged after making enquiry. However, no FIR came to be lodged, still. In such circumstances, he proved that he met the Superintendent of Police, Ghatampur and submitted a written application which he showed to the learned court below, as Paper 9. When no FIR came to be lodged still, he filed the Written Report dated 08.11.1996 (Ex.Ka-1 at the trial). That report is addressed to the Circle Officer, Ghatampur, Kanpur Dehat. It also contains the exact same narration with respect to efforts made to lodge the FIR by 'R' (P.W.-1). No material discrepancy or improvement exists in that narration as compared to

the facts proven by 'R' (P.W.-1) and 'S' (P.W.-2), with respect to the facts and occurrences, from 27.10.1996 to 08.11.1996. On the contrary, the prosecution narration/description of the occurrence is wholly consistent.

29. In face of such facts proven at the trial and in absence of any material inconsistency, we are not inclined to accept the suggestion offered by learned counsel for the appellant that the FIR has been lodged with unexplained delay of 13 days. Not only plausible explanation has been offered but it has also been proven through oral evidence and through inherent proof of such facts arising from the intrinsic worth of the statements made in the Written Report dated 08.11.1996 (Ex.Ka-1) clearly narrating the same facts as to the delay caused in lodging the FIR - due to police inaction. Besides reliance placed on Paper 9, it is undisputed that the FIR was lodged on the Written Report dated 08.11.1996 (Ex.Ka-1). That document is itself not addressed to the SHO or the Inspector, Police Station - Sajeti but to his superior officer i.e. Circle Officer, Ghatampur. That authority has been described as "Superintendent of Police, Ghatampur" by 'R' (P.W.-1). In face of facts placed through oral evidence that intrinsic evidence also corroborates that 'R' was forced to approach the higher police authorities namely the Circle Officer, Ghatampur as his FIR was not being lodged at the Police Station, due to police inaction.

30. Then, 'R' (P.W.-1) further established that he got the Written Report (Ex.Ka-1) prepared through a lawyer since his FIR was not being lodged at the Police Station despite efforts made by him. Considering the unfortunate social and economic status in which 'R' (P.W.-1) and 'S' (P.W.-2) existed, it is not unusual that they would

have taken time to approach a lawyer who may have advised them to approach the higher police authorities, to lodge their FIR.

31. In absence of any doubt emerging during the elaborate examination of 'R' (P.W.-1) and 'S' (P.W.-2) with respect to the occurrences and events from 27.10.1996 and 08.11.1996 as may create any doubt as to the efforts made by 'R' (P.W.-1) and 'S' (P.W.-2), to lodge the FIR, we may not throw out the prosecution story for reason of 13 days delay in lodging the FIR. It is not uncommon and therefore it is not unbelievable that time may have been lost to 'R' (P.W.-1) and 'S' (P.W.-2) to lodge their FIR. Unfortunate as it is, it is a hard reality of life that at times social and economic status govern the fate of citizens in such matters. Disadvantaged persons such as 'R' (P.W.-1) and 'S' (P.W.-2) may be made to wait and may thus have been forced to make many efforts to get their FIR lodged.

32. As noted above, since the narration of the time consumed is wholly consistent and offers a logical and plausible explanation that is wholly natural and consistent throughout, and is corroborated by the facts disclosed in the Written Report (Ex.Ka-1) and the FIR (Ex.Ka-2), we are unable to accept the submissions advanced by learned counsel for the appellant that the FIR was lodged with gross delay and therefore may not inspire confidence with the Court.

33. As to the occurrence narrated, it is a settled principle in rape cases that the allegation of rape may be proven and may result in conviction on the strength of solitary eye witness account of the victim. Here, 'R' (P.W.-1) is not an eye-witness. Other witness named in the charge sheet were not examined by the prosecution. Therefore, the only evidence available is of 'S' (P.W.-2 at the trial). During her

examination-in-chief she disclosed that ‘R’ had left for work during night, he being a manual labourer who used to load sand on trucks. At that time, the appellant entered her house surreptitiously, by jumping over her courtyard wall. The door in the courtyard was open while she was sleeping inside a room, on a cot. Having thus entered her room, the appellant caught her by her throat and threw her down from the cot. Having thus over powered her, the appellant committed rape on her. On her crying for help Ramsewak and Mohan Lal arrived. At that moment, the appellant fled by jumping over the wall at the back of the house. She also claimed that the appellant committed the offence because she belonged to a Scheduled Caste. However, she did not make any statement and she did not try to prove any act committed by the appellant as may establish that the occurrence was caused by him on the ‘ground’ that 'S' belonged to Scheduled Caste.

34. On being questioned, she proved, when the occurrence was being caused, her children woke up and started crying. She had also cried for help. Hearing her cries, others arrived. She further explained that she had not received any injury when she was brought down from cot by the appellant. Further, she proved that the house of the appellant is near her house.

35. Thus, straightforward statement made by 'S' (P.W.-2) of the manner in which occurrence had been caused by the appellant remained consistent. It is wholly corroborated by the FIR narration itself. The self same facts were described in the similar manner by 'R' (P.W.-1), the first informant who had been told about the occurrence by 'S' (P.W.-2) [though 'R' (P.W.-1) is not an eye-witness]. At the same time, it is to be noted that the narration of the occurrence as made by

'S' (P.W.-2 at the trial) not only remained consistent and stood the test of extensive cross-examination but it also finds corroboration in the FIR narration. Barring a minor inconsistency as to the route taken by the appellant to flee from the place of occurrence and whether the noise made by 'S' (P.W.-2) or her two children had brought the neighbours to her house, no other inconsistency may be claimed in the wholesome disclosure of the occurrence by 'S' (P.W.-2 at the trial). The minor inconsistencies noted above are wholly natural. Also, they are trivial and not material as may lead us to doubt the veracity of the evidence of 'S'.

36. In **Mohan Singh Vs. State of M.P., (1999) 2 SCC 428**, the Supreme Court has made the following relevant observations:

> *"11. The question is how to test the veracity of the prosecution story especially when it is with some variance with the medical evidence. Mere variance of the prosecution story with the medical evidence, in all cases, should not lead to the conclusion, inevitably to reject the prosecution story. Efforts should be made to find the truth, this is the very object for which courts are created. To search it out, the courts have been removing the chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long as chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit, to find out the truth. It means on one hand, no innocent man should be punished but on the other hand, to see no person committing an offence should get scot-free....."*
>
> *(emphasis supplied)*

37. In the case of **Inder Singh Vs. State (Delhi Admn.), (1978) 4 SCC 161**, it was observed as under:

> *"2. .... Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth*

*suffers some infirmity when projected through human processes. ...."*

38. Then, in **Krishna Mochi Vs. State of Bihar, (2002) 6 SCC 81**, dealing with the submission advanced with respect to discrepancy in the testimony of prosecution witness, the Supreme Court made the following pertinent observations:

> *"32. ...Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same..... So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot-free. If in spite of such effort suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused."*
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> *(emphasis supplied)*

39. In the same vein, in **State of U.P. Vs. Naresh (2011) 4 SCC 324**, it was observed as below:

> *"30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. ..... However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.*
>
> *Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the*

*trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.*"

*(emphasis supplied)*

40. Thus, it is a settled law that minor inconsistencies may never be relied by the defence to claim a reasonable doubt. In fact, by very nature of limitation of human memory, minor inconsistencies prove the opposite i.e. the truthfulness of the witness. It is in the very nature of the human memory that it may not be able to recall with 100% consistency and accuracy an occurrence, at all times.

41. Thus, we find that the statement of 'S' (P.W.-2) proved the occurrence of rape suffered by her, beyond reasonable doubt.

42. As to lack of medical examination, in the proven fact that the FIR could not be lodged for over 13 days after the occurrence had been caused, the lack of such medical examination would be immaterial. In the first place, 'S' (P.W.-2) was a married lady with two children. Second, she did not narrate an account of the occurrence as may have either directly or impliedly involved sufferance of external or internal injuries to her. From the very beginning, she only narrated that she was suddenly overpowered by the appellant while she was sleeping inside her house, in the dead of the night. In that, the appellant caught hold of her by her throat and threw her down from her cot - to the ground, and committed rape on her. On hearing cries, her neighbours arrived. At that point, the appellant fled.

43. Thus, in the occurrence as narrated by 'S' (P.W.-2), she never stated that she suffered any extensive or visible injury in an assault that may have been caused over a long time. She only disclosed how she came to be physically overpowered by the appellant while she

was asleep on her cot. She did not narrate and she did not try to prove that she was awake when the appellant entered her house or that she had been woken up from sleep when the appellant entered her house. On the contrary, she proved that the appellant entered her house surreptitiously. She would have become aware of his presence, only upon being overpowered. In that nature of occurrence proven by 'S' (P.W.-2) it is wholly natural and therefore believable that she may not have received any external or internal injury. Then, not trying to make a false case, she candidly stated during her cross-examination, since no F.I.R. came to be lodged by the police, despite much efforts made by 'R' and 'S', she did not get herself medically examined, after the F.I.R. was lodged. In the same vein, she also stated that she had washed her clothes, in the meanwhile. It is another unfortunate reality of life that a poor victim of rape may not have a luxury to keep safe, evidence of such heinous offence suffered. Clothing though a basic necessity of life, is very precious and it comes at a heavy price to the poor. Therefore, it is wholly natural and in that regard natural to expect that 'S' would have washed her clothes that she may have worn, at the time of the occurrence.

44. As to the absence of other independent witnesses, we are equally unimpressed with the submission advanced by learned counsel for the appellant that in cases involving rape or in fact other offences as well, independent witnesses fail to testify before Courts for varied reasons. Suffice it to note, at present, civilization values may not have refined enough and may not be strong enough for Courts to necessarily expect that independent witnesses would not fall prey to societal pressures and practices when approached by offenders or to ignore that generally, people tend to walk away from the victim if not for any

threat, only for the sake of personal convenience and comfort, or not finding time for Courts, as a witness.

45. As to the identification of the appellant, there is absolutely no ground to suspect if 'S' had identified the appellant. Undeniably, the parties were neighbours and therefore known to each other, from before. Even in his statement recorded under Section 313 Cr.P.C., the appellant himself alleged animus borne by 'R' (P.W.-1), for reason of some past business disputes. It clearly contains an admission of parties being known from before.

46. In absence of any defence evidence and there being no other case of the defence to explain, that the occurrence was caused otherwise i.e. with consent, no doubt is seen to exist as may allow us to interfere in the order of the conviction under Section 376 read with Section 452 I.P.C.

47. Thus, while we find that the conviction of the appellant under Section 452 and 376 IPC is based on facts duly proven at the criminal trial, by merely stating that the offence had been committed on 'S' because she was a member of the Scheduled Caste, 'S' only proved her perception about the occurrence but not any overt or covert act performed by the appellant that may lead this Court to a conclusion that the appellant had committed the occurrence on 'S' for reason of her being a member of the Scheduled Caste only. To that extent, we do no find ingredients of offence alleged under Section 3(2)(5) SC/ST Act were proven. To that extent, the appellant is entitled to a clear benefit of doubt.

48. In view of the discussion made above, the conviction of the appellant under Section 3(2)(5) SC/ST Act is set aside. The appellant is acquitted of the said charge. Insofar as the conviction of the appellant under Section 452 IPC is concerned, the same is maintained. The conviction of the appellant under Section 376 IPC is also not being interfered with. In the entirety of facts and circumstance, we find that the ends of justice would be met if the minimum sentence contemplated by law is awarded. No grave or mitigating circumstance has been proven at the trial, as may lead to award of any higher punishment. Also, the appellant is about 70 years of age, today. He has remained confined for about six months (in all). Accordingly, the sentence and the nature of imprisonment awarded under Section 376 IPC is modified from ten years rigorous imprisonment to seven years simple imprisonment. Fine imposed for the offence under Section 376 IPC Rs. 10,000/- is maintained. Similarly, the fine for offence under Section 452 IPC Rs. 2,000/- is maintained, however, keeping in mind the age of the appellant to be 70 years, the nature of imprisonment is altered from rigorous to simple imprisonment.

49. The appellant is on bail. He shall surrender forthwith to serve the remaining sentence. Failing that, CJM, Kanpur Dehat shall ensure arrest of the appellant and to lodge him to jail to serve the remaining sentence. On the appellant surrendering before the court concerned, his bail bonds and sureties shall stand discharged.

50. The appeal is accordingly **partly allowed.**

51. Let the trial court record be returned to the Court concerned alongwith a copy of this order. A copy of this order shall be communicated to the CJM, Kanpur Dehat through the Registrar

(Compliance). CJM, Kanpur Dehat shall submit his compliance report to this Court at the earliest.

**To conclude:**

52. Appeal is **partly allowed** as below:

(i). Appellant is acquitted of the offence under Section 3(2)(5) SC/ST Act.

(ii). Conviction of appellant under Section 452 IPC is maintained. Fine Rs. 2000/- is maintained. Nature of imprisonment is altered from rigorous to simple imprisonment.

(iii). Conviction of the appellant under Section 376 IPC is maintained. However, duration and nature of imprisonment is reduced/altered from ten years rigorous imprisonment to seven years simple imprisonment. Fine Rs. 10,000/- is maintained.

53. The appellant is on bail. He shall surrender forthwith, to serve the remaining sentence.

**Order Date :-** 26.5.2025
Faraz/SA/Abhilash/Prakhar

**(Sandeep Jain, J.) (S. D. Singh, J.)**