



2026:AHC:137388

**Reserved
AFR**

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1089 of 1985

Veer Singh

.....Appellant

Versus

State of U.P.

.....Respondent

Counsel for Appellant(s)	: A.K. Gaur, Prayogendra Pal Singh
Counsel for Respondent(s)	: A.G.A.

Court No. - 88

HON'BLE SANJIV KUMAR, J.

1. This Criminal Appeal, under Section 374 (2) of Code of Criminal Procedure, 1973 (in short 'Cr.P.C. '), has been filed by the appellant Veer Singh against the impugned judgment and order dated 22.04.1985, passed by Sri Y. S. Raizada, the then III Additional Sessions Judge, Ghaziabad, in Sessions Trial No. 55 of 1984, arising out of Case Crime No. 36 of 1983, under Section 376 Indian Penal Code, 1860 (in short IPC), Police Station Modi Nagar, District Ghaziabad.

2. By the impugned judgment and order, the learned Trial Court convicted the appellant for offence punishable under Section 376 IPC and sentenced him to undergo seven years' rigorous imprisonment .

3. Brief facts of the prosecution case are that the first informant Hardwari, son of Naubat Kumhaar, resident of Bakhrawa, Police Station Modi Nagar, Ghaziabad, gave a written application, dated 16.01.1983 (Ext. Ka-1), before In-charge Police Station, Modi Nagar, District Ghaziabad, stating therein that on 15.01.1983, as usual his daughter (hereinafter referred to as 'victim'), aged about 14 years, had gone to the forest of Vidhyapur to cut green fodder. It was alleged that at about

11:00 a.m., Veer Singh, son of Lakhan Singh, forcibly caught hold of his daughter and took her into Ranjit Singh's sugarcane field, and committed rape upon her. Upon hearing his daughter's cries, Prakash son of Thawaria and Battu son of Aedli, his co-villagers, reached at the spot and witnessed the incident. Upon seeing them, the appellant fled from the spot. It was further stated that on previous day, he had gone to take a bath in river Ganges and upon returning the following day, he came to know about the incident. It was further stated that he had brought his daughter and Veer Singh alongwith co-villagers Aedli, Prakash and Datey Ram to the Police Station to lodge the report.

4. Upon this information, FIR under Section 376 IPC, was lodged at Police Station Modi Nagar, District Ghaziabad and the investigation of the case was entrusted to S.I. Hukum Chand (P.W.6). The Investigating Officer commenced investigation and recorded the statement of the first informant and other witnesses. He recovered pieces of broken bangles from the place of occurrence and prepared its recovery memo (Ext. Ka-7). He also took into possession the trousers (*salwar*) of the victim, having some white spot, which appeared like semen and was encircled by a red pencil. He prepared its recovery memo (Ext. Ka-5). The victim was medically examined and in her internal examination, injury on private part was found. Hymen was found intact with bruise at 3 o'clock position red and tender. The appellant was also medically examined and there were 14 injuries found over his body. In vaginal smear of the victim, no spermatozoa was found.

5. The Investigating Officer, after collecting evidence, filed charge-sheet under Section 376/511 IPC before the Judicial Magistrate, Ghaziabad, who took cognizance of the offence and summoned the accused. The accused was furnished copy of relevant prosecution papers under Section 207 Cr.P.C. and thereafter, the case was committed to the Court of Session for trial. The concerned Court of Session framed charge under Section 376 IPC against the appellant to which he pleaded not guilty and claimed to be tried.

6. The prosecution has examined seven witnesses to prove its case, to wit, Hardwari, the first informant and father of the victim (P.W.1); the victim (P.W.2); Prakash (P.W.3); Dr. Gyandndra Kumar (P.W.4.); Head Constable Than Singh, who scribed the chik FIR (P.W.5); S.I. Hukum Chand (P.W.6) and Dr. Kanak Lata Joshi (P.W.7).

7. P.W.1 Hardwari is the father of the victim, who in his examination-in-chief has deposed that on the date of incident, his daughter, the victim, as usual had gone to bring green fodder, then the appellant Veer Singh took her in Ranjeet Singh's sugarcane field and committed rape upon her. He further deposed that Prakash and Battu witnessed the incident, whereupon Veer Singh fled from the spot. He further said that he had gone to river Ganges to take bath and returned in the evening and then came to know about the incident. The victim had told this incident to her mother, who subsequently told it to him. The next day, he, along with Prakash and Datey as well as the appellant, went to the Police Station to lodge the report. The witness has proved the written application as Ext. Ka-1.

8. In cross-examination, P.W.1 has said that before going to the Police Station, he had held conversation with Prakash and Battu. The next day, he went to the Police Station. The Constables had reached the village to take Veer Singh along with the Inspector. Veer Singh was caught and he himself accompanied him. The Policemen reached the village after 12 noon. He denied the suggestion that he, Prakash and others had beaten Veer Singh. At about 11:00 p.m., he returned from the hospital.

9. P.W.2 is the victim herself, who has supported the prosecution case and has said that about two years ago at about 12 noon, as usual she had gone to jungle to bring grass, when the appellant Veer Singh took her forcibly in a sugarcane field of Ranjeet and committed rape upon her. She further deposed that she cried a lot, then Prakash and Battu reached there. Thereafter, Veer Singh left her and fled from the spot. She further deposed that at the time of incident, she was aged about 14 years and it was Prakash and Battu, who took her to her house, where she narrated

the entire incident to her mother. Her father had gone to take a bath in river Ganges and had returned at about 01:00 p.m.

10. In cross-examination, P.W.2 has said that she had gone alone to bring grass and the place of occurrence is about one *kos* (approximately 3.2 kilometers) from her village. She further testified that the appellant dragged her to Ranjeet's field. She did not hit the appellant or committed assault upon him. She also did not sustain any injury. She remained in Ranjeet's field for about half an hour. Thereafter, she came out from the field carrying her bundle (*gathri*). Prakash had entered in sugarcane field and saw the appellant, but Battu had not seen him. She testified that the appellant had committed rape upon her for about half an hour. The blood would have dropped on the ground, but she did not know about it. She deposed that she felt pain. Her father took her to the Police Station in the evening. She told the incident to her mother soon after she reached at her house and thereafter told her father about the incident in the evening. The Police came from Police Station and took Veer Singh. The Police or his father or any villager had not assaulted Veer Singh. She denied the suggestion that she had cut mustard crop and, upon complaint by Munnu and Veer Singh at her house, Veer Singh was beaten and was falsely implicated in this case.

11. P.W.3 Prakash is the eye-witness of the incident. He has turned hostile and said that he did not see any incident. He said that he saw the victim coming out of the field weeping and did not see any other person, except the victim. In cross-examination he has said that he along with Battu entered in the sugarcane field, but did not find Veer Singh there.

12. P.W.4, Dr. Gyanendra Kumar, Radiologist, is a formal witness, who has conducted x-ray of the victim, which he proved as Ext. Ka-2. P.W.4 said that the epiphysis of elbow had fused, however, the epiphysis of the radius and ulna at the wrist had not fused. In cross-examination, P.W.4 deposed that epiphysis of elbow normally fuses at the age of 16 years and fusion of epiphysis of wrists takes place at the age of 19 years.

13. P.W.5 Head Constable Than Singh is also a formal witness, who scribed *chik* FIR and entered its gist in G.D. No. 36 at 13:30, the same

day, which he proved as Exts. Ka-3 and Ka-4 respectively. In cross-examination, he has said that the appellant was given first-aid by a compounder, as the doctor was not available. In G.D., the injuries sustained by the appellant were not entered.

14. P.W.6, S.I. Hukum Chand, is the Investigating Officer of the case. He has deposed about the investigation carried out by him and said that he recorded statements of the witnesses, the victim, and collected three pieces of broken bangles from the place of occurrence and also collected a *salwar* from the victim and prepared its recovery memo and thereafter, he submitted the charge-sheet in the Court. He has denied the suggestion that, he had not recorded the statement of the victim.

15. P.W.7 Dr. Kanak Lata Joshi, is also a formal witness, who has medically examined the victim on 16.01.1983 at 08:30 p.m. She deposed that she did not find any mark of injury over her private parts. Hymen was found intact and there was one bruise at 3 o'clock position red and tender. There was no blood. She could not give any opinion that the rape was committed upon the victim. She opined the age of the victim between 12 to 14 years. She further testified that in further test, no spermatozoa was found in the specimen. In cross-examination, she has said that if a person of 20 or 22 years would have committed rape upon the victim, then it is possible that hymen may not remain intact, but sometimes it may remain intact. She admitted that she had added the word 'with bruise at 3 o'clock position red and tender' in view of x-ray report, lateron.

16. After closure of prosecution evidence, the statement of appellant Veer Singh was recorded under Section 313 Cr.P.C., in which, he denied the prosecution case and has said that the witnesses have given evidence against him under the pressure of police and they are of the same house. He further said that the recovery regarding the three pieces of broken bangles and *salwar* of the victim were fake. He further said that on 16.01.1983, Munnu and he himself had gone to Hardwari's house to raise a complaint regarding cutting of mustard crop from his field, thereupon, they assaulted him and called police and got him arrested.

17. In defence, the appellant has examined D.W.1 Dr. Murari Pandey, Medical Officer, State District Hospital, who stated that on 17.01.1983 at about 10:00 a.m., he medically examined Veer Singh and found following injuries over his body:

(i) Lacerated wound 3 x 1/2 x 0.4 cm bone deep to the left of head 6 cm above the left ear.

(ii) Lacerated wound 2.6 cm x 0.2 cm x 0.2 cm to the back of left ear.

(iii) Contusion 5 cm x 3 cm at the right of forehead above the temple.

(iv) Six contusions of brownish and reddish colour 1.5 cm x 3.5 cm over the back of both sides.

(v) Three abraded contusion 2 cm x 1 cm to 2 cm x 6 cm to the left of back and one in the middle and one to the right of back.

(vi) Contusion reddish and brownish in colour 5.5 cm x 3 cm over right shoulder.

(vii) Abrasion 1.7 cm x 1.5 cm over left shoulder.

(viii) Abrasion 3 cm x 1 cm in the middle of left arm.

(ix) Abrasion .4 cm x .05 cm below the thumb of left hand along with contusion.

(x) Abraded contusion 4.5 cm x 2 cm in the front of upper part of the right arm.

(xi) Abrasion 2 x 1 cm to the inner part and near elbow of the right forearm.

(xii) Contusion reddish and brownish in colour 8 cm x 2 cm to the outer and upper part of right thigh.

(xiii) Abrasion 1.7 cm x 1.2 cm to the front and middle part of the left thigh.

(xiv) Two abrasion .2 cm x .15 cm and 2 cm x 1 cm to the front and middle part of the left leg.

18. D.W.1 said that injury no.1 to 6, 9, 10 and 12 were caused by any blunt object and injury nos. 7 to 9, 11, 13, 14 were caused by friction. All

the injuries were simple in nature and about one day old. The injured was brought by Constable Balvir Singh of the Police Station Modi Nagar. The witness has proved injury report as Ext. Kha-1. In cross-examination, he has said that he has not written about the general condition of the injured in his injury report.

19. The Trial Court after hearing arguments of both the parties and upon a perusal of evidence on record, came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt and it is proved that the appellant had committed rape upon the victim and accordingly, the appellant was convicted and sentenced for the offence punishable under Section 376 IPC for the term as indicted above.

20. Heard Mr. Prayogendra Pal Singh, learned counsel for the appellant, Mr. Rajiv Pandey, learned AGA for the State and perused the trial court record.

21. Learned counsel for the appellant submits that there is inordinate delay in lodging the FIR and no sufficient explanation has been given by the prosecution, which raises serious doubt over the prosecution case and false implication of the appellant in this case cannot be ruled out. It is further submitted that there are major contradictions in the statement of P.W.1 Hardwari, the father of the prosecutrix and P.W.2, the victim herself.

22. Learned counsel for the appellant next submits that as per the prosecution case, there were two eye-witnesses of the alleged incident and the prosecution has only examined Prakash as P.W.3, even he has not supported the prosecution case. The other eye-witness has not been examined, therefore, an adverse inference ought to be drawn against the prosecution case. It is also submitted that the oral testimony of the prosecutrix is not supported by medical evidence, which raises serious doubt over the prosecution case.

23. Learned counsel for the appellant next submitted that the appellant sustained fourteen injuries and no explanation has been given regarding these injuries, which raises serious doubt over the prosecution case. It is also contended that the appellant has been falsely implicated in this case

for the reason that on 16.01.1983, he had gone along with Munnu at first informant's house to raise a complaint of harvesting the mustard crop and there they were beaten and after calling the Police, they were lodged in the lock up. Therefore, it is argued that the Trial Court has failed to appreciate the evidence on record correctly and reached at the wrong conclusion of guilt of the appellant, on the basis of surmises and conjectures and as such, the impugned judgment and order is liable to be set aside.

24. Per contra, learned AGA on behalf of the State has submitted that the prosecution case is fully established. The first informant is not the eye-witness of the alleged incident, as he had gone to take bath in river Ganges, and after his return, he came to know about the incident, thereafter he lodged the FIR. It is further submitted that the witnesses are illiterate, rustic village people belonging to lower strata of society, therefore, if there is any discrepancy in their testimony with regard to the date, when the FIR was lodged, then it is minor and has no bearing over the prosecution case. It is also submitted that the prosecutrix has supported the prosecution case. It is also contended that there are no major contradictions in the testimony of the victim, with regard to the alleged incident and for an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be trustworthy, unblemished and of sterling quality. The testimony of prosecutrix in the present case passes such test, therefore, only on the basis of the testimony of P.W.2, the victim, the prosecution case is proved.

25. Learned AGA has next submitted that rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim for an offence of rape. It is also argued that in the present case, some mark of injury is found over private part of the prosecutrix, which corroborates the prosecution case and even if, it is assumed that the medical evidence does not clearly say about the rape, then merely the statement of the prosecutrix is sufficient to prove the prosecution case. It is also submitted that the appellant did not

sustain any such injuries during the incident and there is no such case of the appellant that during the above incident, he sustained injuries, therefore, the prosecution was not required to explain about the injuries found upon the person of the appellant. Therefore, the prosecution case is proved beyond reasonable doubt and this appeal has no force, which is liable to be dismissed.

26. In view of submissions of learned counsel for both the parties and the material on record, it is to be examined whether the prosecution has been able to prove its case beyond reasonable doubt, because it is settled law that the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. According to the prosecution, the incident occurred on 15.01.1983 at 11:00 a.m. under village Bakhrawa, Police Station Modi Nagar, District Ghaziabad, when the victim had gone to a jungle to bring green fodder, then in the sugarcane field of Ranjeet, the appellant forcibly took the victim and committed rape upon her.

27. It is the case of the prosecution, upon hearing the cries of the victim, Prakash and Battu reached at the spot and witnessed the incident and thereafter, the appellant fled from the spot upon seeing them.

28. The FIR in the instant case has been lodged the next day of the incident at 10:30 a.m. i.e. after more than 24 hours from the time of incident and in this regard, learned counsel for the appellant has argued that the prosecution has failed to explain the delay in lodging the FIR.

29. The above submission has no force. It is generally experienced that for an offence like this, the prestige and honour of an unmarried girl of a family is at stake and therefore, they hesitate in lodging the FIR. So, if there is some delay, then it may not be a ground to raise doubt over the prosecution case. P.W.1 Hardwari is the father of the victim and he has is the potter belonging to lower strata of the society. It has come in evidence that on the date of incident, he had gone to take bath in river Ganges and upon his return, the same day, he came to know about the incident from his wife and it was the victim, who after returning from the field, narrated the entire incident to her mother. Though there are some discrepancies as to when P.W.1 Hardwari returned after taking bath

in river Ganges. In the FIR, it is stated that he returned the next day, then came to know about the incident, whereas in his statement before Court, he said that he had returned in the evening of the incident. P.W.2, the victim, an illiterate young girl of the age of 14 years, has stated that her father came in the afternoon of the incident. The first informant is an illiterate person and the *Tehrir* has not been written by him.

30. Learned counsel for the appellant has also submitted that, according to P.W.1 Hardwari, he went to the Police Station along with the victim and the appellant to lodge the FIR and P.W.2, the victim, has stated that they went to the Police Station in the evening of the incident, therefore, it raises doubt over the prosecution case.

31. The above submission also has no force. Though there are some discrepancies in the statement of P.W.2, about when they went to the Police Station, whether the same day alongwith the appellant or the next day with him, but in this regard the statement of appellant under Section 313 Cr.P.C., is relevant in which he says that on 16.01.1983, he alongwith Munnu went at the house of informant Hardwari to raise a complaint over cultivating his mustard crop, then they were beaten and after calling the Police, they were lodged in the lock up. So, as per above statement of the appellant, he was taken to the Police Station the next day of the incident i.e., 16.01.1983, and not the same day. Therefore, in this regard, if the victim has stated that they went to the Police Station the same evening of the incident, then it is not a very material contradiction to raise any suspicion over the prosecution case.

32. In view of the above, there is no inordinate delay in lodging the FIR and some minor inconsistencies in the statement of P.W.1 and P.W.2, in this regard, have no adverse effect over the prosecution case.

33. Here, it is relevant to mention that the defence has not adduced any evidence in support of its version and there is no evidence to show that the appellant along with Munnu had gone to the house of the first informant where they were beaten up. There is also no evidence that any part of his mustard crop was cultivated. There is also no evidence that the appellant was assaulted at the house of the first informant. Though

14 injuries to the appellant are established, in view of his medical report, but there is no evidence that these injuries were caused during the incident. So the prosecution was not required to explain these injuries and as such, non-explanation of injuries of the appellant has no adverse effect over the prosecution case.

34. So far as the alleged incident is concerned, P.W.2, the victim, is the crucial witness of this case. In the case of **Vishnu Vs. State of Maharashtra (2006) 1 SCC 283**, the Hon'ble Supreme Court has held that for such kind of offence, conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. In **State of Rajasthan Vs. N.K., (2000) 5 SCC 30**, the Hon'ble Supreme Court has again held that it is well settled by a catena of decisions of this Court that there is no rule of law that the evidence of the prosecutrix cannot be relied upon without corroboration and as such, it has been laid down that corroboration is not a *sine qua non* for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of credence by a general rule, there is no reason to insist on corroboration except on medical evidence, whether, having regard to the circumstances of the case medical evidence can be expected to be forthcoming. It is well settled law that while evaluating evidence for such kind of crime, the Court must 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 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. The testimony of a victim in such cases are vital and unless there are compelling reasons, which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her

testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury, as held by Hon'ble Supreme Court in **Ranjit Hazarika Vs. State of Assam (1998) 8 SCC 635**.

35. In view of the above legal position, if we look into the testimony of P.W.2, the victim, then it appears that her statement is consistent throughout and there are no major contradictions in her statement to render her testimony unreliable and untrustworthy. She has stated on oath that on the date of incident, she had gone to the jungle to collect fodder, as usual, then the appellant took her forcibly in Ranjeet's sugarcane field, where he removed her *salwar* and committed rape upon her. She further testified that she cried loudly, whereupon Prakash and Battu reached at the spot, and then appellant fled away. Thereafter, Prakash and Battu took her to her house, where she narrated the entire incident to her mother. She has stated that she was about 14 years of age at the time of the incident.

36. The witness has been thoroughly cross-examined, but her testimony could not be shaken and there are no major contradictions in her statement. She has said that the place of occurrence is about one *kos* (approximately 3.2 kilometers) from her village and she had gone alone to collect fodder. She cried loudly, but had not assaulted the appellant nor struck him with a hoe (*khurpa*). Upon this, it is submitted by learned counsel for the appellant that in the ordinary course of event, the victim would have resisted by assaulting or hitting the appellant. Since the victim, admittedly, did not do so, therefore, it is contended that the prosecution version is doubtful.

37. The above submission has no force. A rustic village girl of such a tender age, overpowered by the appellant, and out of fear and helplessness, if she did not offer any resistance or cause any injury to the appellant, then merely this, by itself, would not render her testimony unreliable. P.W.2 has testified that she was raped for about half an hour, resulting in pain and the blood might have fallen on the ground, although she was not aware of it. Relying upon this statement, learned counsel for

the appellant has submitted that the above statement is not reliable, as in the ordinary course of such an incident, the victim could have sustained injuries over her person as well as upon her private parts, however, in view of her medical examination, she did not suffer any such injury, which raises doubt over the prosecution case.

38. The above submission of learned counsel for the appellant is also not acceptable. As observed earlier, the victim is a minor girl of tender age and is illiterate, therefore, her estimation of time and duration with regard to the offence committed upon her, may not be precise and accurate, but the fact of the matter is that the witness has clearly stated that the appellant committed rape upon her. As per law, even slight penetration is sufficient to prove offence of rape. In this case, the evidence adduced by the prosecutrix proves that accused had inserted his penis in her vagina. So the testimony of P.W.2, the victim, with regard to the alleged incident is consistent, trustworthy and reliable and it is of sterling quality, having no major contradictions with regard to the incident, to raise any doubt about it. Further, P.W.3 Prakash, who turned hostile, has corroborated the prosecution case, where he has said that he had seen the victim at the place of occurrence coming out of Ranjit's sugarcane field weeping, and he and Bittu tried to find someone there after entering inside the field of sugarcane crop, which discloses that something wrong had happened to the victim there and thus, upto this extent he corroborates the prosecution case.

39. It is also submitted by learned counsel for appellant that the ocular evidence is not supported with medical evidence which raises serious doubt over the prosecution case. The above submission has no force. The Hon'ble Supreme Court in **State of Tamil Nadu vs. Ravi @ Nehru (2006) 10 SCC 534**, ruled that "Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether rape has occurred or not is a legal conclusion, not a medical one." That is the reason why, even the opinion of the doctor, that there

was no evidence of sexual intercourse or rape, is at times held to be not sufficient to disbelieve the accusation of the rape by a victim. In another case of **Ranjit Hazarika vs. State of Assam (1998) 8 SCC 635**, the prosecutrix was also a young girl, who was 14 years of age and subjected to rape by the accused, while she was on her way to home along with him. In her evidence before the court she clearly narrated the manner in which the accused forcibly performed sexual intercourse with her without her consent on the road side. Her statement remained virtually unchallenged in the cross examination and was amply supported by her mother and two witnesses, to whom she made immediate disclosure. The argument of the learned counsel for the accused was that medical evidence belies the testimony of prosecutrix as no injury was found on her private parts and her hymen was found to be intact. The Apex court, however, held that neither the non-rupture of hymen nor absence of injury to the private parts belies the testimony of prosecutrix. It was held that the opinion of the doctor, that no rape appeared to have been committed, which was based only on the absence of rupture of the hymen and absence of injuries on the private parts of the prosecutrix, cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix.

40. In view of the above legal position, if we look into the present case, then in the present case, the victim has been medically examined on 16.01.1983 at 08:30 p.m. by P.W.7 Dr. Kanak Lata Joshi. She found no mark of injury over her private part except that there was a bruise at 3 o'clock position red and tender over hymen, but no bleeding was present. The doctor has opined that no clear opinion could be given with regard to the rape upon the victim. In vaginal examination, no spermatozoa was found. Upon being questioned, the doctor has said that if a boy of 20-22 years of age commits rape upon a girl of such age, then, most probably, hymen would not remain intact, but sometimes it remains intact. The doctor has denied the suggestion that she has added the bruise injury under undue influence and had not found any such injury over hymen. She has said that the above sentence was added after

examining the x-ray report. There is no evidence that the Investigating Officer or any other Police Officer or the doctor was on inimical terms to the appellant, or had colluded with the first informant, which could have prompted them to fabricate false evidence against the appellant. Therefore, the doctor is not certain with regard to rape, but it has no material significance in the present case as otherwise the statement of the victim is found reliable, trustworthy and of sterling quality.

41. So far as the age of the victim is concerned, as per prosecution, she was aged about 14 years at the time of incident. She herself, in her statement, has testified that she was 14 years of age at the relevant time. P.W.4 Dr. Gyanendra, who was a radiologist of District Hospital, Ghaziabad, has also, on the basis of x-ray (Ext. Ka.2) stated that he conducted x-ray of the victim and found that the epiphysis of elbow had fused, whereas the epiphysis of the radius and ulna at the wrist had not fused. In cross-examination, P.W.4 deposed that epiphysis of elbow normally fuses at the age of 16 years and fusion of epiphysis of wrist takes place at the age of 19 years. In the opinion of the P.W. 7, victim was aged between 12-14 years. The victim's father Hardwari has stated that she was about 14 years of age. There is no other contrary evidence on record with regard to the age of the victim. The defence has also not suggested any other age of the victim. Therefore, it is established that the victim was minor and aged about 14 years at the time of incident.

42. The Investigating Officer has also prepared a recovery memo (Ext.Ka-5) of *salwar* of the victim and found that there were some white spots like semen between left thigh and nearby places. Though the Investigating Officer has not sent the *salwar* for chemical examination, which amounts to a defective investigation, but it is settled law that if the prosecution case is proved otherwise, defective investigation would not be a ground to disbelieve the prosecution case.

43. So far as the place of occurrence is concerned, the Investigating Officer has prepared its site-plan (Ext. Ka-6), in which he has shown the sugarcane field of Ranjeet Singh, as the place of occurrence, and has marked it as place 'A'. The prosecutrix in her statement as P.W.2, has

said that at the same place, rape was committed upon her by the appellant. The prosecution has examined Prakash as P.W.3, who is stated to be the person, who reached at the spot upon hearing the cries of the prosecutrix. P.W.3 has turned hostile and has said that except the prosecutrix, he did not see any other person at the spot, though from his statement, it is established that he admits that at the alleged place, date and time, he heard some faint sound (*khatka*) in Ranjeet's sugarcane field. There he saw nothing, but saw the first informant's daughter coming out weeping. He also stated that the other witness Battu came later on and both of them entered in the sugarcane field, but did not find appellant Veer Singh. It is established law that the statement of a hostile witness shall not outrightly be rejected in totality and that portion of the statement can be relied upon, which is in support of prosecution and finds corroboration from other evidence.

44. In view of the above legal position, the testimony of P.W.3, Prakash, corroborates the place of occurrence, as at this place he found the prosecutrix coming out of field weeping.

45. The Investigating Officer has prepared a recovery memo of the pieces of bangles (Ext. Ka-7), which he recovered from the place of occurrence and proved them before the court. The broken pieces of bangles further corroborates the prosecution case that the victim's bangles may have been broken in her struggle at the time of incident. In view of the above discussion, the place of occurrence is fully established.

46. Here, it is also relevant to note that, according to the appellant, the appellant and Munnu were beaten by Hardwari, when they had gone to raise a complaint to his house, but in this regard the appellant or Munnu have not lodged any FIR at the Police Station. There is also no evidence that Munnu sustained any injuries. There is no reason why the first informant would falsely implicate the appellant alone. There is also no evidence that there was any previous enmity between both the parties giving any reason for false implication of the appellant in this case.

47. In view of the above discussion, this Court comes to conclusion that the prosecution has been able to prove, beyond reasonable doubt, that on the date of incident the appellant has committed rape upon the victim and, as such, charge against him under Section 376 IPC stands proved. Thus, the Trial Court has appreciated the evidence on record correctly and has rightly reached at the conclusion of guilt of the appellant and thus, this appeal has no force.

48. Therefore, the present appeal lacks merit and is, accordingly, **dismissed**. The conviction and sentence of the appellant by impugned judgment and order dated 22.04.1985 is **affirmed**. The appellant, Veer Singh, is on bail. His personal bonds and bail bonds are cancelled and sureties are discharged. He is directed to surrender before the learned Trial Court, within three weeks from today to undergo the remaining part of his sentence, failing which, the Trial Court is directed to adopt coercive measures for securing his presence.

49. Let a copy of this order be forwarded to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

(Sanjiv Kumar,J.)

July 9, 2026
Subham