



**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 212 of 1986**

Subhash Singh and others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Ajay Kumar Pandey(ac), K.d.awasthi, S.m. Chaturvedi, S.m. Dayal
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

AFR

Reserved On 2.7.2026

Delivered On 29.7.2026

HON'BLE SANTOSH RAI, J.

1. Heard Sri Ajay Kumar Pandey, learned Amicus Curiae for the appellant nos.1,3; Sri Purushottam Maurya, learned AGA for the State and perused the material on record.

2. Three accused appellants have filed the instant appeal in the year 1986, but when the matter is taken up for hearing today, we were informed that one of them namely, Shanti has already died, hence the appeal qua him has already abated. The surviving appellants are Subhash Singh and Sher Singh.

3. The present appeal has been preferred by the appellants to set aside the judgment and order dated

6.12.1985 passed by the II Additional Sessions Judge, Rampur, in Sessions Trial No.142 of 1984 (State Vs. Subhash Singh & Ors.), under Section 376/34 IPC, Police Station Tanda, District Rampur, whereby the accused appellants have been convicted and sentenced to five years rigorous imprisonment under Section 376/34 IPC.

4. The prosecution case, briefly stated, is that on 14.3.1984 the prosecutrix Smt. Rafeeqan (P.W.2) and her brother's daughter Kumari Nayab Jahan (P.W.3) had gone to the jungle of village Badli to collect dry leaves from the grove of Vishnu Autar, where the five accused persons, who were tending their cattle nearby, are alleged to have surrounded the two girls. It is alleged that accused Preetam and Shanti caught hold of Smt. Rafeeqan and threw her into a pit, while accused Pooran and Sher Singh similarly overpowered Kumari Nayab Jahan. Accused Preetam is alleged to have cut the naara of the shalwar of Smt. Rafeeqan with a knife and committed rape upon her, appellant Subhash Singh and Shanti having pressed her mouth and hands. Accused Pooran is alleged to have committed rape upon Kumari Nayab Jahan, appellant Sher Singh having assisted in overpowering her and standing guard. The alarm raised by the victims attracted P.W.1 Amir Ahmed, brother of P.W.2 and father of P.W.3, whereupon the accused persons fled. A first information report was lodged the same day, and after investigation, charge-sheet was submitted against all five accused persons.

5. The learned trial court, upon appreciation of the ocular testimony of P.W.1 Amir Ahmed, P.W.2 Smt. Rafeeqan and P.W.3 Kumari Nayab Jahan, read with the

medical evidence of P.W.5 Dr. S.C. Gupta and P.W.6 Dr. (Mrs.) Sheela Khanna, held that the prosecution had proved beyond reasonable doubt that accused Preetam committed rape upon Smt. Rafeeqan and accused Pooran committed rape upon Kumari Nayab Jahan, and that the appellants Subhash Singh and Shanti had, in furtherance of the common intention to facilitate the commission of rape upon Smt. Rafeeqan, caught her hands and pressed her mouth, while appellant Sher Singh had similarly assisted in facilitating the rape upon Kumari Nayab Jahan and stood guard to warn his companions of any danger. The trial court accordingly convicted the appellants with the aid of Section 34 IPC.

6. Learned Amicus Curiae for the appellants has assailed the impugned judgment on the following grounds: (i) that the statements of P.W.2 and P.W.3 are riddled with material contradictions regarding the specific role attributed to each accused, rendering their testimony unsafe for conviction; (ii) that no specific overt act constituting rape has been attributed to the appellants, who were, at best, alleged to have facilitated the commission of the offence by the principal accused; (iii) that no independent role has been assigned to appellant Sher Singh, who was merely alleged to be "standing guard", which cannot by itself found a conviction with the aid of Section 34 IPC; (iv) that the medical evidence, particularly the finding of an intact hymen in respect of Kumari Nayab Jahan, is inconsistent with the prosecution case of rape by five persons; and (v) that the FIR and the testimony of P.W.1, being interested witnesses, ought not to have been relied upon, more particularly in view of the affidavit dated 30.3.1984

wherein P.W.1 had alleged that all five accused persons had committed rape upon both the prosecutrix turn by turn, a version at variance with the case set up at trial.

7. Having heard learned counsel for the parties and perused the record, we find no merit in these submissions. It is well settled that the testimony of a prosecutrix, if found to be trustworthy, does not require corroboration as a rule of law, and minor discrepancies arising out of the rustic, illiterate background of the witnesses, or the trauma and passage of time, cannot be treated as fatal to the prosecution case.

8. In **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217**, Honble Supreme Court held in para 11 as under:-

"11.....We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification : Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the "probabilities factor" is found to be out of tune."

9. In **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384** Honble Apex Court held in para 21 as under:-

"21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape

is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

10. Thus, in the light of principle laid down in above cases, the trial court has, in my view, correctly appreciated the ocular testimony of P.W.2 and P.W.3 by separating the core of their statements, namely, that they were forcibly waylaid, thrown into a pit, and ravished, from the embellishments and exaggerations natural to young, agitated victims giving evidence of a traumatic sexual assault before a court of law. The consistent thread running through the statements of P.W.1, P.W.2 and P.W.3, namely that accused Pooran raped Kumari Nayab Jahan and accused Preetam raped Smt. Rafeeqan while the remaining three accused persons facilitated and stood guard, has rightly been accepted by the trial court as the reliable core of the prosecution case.

11. Section 34 of the Indian Penal Code embodies the principle of joint or constructive liability. It is not a substantive offence but a rule of evidence and

interpretation which provides that when a criminal act is committed by several persons in furtherance of the common intention of all, each of them is liable for the entire act as if he alone had committed it. The law proceeds on the principle that where two or more persons act together to achieve a common unlawful object, the act of one becomes the act of all. Once common intention and participation are proved, it is not necessary to determine the precise role played by each accused in causing the final result. In such a situation, the responsibility is common because the intention is common. For attracting Section 34 IPC, the prosecution must establish not only the existence of a common intention but also the participation of the accused in the commission of the crime. Such participation may be active or even passive, provided it is intended to facilitate or advance the common design. Mere presence at the place of occurrence, without sharing the common intention or without participating in the commission of the offence, is not sufficient to invoke Section 34. The common intention may be formed before the occurrence or even at the spot, and in most cases it has to be inferred from the conduct of the accused, the nature of the assault, their behaviour before, during and after the incident, and the surrounding circumstances. Thus, where the accused jointly participate in carrying out the criminal act in furtherance of a shared intention, each of them becomes equally liable for the offence committed.

12. On the question of constructive liability under Section 34 IPC, it is well settled that common intention may develop on the spot and can be inferred from the conduct of the accused, the manner of the assault, and the roles

played by each participant, and that it is not necessary that an overt act of penetration be attributed to every person sought to be convicted with its aid. In the present case, the evidence establishes that appellants Subhash Singh and Shanti caught hold of Smt. Rafeeqan and pressed her mouth and hands to facilitate the rape upon her by accused Preetam, and that appellant Sher Singh actively assisted in overpowering Kumari Nayab Jahan and thereafter stood guard to warn the other accused of any danger, thereby enabling the commission of rape upon her by accused Pooran. Such conduct is not that of a passive bystander but reflects a shared, pre-arranged design to overpower the two girls and facilitate their ravishment, squarely attracting Section 34 IPC. The argument that no role can be fastened on appellant Sher Singh merely because he did not himself commit penetration is misconceived; one who keeps watch to enable his companions to commit an offence is as much a participant in the common intention as the principal offender, on the time-tested principle that "they also serve who only stand and wait".

13. The submission founded on the medical evidence, namely that the hymen of Kumari Nayab Jahan was found intact and therefore rape could not have taken place, does not assist the appellants. The Explanation to Section 375 IPC, as it stood at the relevant time, makes it clear that penetration, howsoever slight, is sufficient to constitute the sexual intercourse necessary for the offence of rape, and rupture of the hymen is not a *sine qua non* for proving the offence. The medical witness herself admitted the possibility of partial penetration without rupture of the hymen. This position has since been reiterated by the

Hon'ble Supreme Court, which has repeatedly held that the absence of injuries or an intact hymen cannot, by itself, be a ground to discredit an otherwise credible and consistent testimony of a victim of sexual assault. In **State of H.P. v. Sanjay Kumar, (2017) 2 SCC 51** Honble Apex Court held as under:-

"31.....By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma v. State of H.P. [Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551 : 2004 SCC (Cri) 31])....."

14. In **Raju @ Umakant Vs. State of Madhya Pradesh 2025 8 SCC 281**, Honble Supreme Court held in para nos.22,23 as under:-

22. Further, in Ashok Kumar v. State of Haryana [Ashok Kumar v. State of Haryana, (2003) 2 SCC 143 : 2003 SCC (Cri) 446] , it was held as under: (SCC p. 146, para 8)

"8. Charge against the appellant is under Section 376(2)(g)IPC. In order to establish an offence under Section 376(2)(g)IPC, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds. It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence.

23. In view of this, it is very clear that in a case of gang rape under Section 376(2)(g), an act by one is enough to render all in the gang for punishment as long as they have acted in furtherance of the common intention. Further, common intention is implicit in the charge of Section 376(2)(g) itself and all that is needed is evidence to show the existence of common intention."

15. Thus, in the light of principle laid down by the Supreme Court in above case laws and fact and circumstances in totality, I am of considered view that the argument of the learned amicus curiae for the appellants in this regard is very fake, hence liable to be rejected.

16. As regards the affidavit of P.W.1 dated 30.3.1984, the trial court has rightly noted that the same appears to have been sworn to oppose the bail application of the accused persons and does not, by itself, discredit the substantive testimony of P.W.1 recorded before the court on oath, which is broadly consistent with the statements of P.W.2 and P.W.3 on the material particulars. The mere

relationship of P.W.1 with the victims, being the brother of one and father of the other, cannot be a ground to discard his testimony; rather, being a natural witness present at or near the spot of occurrence who responded to the alarm raised by the victims, his evidence inspires confidence and is corroborative of the core prosecution case.

17. This Court may also usefully refer to the recent pronouncement of the Hon'ble Supreme Court on the approach to be adopted while dealing with offences of gang rape and the appreciation of the collective culpability of persons acting in concert. In **Ehsaan v. State (NCT of Delhi)**, 2026 SCC OnLine SC 1356, the Supreme Court held in para 6.3 and 6.4 as under:-

6.3. In State of Karnataka v. Krishnappa (2000) 4 SCC 75 three-Judge Bench of this Court observed as follows to the effect that a retributive view in cases involving the offence of rape is entirely justified:

"18. ...The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. ..."

The view above was referred to by a Bench of equal strength in Shimbhu v. State of Haryana (2014) 13 SCC 318.

6.4. When a sentence is imposed on an offender, it is done so with tri-fold purpose i.e. punitive, deterrent and protective. The overall objective is to rid the society of criminal proclivity. The same is done by ensuring that the sentence imposed is proportional to the offence or in other words not overly influenced by the possibility of reformation and instead, striking a judicious balance between the interest of the victim, society and the accused, after following the due process of law. We have considered a number of other judgments also inter-alia Allauddin Mian v. State of Bihar (1989) 3 SCC 5; Navas v. State of Kerala (2024) 14 SCC 82; Sevaka Perumal v. State of T.N (1991) 3 SCC 471; and Parsuram v. State of M.P.1 (2019) 8 SCC 382. The following aspects reveal themselves when viewed from the lens of imposition of sentence. It must:

- (a) Be in accordance with the nature and gravity of the crime;*
- (b) Adequately protect the interest of the society;*
- (c) Take into account the deterrent purpose of punishment;*
- (d) Consider the motive behind the crime, if any;*
- (e) Give due weight to the conduct of the accused;*
- (f) Examine whether the crime in question was pre-meditated or not;*
- (g) Keep in view the age of the accused and whether he has engaged in any similar offence in past for which he has been duly convicted;*
- (h) Account for the number of victims of the offence;*
- (i) Not consider the religion, race, caste or creed of the offender as a factor;*
- (j) Consider the possibility of reformation of the accused. It is the duty of the State to establish that the same does not exist; and*
- (k) The abuse of trust or misuse of personal relationship, if any.*

The facets identified by us above are illustrative and not exhaustive. A holistic view of the entire case must be taken in the attending facts of each case. Considering all these factors among others, the foremost duty of the Court is to assess the evidence in a given case; imposing just and adequate punishment upon the accused."

18. The Supreme Court in the above judgment, while dealing with a conviction under Section 376D IPC (gang rape), reiterated that sentencing in such cases must strike a judicious balance between the interests of the victim, the society and the accused, and that the testimony of the prosecutrix, where clear, clinching and unwavering, is sufficient to sustain a conviction without insisting on corroboration in each and every particular. The Court further emphasized that circumstances such as the involvement of multiple accused acting with a shared design to overpower and violate the victim aggravate the offence, and that courts must remain alive to the trauma and helplessness of victims subjected to sexual violence by more than one person acting in concert. Though the said decision arises under Section 376D IPC, a provision introduced by the Criminal Law (Amendment) Act, 2013 and therefore not attracted to an offence of 1984, which continues to be governed by Section 376(2)(g), the underlying principles of appreciation of victim testimony and collective culpability of persons acting in concert to facilitate a sexual offence remain equally instructive and apposite to the facts of the present case.

19. In this case at hand, the offence was committed in 1984, the applicable law was the Indian Penal Code, 1860 as it stood before the Criminal Law (Amendment) Act, 2013. The concept of "gang rape" existed, but in a more limited form than today. *The applicable provision was Section 376(2)(g) IPC, which was inserted by the Criminal Law (Amendment) Act, 1983 (Act 43 of 1983) and came into force on 25 December 1983. Thus, for an offence committed in 1984, Section 376(2)(g) IPC governed rape*

committed by more than one person acting together.

Section 376(2)(g) Explanation 1 provided, in substance:-

"Where a woman is raped by one or more persons constituting a group acting in furtherance of their common intention, each of the persons shall be deemed to have committed the offence of rape, irrespective of whether he himself committed the act of penetration."

20. This provision created a deeming fiction. Therefore actual penetration by every accused was not necessary. If the accused acted as a group in furtherance of their common intention, every participant was legally guilty of rape. It was a statutory application of the principle similar to Section 34 IPC, specifically incorporated into the offence of gang rape.

21. The punishment under Section 376(2) IPC, including clause (g):-

"376.(2) (g)-Whoever commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may for life and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years."

22. The Court could impose a sentence of less than 10 years only for adequate and special reasons, which had to be recorded in the judgment. Thus, the minimum punishment was 10 years' rigorous imprisonment, unless the court recorded special reasons for awarding a lesser sentence. The trial court has committed material legal error in this regard, no specific reasons have been recorded with the impugned judgment. Where the IPC provision prescribes punishment in the form:"...shall be punished with imprisonment ... and shall also be liable to

fine", or" ...with imprisonment and fine", the trial court is expected to impose fine also. Failure to impose fine amounts to an error in sentencing. It is true that the learned trial court has committed an error in not imposing the fine though the penal provision contemplates punishment of imprisonment coupled with fine. Nevertheless, the present appeal has been preferred only by the convicted accused. Neither the State nor the victim has preferred any appeal seeking enhancement of sentence, nor has any revisional jurisdiction for enhancement been invoked after due notice. Since imposition of fine would undoubtedly amount to enhancement of the sentence already awarded, this Court, while deciding the appeal preferred by the accused alone, cannot place him in a more disadvantageous position. The omission of the trial court, though legally erroneous, cannot therefore be rectified in the present appellate proceedings.

23. Having regard to the foregoing discussion, we find that the trial court has correctly appreciated the oral testimony of the witnesses of fact, read with the medical and other corroborative evidence on record, and has rightly attributed distinct and specific roles to each of the appellants in furtherance of the common intention to facilitate the commission of rape upon the two victims, so as to bring their case within the ambit of Section 376 read with Section 34 IPC (gang rape) The findings recorded by the trial court regarding conviction are well reasoned and proper, being in consonance with the settled principles governing appreciation of evidence in cases of sexual assault, and call for no interference by this Court, at the

same time committed material legal error by not imposing mandatory fine for the offence of rape. Furthermore no adequate and special reason has been recorded in the judgment for awarding sentence below the statutory limit and excess leniency has been adopted by the Trial Court, except as discussed above, no perversity, illegality or infirmity has been shown in the impugned judgment warranting interference in appeal.

24. For the reasons aforesaid, the appeal fails and is hereby **dismissed** qua appellants Subhash Singh and Sher Singh.

25. The conviction and sentence recorded by the II Additional Sessions Judge, Rampur, vide judgment and order dated 6.12.1985 in Sessions Trial No.142 of 1984 is hereby affirmed in respect of appellants Subhash Singh and Sher Singh.

26. The appellants Subhash Singh and Sher Singh, who are on bail, shall surrender before the trial court **within a period of two weeks from today** to serve out the remaining sentence, failing which the trial court shall take coercive steps including non bailable warrant, to secure their custody in accordance with law.

27. The appellants shall be entitled to benefit under Section 428 Cr.P.C.

28. Let trial court record along with copy of this judgment be transmitted 'forthwith' to the court concerned for information and necessary compliance.

29. The trial court is directed to submit its compliance report within two months from the date of receipt of this

order. Further more, the registry is also directed to place the compliance report on record.

30. The Registrar (Compliance) is also directed to serve a copy of this order **within two days** by FAX/e-mail to the trial court through District & Sessions Judge concerned for compliance.

31. Let Sri Ajay Kumar Pandey, learned Amicus Curiae, who has been appointed as Amicus Curiae in this case vide order dated 5.12.2025 be paid remuneration of Rs.25,000/-, within a period of two weeks from today.

32. Before parting with this judgment, this Court records its appreciation for the sincere assistance rendered by the Research Associates, Mr. Shivansh Pandey, Mr. Sandeep Kumar Singh and Law Intern Ms. Ishika Rai, in researching the legal issues involved and assisting in the preparation of this judgment. Their efforts are gratefully acknowledged.

(Santosh Rai,J.)

July 29, 2026
RA