

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.320 of 2004**

Arising Out of PS. Case No.-18 Year-1998 Thana- SIMRA District- West Champaran

1. Shaymdeo Uraon (Abated vide Hon'ble Court's order dated 20-02-2025)
S/O Late Jagarnath Uraon R/O Village- Chiuataha, P.S- Semra, Distt.- West-
Champaran.
2. Ramdeo Uraon S/O Late Jagarnath Uraon R/O Village- Chiuataha, P.S-
Semra, Distt.- West- Champaran.
3. Gorakh Uraon S/O Ram Kishun Uraon R/O Village- Chiuataha, P.S- Semra,
Distt.- West- Champaran.
4. Mohan Uraon S/O Nand Lal Uraon R/O Village- Chiuataha, P.S- Semra,
Distt.- West- Champaran.
5. Ramawatar Uraon S/O Late Jagdish Uraon R/O Village- Chiuataha, P.S-
Semra, Distt.- West- Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Surya Nilambari, Amicus curiae
For the Respondent/s : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 01-07-2026

1. This appeal is arising out of the judgment of conviction and order of sentence dated 26.03.2004 passed by Learned 6th Additional Sessions Judge, Bagaha, in Sessions Trial No. 528 of 1998, arising out of Semra P.S. Case No. 18 of 1998, whereby the appellants were convicted for the offences punishable under Sections 376(2)(g)



of the Indian Penal Code (hereinafter referred to as the I.P.C.), and they were sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 1000/- each, and in default of payment of fine, to undergo rigorous imprisonment for six months.

2. It is relevant to mention that the appeal pertains to the year 2004. As there was no assistance from the Learned counsel for the appellants, this Court was constrained to appoint Ms. Surya Nilambari as *amicus curiae* vide order dated 05.09.2024.

3. It is also pertinent to mention that as there was no contact with the appellants, this Court, vide order dated 18.01.2025, called for a report from the Superintendent of Police, Bagaha, West Champaran, regarding the live status of the appellants. In compliance of the order, the Superintendent of Police, Bagaha, West Champaran, addressed a letter dated 01.02.2025 reporting that appellant no. 1/Shyamdeo Uraon, had died. Therefore, the conviction and sentence



against appellant no. 1/Shyamdeo Uraon stood abated vide order dated 20.02.2025, and the appeal proceeded against appellant nos. 2 to 5.

4. Heard Ms. Surya Nilambari, the Learned Amicus Curiae, and Ms. Anita Kumari Singh, the Learned Additional Public Prosecutor for the State and perused the record.

5. As the offence is under Section 376 of the I.P.C., this Court shall not disclose the name of the prosecutrix. Henceforth, she shall be referred to as either the "Victim", or "X", or P.W. 5.

6. The case of the prosecution is based on the written complaint of the victim/P.W. 5, before the Officer-in-Charge of Chiutaha Police Station on 21.05.1998. The contents of the written complaint disclose that the victim/"X", along with her niece, Sumitra Uraon/P.W. 3, was working as a cook at Fakirana Holy Cross. Eight days prior to the submission of the written complaint, P.W. 5 and P.W. 3 had returned to their village from Bettiah. While returning from Bagaha, they stayed at the cottage of one Harendra Uraon, and reached their



village on the following day. On 17.05.1998, a Panchayati was convened, in which the father and brother (P.W. 4) of the victim participated, leaving only the women members at the house. At about 12:30 A.M., on the intervening night of 17/18.05.1998, the appellants came to the house of P.W. 5, and appellant no. 4/Mohan Uraon, asked P.Ws. 3 and 5 to accompany them to attend the Panchayat. After proceeding some distance, the appellants directed P.Ws. 3 and 5 to move towards the orchard. Initially P.W. 5 refused but the appellants forcibly took them towards the orchard. However, P.W. 3 managed to escape from the place of occurrence. Thereafter, all the appellants committed gang rape upon the victim one after another. Thereafter, appellant no. 4 handed over a ten-rupee note to P.W. 5 and asked her to bring P.W. 3 on the following night. The victim narrated the incident to her family member, who, thereafter, convened a *Panchayati*. However, as no settlement could be arrived at in the *Panchayati*, the victim was constrained to prefer the written complaint



four days after the incident.

7. Basing on the written complaint submitted by P.W. 5, Semra P.S. Case No. 18 of 1998 dated 21.05.1998 was instituted against all the appellants for the offence punishable under Sections 341, 323, 376 r/w 34 of the I.P.C.

8. The Station House Officer took up investigation and upon completion thereof, submitted the charge-sheet against all the appellants for the offence punishable under Section 376 r/w 34 of I.P.C. on 19.08.1998. The Learned Additional Chief Judicial Magistrate, Bagha, took cognizance of the said offence on 22.08.1998 and thereafter, committed the case to the Court of Sessions for trial on 04.9.1998, as the case was exclusively triable by Court of Sessions.

9. Upon committal of the case, the trial Court framed charges against all the appellants for the offence punishable under Section 376 r/w 34 of the I.P.C. of I.P.C. on 19.12.1998. The substance of the charge was read over and explained to the appellants for which they pleaded not guilty and



claimed to be tried.

10. During the course of trial, the prosecution examined altogether seven witnesses, i.e., P.Ws. 1 to 7, two witnesses were examined on behalf of defence and three Exhibits were marked. The name and details of the witnesses, and exhibits are as follows:-

PW no.	Prosecution witness name	Prosecution witness Details
P.W. 1	Tirshath Uraon	Hostile
P.W. 2	Chulhai Uraon	Hostile
P.W. 3	Sumitra Uraon	Niece of victim/P.W.5
P.W. 4	Swaminath Uraon	Brother of the victim
P.W. 5	X	Victim
P.W. 6	Bhuwaneshwar Thakur	S.I.
P.W. 7	Prem Nath Ram	S.I.

SI No	List of Exhibits	Exhibit Details
1.	Exhibit-1	Signature of Informant on written application
2.	Exhibit-2	Formal FIR
3.	Exhibit-2/1	Endorsement of officer-in-charge on FIR
4.	Exhibit-3	Medical report of victim

11. After the closure of the prosecution evidence, the appellants were examined under



Section 313 of the Cr.P.C. with regard to the incriminating evidence against them, to which all the appellants denied the allegations and claimed to adduce defence evidence. Accordingly, D.Ws. 1 and 2 were examined on behalf of the defence.

D.Ws. no.	Deposition witness name
D.W. 1	Chhedi Uraon
D.W. 2	Mohan Uraon

12. Considering the entire material available on record, the trial Court convicted the appellants for the offence punishable under Section 376(2)(g) of I.P.C. and sentenced them as stated supra.

13. The points for determination in this appeal are as follows:-

(i) Whether the trial Court is right in convicting and sentencing the appellants for the offence punishable under Sections 376 r/w 34 of I.P.C?

(ii) Whether the prosecution is able to prove the guilt of the appellant for the said



offences beyond reasonable doubt?

14. In order to determine these points, it is just necessary to re-appreciate the evidence available on record.

15. P.W. 1/Tirshath Uraon and P.W. 2/Chulhai Uraon turned hostile and did not support the case of the prosecution

16. P.W. 3/Sumitra Uraon is the niece of the victim. Her evidence disclose that she along with the victim/P.W. 5, reached the village one day prior to the incident. According to her, on the date of the incident, a Panchayat was held, which was attended by her parents. She deposed that after dinner, appellant no. 3/Gorakh Uraon, informed her that she and P.W. 5 were required to attend the Panchayat. At that time, the other appellants were also accompanying appellant no. 3. Thereafter, P.W. 3 and P.W. 5 followed the appellants towards the plantation situated on the southern side of the village. After proceeding some distance, the appellants dragged the victim towards the plantation. However, P.W. 3 refused to go,



somehow escaped from the clutches of the appellants. She further testified that, after escaping from the place of occurrence, she went to the place where Panchayat was being held and sat with her mother. Subsequently, the victim came there and informed her that the appellants had committed rape upon her.

17. In her cross-examination, P.W. 3 testified that her house is situated near the place where the Panchayat was being held. She further deposed that she was frightened by the incident and sat beside her mother after reaching the planchayat. According to her, the Panchayat was being held at the school, situated on the northern side of her house. She also testified that she went to the house of one Jagannath Uraon, which is situated near the Panchayat, but she neither informed him about the incident nor disclosed the same before the member of the Panchayat. She further deposed that it was only after returning home that the victim narrated the incident to the family members. She also stated that on the



following day, she, along with the victim, her brother, and her father, went to the police station, where the victim showed her injuries to the police and lodged the report.

18. On appreciation of the evidence of P.W. 3, it can be construed that the place where the Panchayat was held was on the northern side of her house, whereas the place of occurrence was situated on the southern side. Despite being aware of the venue of the panchayat, P.W. 3, along with the victim, followed the appellants towards the plantation situated on the southern side of the village. It can further be construed that, despite witnessing the victim in the clutches of all the five appellants, she did not inform about the incident to anyone until the victim returned home and narrated the incident.

19. P.W. 4/Swami Nath Uraon is the brother of the victim. His evidence disclose that P.W. 3 and P.W. 5 returned to the village, eight days prior to the occurrence. According to him, on the date of the incident, he attended the Panchayat in the



evening, while P.W. 5 remained at home. After returning from the Panchayat, P.Ws. 3 and 5 informed him that the appellants had taken them to the garden situated towards the south of their house, where all the appellants committed rape upon the victim/P.W. 5. On the following day, he convened a Panchayat regarding the incident, but according to him, Mohan Uraon influenced the elders of the Panchayat, due to which the Panchayat could not be held.

20. In his cross-examination, P.W. 4 testified that he was a resident of Tarkulhawa village, which is situated at a distance of 1 KM from village Chiutaha. He further stated that his father was alive at the relevant time of the Panchayat. According to him, the Panchayat was being held but he did not know that it was with respect to his sister and niece, and as such, he did not take his father along with him to the Panchayat. He specifically testified that his father was at Tarkulhawa village on the same day and that the Panchayat was scheduled to take place between



8:00 to 9:00 P.M. at night but continued for about 2½ hours. He also testified that neither his sister nor niece was called before the Panchayat. P.W. 4 also testified that the Panchayat was being held on the northern side whereas the garden was situated on the southern side.

21. P.W. 5 is the victim. Her evidence disclose that she, along with P.W. 3, was working as a cook at Fakirana Holy Cross, Bettiah. While returning to the village, they stayed at the house of one Harendra Uraon at Bagaha, as they could not find a bus to their village. On the next morning, they reached the village. She further deposed that on 07.05.1998, a Panchayat was held in their village which was attended by P.W. 4 and her father. However, P.W. 4 testified that, on the date of the incident, his father was not present in the village and was at Tarkulwaha village. Thus, there is a contradiction between the evidence of P.W. 4 and 5 on this aspect. P.W. 5 further testified that, while she was sleeping with P.W. 3, appellant/Mohan Uraon came to her house and



asked them to attend the Panchayat, while the other appellants were standing at the doorstep. She further deposed that they followed the appellants, whereupon three of them caught hold of her and took her towards the southern side of the village, whereas P.W. 3 managed to escape from there. She specifically testified that Mohan Uraon first lifted her and threw her on the ground, removed her undergarment, while Gorakh Uraon caught hold of her hands and pressed her mouth, Ramdeo Uraon held her legs, and Mohan Uraon committed rape upon her. Later, one after another, Gorakh Uraon, Ramdeo Uraon, Shyamdeo Uraon, and Ramawatar Uraon committed rape upon her.

22. She further testified that the accused persons left her after about 1½ hours. Before leaving, appellant No. 4/ Mohan Uraon gave her a ten rupee note and asked her not to disclose the incident to anyone. He further instructed her to bring P.W. 3 on the following night on the pretext of going for defecation, stating that he would leave her and take P.W. 3 instead. It is specifically



testified by P.W. 5 that the incident occurred between 12:00 midnight to 12:30 AM. Thereafter, the accused persons allowed her to return home, however, she stated that she was not aware as to how she reached her house. Her evidence further disclose that she informed P.W. 3 about the incident and thereafter disclosed the same to her mother, elder brother, and sister-in-law. She also testified that she went to the police station and preferred a written complaint, on which she affixed her signature, and the same was marked as Ext. 1. She further deposed that a Panchayat was held after the occurrence; however, no solution was arrived at in the Panchayat, due to which they went to the police station to register the case.

23. In her cross-examination, P.W. 5 testified that, subsequent to the incident, she got married and appeared before the Court along with her brother and husband. She specifically testified that she does not remember after how many days the case was instituted and do not remember the date on which she left Bettiah and also admitted



that she did not remember the entire contents of the written complaint.

24. The evidence of P.W. 3 contradicts the evidence of P.W. 5 with regard to the place where the Panchayati was held. As per the evidence of P.W. 3, the Panchayat was held in a school, whereas, as per the evidence of P.W. 5, it was held in a barn (a building where livestock is kept). P.W. 5 also admitted that she could not state what decision, if any, was taken in the Panchayat held on the day following the occurrence, as she did not attend the Panchayati. She further admitted that the barn where the Panchayati was held was situated next to the house of Nathhu, on the northern side of her house.

25. As per the evidence of this witness also, the Panchayat was held on the northern side of the house, whereas the place of occurrence situated on the southern side of the house. Her cross-examination further reveals that the garden was situated at a distance of less than 1 KM on the southern side of her house. However, no



explanation has been assigned by the victim as to why she proceeded towards the southern side of the house along with the accused persons when the Panchayati was being held on the northern side of the house.

26. P.W. 5 admitted that her clothes were stained with blood, during the course of the incident and that she had shown her clothes to the Investigating Officer. She further did not know how she returned to her house, as she had become unconscious during the incident, and could not say after how many hours she regained consciousness. However, upon regaining consciousness, she found herself at her house.

27. It is evident from the evidence of P.W. 5 that she fell unconscious during the course of the incident and found herself at her house when she regained consciousness. If the victim had infact become unconscious at the place of occurrence, who brought her back to her house? She specifically testified that she went to the police station on the day following the incident and



lodged her complaint. However, the contents of the written complaint and the endorsement made thereon clearly disclose that the written complaint was submitted by the victim four days after the incident. The delay has not been explained by the prosecution. Further, the victim also admitted that she was not well educated and was unable to write. The written application neither disclose the name of its scribe nor who drafted it.

28. As per P.W. 4, the place of occurrence was on the southern side of the house, whereas the Panchayat, which P.Ws. 3 and 5 were allegedly called upon to attend, was being held on the northern side of the house. The said fact has also been admitted by P.W. 5. However, no reason has been assigned either by P.W. 3 or P.W. 5 as to why they proceeded towards the southern side, if they were called to attend the Panchayat, which was being held on the northern side.

29. The other witnesses in this case are the Investigating Officers, i.e., P.Ws. 6 and 7.

30. P.W. 6 testified that he took over the



investigation from his predecessor on 18.07.1998, thereafter upon receiving instructions from his senior officer, he submitted the charge-sheet in the case for the offence punishable under Section 376 r/w 34 of the I.P.C. The formal F.I.R. of Semra P.S. Case No. 18 of 1998 dated 21.05.1998 was marked as Ext. 2, and the endorsement made by Premnath on the formal F.I.R. was marked as Ext. 2/1. Except for filing the charge-sheet, no investigation was carried out by this witness. Therefore, much importance need not be given to the evidence of P.W. 6.

31. P.W. 7 is the Investigating Officer, who registered the case against the appellants for the offences punishable under Sections 341, 323, and 376 r/w 34 of the I.P.C. on 21.05.1998. He took up the investigation and, during the course of the investigation, recorded the statements of the witnesses and inspected the place of occurrence, which was a rose garden. He specifically testified that the house of the victim was situated at about a distance of 500 yards to the west of the garden



and that the place of occurrence was a quite deserted place.

32. In the cross-examination, P.W. 7 admitted that P.W. 3 did not state before him that her father and mother had gone to attend the Panchayat on that the Panchayat commenced after dinner. He also admitted that the incident took place on 14.05.1998, whereas the F.I.R. was registered on 21.05.1998, and the reasons for the delay was required to be mentioned in Column No. 8 of the FIR. He admitted that no explanation was stated for the delay in lodging the complaint. He further deposed that he did not inspect the place where the Panchayat was held but visited the place of occurrence and referred the victim for medical examination. It is categorically testified by P.W. 7 that the Medical Officer did not find any signs of rape on the victim/P.W. 5.

33. It is pertinent to mention here that the Medical Officer was not examined in this case. However, the injury report was marked as Ext. 3 by the Court pursuant to the petition filed under



Section 294 of the Cr.P.C.

34. On perusal of the medical report/Ext. 3, it is evident that the medical evidence does not corroborate the oral evidence of P.W. 5 in any manner. In a case of rape, the medical evidence plays a prominent role in establishing the injuries sustained by the victim. Except for the oral evidence of P.W. 5, there is no other evidence available on record to prove that the victim was sexually assaulted by the appellants. Admittedly, P.Ws. 3 and 4 are not the eye-witnesses to the incident. Further, there are several contradictions in the evidence of P.Ws. 3 to 5. P.W. 4 categorically testified that, after returning from the Panchayat, P.Ws. 3 and 5 informed him about the incident, whereas the evidence of P.W. 3 disclose that she did not inform anyone about the incident until she reached home, and it is P.W. 5 who informed her and her family members about the incident. On the other hand, the evidence of P.W. 5/victim disclose that she become unconscious at the place of occurrence and do not know as how she reached



home and after regaining consciousness, she found herself at her house and later informed her family members about the incident.

35. At this juncture, the Learned Amicus Curiae relied upon the judgment of the Hon'ble Supreme Court in the case of **Aman Kumar and Another v. State of Haryana**, reported in **(2004) 4 SCC 379**, wherein their Lordships have held as follows:

5. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would suffice.



6. *The offence of rape occurs in Chapter XVI IPC. It is an offence affecting the human body. In that chapter, there is a separate heading for "sexual offences", which encompass Sections 375, 376, 376-A, 376-B, 376-C and 376-D. "Rape" is defined in Section 375. Sections 375 and 376 have been substantially changed by the Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act i.e. Sections 376-A, 376-B, 376-C and 376-D. The fast sweeping changes introduced reflect the legislative intent to curb with an iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is "the ravishment of a woman, without her consent, by force, fear or fraud", or as "the carnal knowledge of a woman by force against her will". "Rape or raptus" is when a man hath carnal knowledge of a woman by force and against her will (Co Litt 123 b); or, as expressed more fully, "rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will". (Hale PC 628) The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape. [1 Hen.*



6, 1a, 9 Edw. 4, 26 a (Hale PC 628)] In the crime of rape, "carnal knowledge" means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation. (Stephen's Criminal Law, 9th Edn., p. 262) In Encyclopaedia of Crime and Justice (Vol. 4, p. 1356), it is stated "... even slight penetration is sufficient and emission is unnecessary". In Halsbury's Statutes of England and Wales (4th Edn.), Vol. 12, it is stated that even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation, with violence, of the private person of a woman, an outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order.

7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (see Joseph Lines, IC&K 893). It is well known in the medical world that the examination of smegma loses all importance after twenty-four hours of the performance of the sexual intercourse. [See S.P. Kohli (Dr) v. High Court of Punjab and Haryana



[(1979) 1 SCC 212 : 1979 SCC (Cri) 252] .] In rape cases, if the gland of the male organ is covered by smegma, it negatives the possibility of recent complete penetration. If the accused is not circumcised, the existence of smegma around the corona gland is proof against penetration, since it is rubbed off during the act. The smegma accumulates if no bath is taken within twenty-four hours. The rupture of hymen is by no means necessary to constitute the offence of rape. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The actus reus is complete with penetration. It is well settled that the prosecutrix cannot be considered as accomplice and, therefore, her testimony cannot be equated with that of an accomplice in an offence of rape. In examination of genital organs, state of hymen offers the most reliable clue. While examining the hymen, certain anatomical characteristics should be remembered before assigning any significance to the findings. The shape and the texture of the hymen is variable. This variation, sometimes



permits penetration without injury. This is possible because of the peculiar shape of the orifice or increased elasticity. On the other hand, sometimes the hymen may be more firm, less elastic and gets stretched and lacerated earlier. Thus a relatively less forceful penetration may not give rise to injuries ordinarily possible with a forceful attempt. The anatomical feature with regard to hymen which merits consideration is its anatomical situation. Next to hymen in positive importance, but more than that in frequency, are the injuries on labia majora. These, viz. labia majora, are the first to be encountered by the male organ. They are subjected to blunt forceful blows, depending on the vigour and force used by the accused and counteracted by the victim. Further, examination of the female for marks of injuries elsewhere on the body forms a very important piece of evidence. To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Section 376 IPC.



36. It is the specific contention of the Learned Amicus Curiae that the version of the prosecution cannot be believed, as the medical evidence does not corroborate the oral evidence of P.W. 5/victim, and even the place of occurrence has not been established in this case.

37. The Learned Amicus Curiae further relied upon the judgment of the Hon'ble Apex Court in the case of ***Darbara Singh v. State of Punjab***, reported in **(2012) 10 SCC 476**, wherein their Lordships have held as follows:

10. *So far as the question of inconsistency between the medical evidence and the ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the*



process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved. (Vide State of U.P. v. Hari Chand [(2009) 13 SCC 542 : (2010) 1 SCC (Cri) 1112] and Bhajan Singh v. State of Haryana [(2011) 7 SCC 421 : (2011) 3 SCC (Cri) 241] .)

38. She further relied upon the judgment of the Hon'ble Apex Court in the case of **Santosh Prasad @ Santosh Kumar v. State of Bihar**, passed in **Cr. Appeal No. 264 of 2020**, wherein their Lordships have held as follows:

5.2 From the impugned judgments and orders passed by both the courts below, it appears that the appellant has been convicted solely relying upon the deposition of the prosecutrix (PW5). Neither any independent witness nor even the medical evidence supports the case of the prosecution. From the deposition of PW1, it has come on record that there was a land dispute going on between both the parties. Even in the cross-examination even the PW5 -



prosecutrix had admitted that she had an enmity with Santosh (accused). The prosecutrix was called for medical examination by Dr. Renu Singh - Medical Officer and PW7 - Dr. Renu Singh submitted injury report. In the injury report, no sperm as well as RBC and WBC were found. Dr. Renu Singh, PW7 - Medical Officer in her deposition has specifically opined and stated that she did not find any violence marks on the body of the victim. She has also categorically stated that there is no physical or pathological evidence of rape. It is true that thereafter she has stated that possibility of rape cannot be ruled out (so stated in the examination- in-chief). However, in the cross-examination, she has stated that there was no physical or pathological evidence of rape.

5.3 As per the FSL report, the blood group on the petticoat and the semen on the petticoat are stated to be inconclusive. Therefore, the only evidence available on record would be the deposition of the prosecutrix. It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and trustworthy. Therefore, now let us examine the evidence of the prosecutrix and consider whether in the facts and circumstances of the case is it safe



to convict the accused solely based on the deposition of the prosecutrix, more particularly when neither the medical report/evidence supports nor other witnesses support and it has come on record that there was an enmity between both the parties.

5.4 Before considering the evidence of the prosecutrix, the decisions of this Court in the cases of Raju (supra) and Rai Sandeep @ Deepu, relied upon by he learned Advocate appearing on behalf of the appellant-accused, are required to be referred to and considered.

5.4.1 In the case of Raju (supra), it is observed and held by this Court in paragraphs 11 and 12 as under:

“11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of



such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness



would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."

5.4.2 In the case of Rai Sandeep alias Deepu (supra), this Court had an occasion to consider who can be said to be a "sterling witness". In paragraph 22, it is observed and held as under:

"22 In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under



no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other



supporting materials for holding the offender guilty of the charge alleged.”

5.4.3 In the case of Krishna Kumar Malik v. State of Haryana (2011) 7 SCC 130, it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

5.5 With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?

6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that



she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 O'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW5 -prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of "sterling witness". There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix - PW5 cannot be taken as a gospel truth at face value and in



the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt.

39. She further relied upon the judgment of the Hon'ble Apex Court in the case of **Mohd. Ali @ Guddu v. State of U.P.**, reported in **(2015) 7 SCC 272**, wherein their Lordships have held as follows:

29. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment [Criminal Appeal No. 602 of 2006, decided on 25-3-2009 (All)] , it would only



indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished a number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed



reliance upon.

30. True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely does not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the appellant-accused for the alleged offences and the High Court has fallen into error, without reappreciating the material on record, by giving the stamp of



approval to the same.

40. She further relied upon the judgment of the Hon'ble Apex Court in the case of **Raju v. State of M.P.**, reported in **(2008) 15 SCC 133**, wherein their Lordships have held as follows:

11. *It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or*



exaggeration.

12. Reference has been made in Gurmit Singh case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as



that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.

41. The Learned Amicus Curiae contended that even the incriminating evidence was not put to the witnesses in its proper perspective, as envisaged under Section 313 of the Cr.P.C., except by putting questions with regard to the contents of the charge. Therefore, the appellants lost the opportunity of denying any incriminating evidence of the prosecution.

42. In the said context, the Learned amicus curiae relied on the Judgment of Hon'ble Apex Court in case of **Indrakunwar v. State of Chhattisgarh**, reported in **2023 SCC OnLine SC**



1364, wherein their Lordships have held as follows:

34. *Keeping in view the understanding of the principles of privacy and the propositions of law in regard thereto, we now travel to what, by law, may be required of the convict-appellant in her statement under Section 313 Cr.P.C.*

35. *A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.*

35.1 *The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.*

35.2 *The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.*

35.3 *The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.*

35.4 *The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say*



his piece.

35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

35.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8 This statement is to be read as a whole. One part cannot be read in isolation.

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.



35.10 *The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.*

35.11 *The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.*

35.12 *Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.*

43. She further relied on the Judgment of Hon'ble Apex Court in case of ***Premchand v. State of Maharashtra***, reported in **(2023) 5 SCC 522**, wherein their Lordships have held as follows:

15. *What follows from these authorities may briefly be summarised thus:*

15.1. *Section 313CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.*

15.2. *Section 313, which is intended to ensure a direct*



dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.

15.3. *When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.*

15.4. *The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognised defences.*

15.5. *An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.*

15.6. *The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).*

15.7. *Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence*



Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.

15.8. *Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.*

15.9. *If the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyse and consider his statements.*

15.10. *Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.*

44. In the present case also, though the victim was examined, the medical evidence clearly rules out the probability of the appellants having committed rape on the victim. If at all the five accused had committed the offence of rape, there should have been some injuries found on the body of the victim. Further, the Doctor was not examined, for reasons best known to the



prosecution. The cardinal principle of criminal law is that the prosecution has to prove the guilt of the appellants beyond reasonable doubt, and until such guilt is established, the accused is presumed to be innocent. Further, it is the duty of the prosecution to connect the crime with the appellants by adducing cogent and reliable evidence. In the present case, the evidence of P.Ws. 3 to 5 contradicts each other, and there are major discrepancies which go to the root of the prosecution's case.

45. On perusal of the entire record, it is evident that the medical evidence does not corroborate with oral evidence of P.Ws. 3 to 5 in any manner. The testimony of P.W. 5 alone is not sufficient to prove the guilt of the appellants as it is not corroborated by any material evidence. If P.W. 5 was assaulted by the appellants one after the other, the doctor who examined the victim would have opined regarding the marks of injuries found on her body. Further, the prosecution has miserably failed to establish the place of



occurrence or the time of the incident. The evidence of P.Ws. 3 to 5 contradicts the timings of the Panchayat which allegedly took place in the evening, after dinner, and at midnight, respectively. It is surprising to note that the village Panchayat was allegedly held at midnight, as per the evidence of P.W. 5. Generally, lifestyle of villagers would show that they go early to the bed and rise early from the bed. Contrary to this, the case of the prosecution shows that the Panchayat took place at midnight, i.e., between 12:00 to 12:30 A.M., for which P.Ws. 3 and 5 were called to attend the Panchayat, which itself cannot be believed.

46. The citations of the Hon'ble Apex Court relied by the Amicus Curiae are squarely applicable to the facts and circumstances of case. The trial Court ought to have questioned the appellants about incriminating evidence of the prosecution.

47. In view of the aforesaid discussions, this Court is of the considered view that the prosecution has miserably failed to prove the guilt



of the appellants for the offences punishable under Section 376(2)(g) of the I.P.C., and the Trial Court erred in convicting the appellants. It is also pertinent to mention that the charge was initially framed against the appellants under Section 376 r/w 34 of the I.P.C.; however, all the appellants have been convicted for the offence punishable under Section 376(2)(g) of the I.P.C. The substance stated in the charge and the section mentioned therein are also contradictory to each other. Therefore, the judgment of the trial Court is liable to be set aside.

48. Accordingly, the Judgment of conviction and order of sentence dated 26.03.2004 passed by Learned 6th Additional Sessions Judge, Bagaha, in Sessions Trial No. 528 of 1998, arising out of Semra P.S. Case No. 18 of 1997, is hereby set aside, and the appellants are acquitted for the aforesaid offence.

49. The record reveals that appellant No.1 / Shyamdeo Uraon was released on bail by this Court vide order dated 27.07.2006, and



appellant Nos. 2 to 5 were released on bail by this Court vide order dated 28.08.2006. However, the case against the appellant No. 1 stood abated. In view of the acquittal of the appellants, their bail bonds shall stand cancelled. Let the records be transmitted to the trial Court.

50. In result, the appeal is hereby allowed.

(G. Anupama Chakravarthy, J)

AMANDEEP/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.08.2026
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