2026:AHC:233863

AFR

Judgment Reserved on 30.10.2027
Judgment Delivered on 16.11.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 116 of 1984

Ram Raj @Lala

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	J.S. Sengar, Jaya Tiwari, Nitin Pal, Padmaker Pandey, Sharad Kumar Srivastava, Shivam Kumar Pal, Vinod Kumar Kushwaha
Counsel for Respondent(s)	:	A.G.A.

Court No. - 88

HON'BLE ABDUL SHAHID, J.

1. Heard Mr. Shivam Kumar Pal, learned counsel for the appellant, and Mr. Manoj Kumar Singh, learned A.G.A. for the State.

2. The present criminal appeal has been filed against the judgment and order dated 07.01.1984 passed by the learned III Additional Sessions Judge, Fatehpur, in Criminal Sessions Trial No. 39 of 1983 (State v. Ram Raj alias Lala), whereby the appellant has been convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for a period of four years. Since the appellant has been convicted under Section 376 IPC, he has not been separately convicted under the alternative charge under Section 376 read with Section 511 IPC.

3. The complainant, Vasdev, lodged a written report at Police Station Hathgaon, District Fatehpur, stating that on 10.07.1982, his daughter had gone to the forest to graze cattle, where the accused, Ram Raj alias Lala, was also grazing his cattle. At about 4:00 p.m., the accused allegedly pushed the victim to the ground by using force and attempted to insert his penis into her urethra. Upon failing to do so, he repeatedly inserted his finger into her urethra, causing bleeding. The victim raised an alarm, whereupon Shivpyare, son of Jairam, Ramesur, son of Mahavir, and

Buddhan, all residents of the same village, rushed to the spot and challenged the accused. On being challenged, the accused fled from the spot.

4. The complainant further stated that he could not approach the police station on the previous evening and, therefore, went to the police station on 11.07.1982 along with his daughter. He also handed over her blood-stained underwear to the police and requested that appropriate legal action be taken against the accused.

5. In her statement recorded under Section 161 Cr.P.C. on 11.07.1982, the victim confirmed and reiterated the prosecution version set out in the F.I.R. She stated that on the previous day, as usual, she had taken her cattle for grazing. Ram Raj alias Lala and Prem, both residents of her village, were also grazing their cattle there. In the afternoon, they left their cattle in the shade of an orchard belonging to Shivviyara. While grazing the cattle, she sat beneath a mango tree belonging to Sukruva Pasi. Ram Raj alias Lala was also lying beneath the same tree, with his dhoti spread out and a thuha beside him.

6. She further stated that after pushing Prem away, Ram Raj alias Lala forcibly made her lie down and attempted to insert his penis into her buttock at the place of her urethra and consistently inserted but he failed to insert. Thereafter, the accused inserted his finger into her urethra, causing profuse bleeding. He also tore her underwear and forcibly stripped her naked. When blood started oozing, she raised an alarm and cried loudly. Upon hearing her cries, Shivdhiyare, Rameshwar and Buddha, residents of Baihanan Ka Purwa in her village, rushed to the spot and challenged the accused. On being challenged, Ram Raj alias Lala fled from the spot. She further stated that she had narrated the entire incident to her father.

7. Dr. Satish Chandra, Radiologist, District Hospital, Fatehpur, was examined as P.W.-1. He stated that on 12.07.1982, he was posted as a Radiologist at the District Hospital, Fatehpur. On that day, he conducted X-ray examinations of the right elbow and left wrist of the victim, daughter of Vasudev Gaderia, resident of Hulasi Ka Purwa, Majra Kasrao, Police Station Hathgaon, District Fatehpur. He identified the

victim, who was present in Court.

8. After examining the X-ray plates, he arrived at the following conclusions:

1. The X-ray of the right elbow revealed that the epiphyses at the lower end of the humerus and the upper ends of the radius and ulna bones had not fused.

2. The X-ray of the left wrist revealed that the epiphyses at the lower ends of the radius and ulna bones and the head of the first metacarpal bone had not fused.

3. X-ray Plate No. 2163, dated 12.07.1982, was certified by him and bore the thumb impression of the victim, on the right side. He produced the said X-ray plate before the Court, which was marked as Material Exhibit-1.

9. He further stated that he had also brought his report, which was in his handwriting and bore his signature. He produced the said report before the Court, which was marked as Exhibit Ka-1. He further stated that in his opinion, the age of the victim at the time of the X-ray examination could not have been more than 14 years.

10. In his cross-examination, P.W.-1 stated that the victim could also have been 15 years old at that time.

11. The statement of the victim was recorded on 08.11.1983 as P.W.-2. She stated that she was aged about 14–15 years. She further stated that about one year and four months prior to the incident, she had gone to the forest to graze her cattle. On that day, she was grazing her cattle near the well at Pujha. The accused, Ram Raj alias Lala and Prem, were also present there, grazing their cattle. In the afternoon, all three of them took their cattle to the orchard of Shiv Pyare, the carpenter. At that time, she was sitting under a mango tree in the field of Buddhu. Prem and the accused, Ram Raj alias Lala, were also present there. The accused Ram Raj was lying there wearing a dhoti, while Prem was sitting under a neem tree situated about ten feet away. The accused asked her to come near him, pretending that he wanted to tell her something. Thereafter, the

accused moved Prem away from under the neem tree, lifted her and laid her down on the same dhoti behind him. The accused then tried to remove her shorts, but when he failed to do so, he broke the string. He thereafter attempted to insert his penis into my urethera. When he failed to do so, he inserted two fingers into her urethera, as a result of which blood started oozing from her urethera. She raised an alarm. On hearing her cries, Rameshwar and Shiv Pyare also arrived there. No other person came to the spot. Thereafter, Rameshwar and Shiv Pyare consoled her, sent her home and went in search of the accused, but he could not be found. The accused had committed the aforesaid act with her at about 4:00 p.m.

12. After reaching home, she narrated the entire incident to her father, Vasudev. On the following day, she went to the police station along with her father. At the police station, the Station House Officer seized her blood-stained underwear. Thereafter, she was medically examined at Sadar Hospital, Fatehpur. At the police station, she also narrated the entire incident to the Inspector.

13. In her cross-examination, the victim stated that the accused, Ram Raj alias Lala, Buddhu and Bachani were real brothers and that all of them resided in the same locality of the village. There had never been any dispute between her father and Buddhu regarding the grazing of cattle. The incident had taken place in the month of Jeth. By that time, all the crops, including wheat, gram and mustard, had been harvested, and there was no greenery in the fields. At a distance of about three furlongs west of the place of occurrence, there was a large orchard. There were about 25–30 houses in that orchard, with approximately 200–300 people residing there. However, nobody from that orchard came despite her raising an alarm. The field of her grandfather, Rameshwar, was situated nearby. Her father did not own any agricultural land in that orchard. Bachani also did not have any agricultural land near the place of occurrence. Her grandfather, Rameshwar, had sown paddy in his field situated near the place of occurrence, and the crop had grown to a height of about four inches at that time. The remaining fields were lying vacant after the harvesting of crops. She denied the suggestion that the accused's uncle, Bachani, had a field there in which he had sown paddy. She also denied the suggestion that her cattle had entered Bachani's field and that

the accused Ram Raj had chased her with an aagi (stick), abusing her, whereupon she ran away and fell face down, and a mustard stalk struck her urethra, causing bleeding.

14. She further stated that she had raised an alarm when the accused caught hold of her neck and lifted her up. At that time, nobody came to rescue her. The accused first threw her down and thereafter tried to untie the string of her shorts. She raised an alarm at that time as well, but nobody arrived. The accused carried her for about four to six steps. After inserting his finger into her urethra, the accused fled towards the east. After consoling her, her grandfather, Rameshwar, and Shiv Pyare alias Pyare chased the accused, but he had entered village Sethiya and could not be found. The accused had inserted his finger into her urethra. She started crying, whereupon the accused asked her to keep quiet, stating that otherwise her honour would be lost, and questioned what would happen to him. He also told her that he would go to Savarhi to his maternal uncle. She told the accused that she would go home and narrate the entire incident to her father. However, the accused did not allow her to leave. When her grandfather, Rameshwar, and Shiv Pyare reprimanded the accused, he fled. By that time, she was crying. Both of them consoled her, whereafter she went home and narrated the entire incident to her father.

15. She further stated that her grandfather, Rameshwar, must have been about three furlongs west of the place of occurrence. Shiv Pyare was also present in his field, which was situated three to four fields west of the place of occurrence. Rameshwar's cot was situated west of the well. At that time, Rameshwar was at the tubewell of Shiv Pyare. Shiv Pyare's tubewell was situated near Badi Bagh Purwa, at a distance of one ghathi and six fields west of Badi Bagh. Both the witnesses had reached the place of occurrence after hearing her cries from there. Her grandfather, Rameshwar, and Shiv Pyare had arrived at the place of occurrence when the accused was fleeing.

16. She denied the suggestion that the village Pradhan of Kasraon had also accompanied them to lodge the report. She stated that she could not say who had written the report. She further denied the suggestion that the accused had not committed the aforesaid act with her and that her father

had falsely implicated him due to enmity. She stated that her father had taken her to the police station on the second day of the incident. She also denied the suggestion that her father, after consulting others for two days, had gone to the police station on the third day along with the village Pradhan to lodge the report.

17. P.W.-3, Basudeo, stated that approximately nine years prior to the recording of his statement, his daughter Golhi had gone to graze cattle. In the evening, his daughter returned home and informed him that the accused, Ram Raj alias Lala, had pulled her to the ground and committed rape upon her.

18. He further stated that as it had become night, he could not go to the police station to lodge the report on the day of the incident. The following morning, he went to the house of the village Pradhan, Udaipal Singh, and narrated the entire incident to him. Thereafter, Udaipal Singh scribed the report on the basis of the facts narrated by him and read it over to him. The facts narrated by him had been correctly recorded in the report. After hearing its contents, he affixed his thumb impression on the report.

19. The written report was read over to the witness, who stated that it was the same report that had been scribed by Udaipal Singh. He identified his thumb impression thereon. The report was marked as Exhibit Ka-2. He further stated that he had gone to Police Station Hathgaon along with his daughter, Golhi, and submitted the written report, on the basis of which the case was registered.

20. He also stated that his daughter Golhi's blood-stained underwear was taken into custody at the police station and sealed. A memo in respect of the underwear was also prepared at the police station, on which he had affixed his thumb impression. Thereafter, he accompanied his daughter and the police constable to the Civil Hospital (Women), Fatehpur, where his daughter was medically examined. At the time of the incident, his daughter Golhi was aged about 10–11 years.

21. In his cross-examination, P.W.-3 denied the suggestion that there had ever been any dispute between his daughter and the accused regarding the grazing of cattle or that any case had ever been instituted in that regard.

He further stated that his daughter had returned home at sunset and narrated the entire incident to him. However, as it had already become evening, he did not go to the police station. He denied the suggestion that the report regarding the incident had been lodged at the police station after due deliberation.

22. The statement of Rameshwar was recorded as P.W.-4 on 08.11.1983. He stated that about one year and four months prior to the recording of his statement, at around 4:00 p.m., he was going to sow paddy in his field situated on the eastern side of the village. When he had reached about four to five furlongs outside the village, he heard the victim's screaming. On hearing her cries, he looked towards the direction from which the sound was coming and saw Ram Raj getting up, putting on his dhoti and running towards the east. He saw the accused getting up under a mango tree situated in the field of Sakail, putting on his dhoti and running away. The victim was lying under the mango tree, but, on seeing him, she got up and ran towards him. He consoled her and sent her home. At that time, he was alone. Thereafter, he went some distance in search of the accused but could not find him and, therefore, returned home. Shiv Pyare and Buddhu had also heard the cries and reached the mango tree.

23. In his cross-examination, he stated that he had heard the girl's cries from a distance of about three and a half furlongs. Shiv Pyare and Buddhu were at some distance from him. He had sown paddy in his fields two to four days before the incident. He further stated that he had not sown any paddy in his fields before the incident. He denied the suggestion that he was giving false testimony under pressure from his brother, Vasudev. His field was situated about one furlong north of the well. The mango tree under which the incident had taken place was situated at a distance of about 10–15 paces from the well. South of the well, in the same orchard and at some distance from the mango tree, there was a neem tree. He had seen the girl lying and the boy sitting under the mango tree.

24. He further stated that when he first saw the girl and the boy, he was at a distance of about three to three and a half furlongs from them. Shiv Pyare and Buddhu were about one furlong south of him. There was a distance of about 15–20 feet between the mango tree and the neem tree in

that orchard. He denied the suggestion that he had not witnessed anything and was giving false testimony under pressure from his brother, Vasudev. He stated that he had not seen Prem there because he had not paid attention to the area under the neem tree.

25. Phool Singh Sachan, Sub-Inspector, was examined as P.W.-5. He stated that on 11.07.1982, he was posted as Sub-Inspector at Police Station Hathgaon, District Fatehpur. The present case was registered at the police station in his presence, and its investigation was entrusted to him on the same day. He recorded the statements of the informant, Vasudev, and his daughter, victim, at the police station. On the same day, he proceeded to the place of occurrence along with a constable.

26. Upon reaching the place of occurrence, he recorded the statements of witnesses Shiv Pyare and Rameshwar and prepared a site plan at their instance, which was available before the Court. He stated that the site plan correctly depicted the place of occurrence and contained the necessary details of the adjoining land. The site plan was prepared by him in his own handwriting and bore his signature, which he identified. The same was marked as Exhibit Ka-3. On the same day, he also recorded the statements of other witnesses and searched for the accused, but he could not be traced.

27. He further stated that on 19.07.1982, he received the medical examination report of the victim. Thereafter, a report was submitted for initiating proceedings against the accused under Sections 82/83 Cr.P.C. Upon completion of the investigation, he submitted a charge-sheet against the accused on 25.07.1982. He identified the charge-sheet, which was in his handwriting and bore his signature. The same was marked as Exhibit Ka-4.

28. He further stated that the F.I.R. in the present case had been written by Head Constable Mauji Lal Mishra, whose handwriting and signature were familiar to him. He identified the handwriting and signature of Head Constable Mauji Lal Mishra on the F.I.R., which was marked as Exhibit Ka-5.

29. He also stated that the entry regarding registration of the case, i.e.,

G.D. Report No. 19, dated 11.07.1982, at 12:30 p.m., had been written by Head Constable Mauji Lal Mishra. The original G.D. was available before the Court and bore the handwriting and signature of Head Constable Mauji Lal Mishra, which he identified. He stated that the copy available on the record was a true copy of the original G.D. and endorsed the same with his signature on that day. The said document was marked as Exhibit Ka-6.

30. In his cross-examination, P.W.-5 stated that he had not shown in the site plan the locations from where witnesses Buddhu, Shiv Pyare and Rameshwar had claimed to have witnessed the incident. He further stated that he had not visited the paddy field of witness Rameshwar. He denied the suggestion that he had prepared the site plan at the police station without visiting the place of occurrence. He also stated that his conversation with Vasudev and the victim had not been recorded before the F.I.R. was lodged.

31. Ram Sajeevan was examined as P.W.-6. He stated that on 11.07.1982, he was posted as a Constable Clerk at Police Station Hathgaon. On that day, the informant, Vasudev, and his daughter, victim, came to the police station. The informant, Vasudev, produced a green underwear bearing bloodstains.

32. The sealed packet was opened in Court and, upon seeing the underwear marked as Material Exhibit-2, the witness identified it as the same underwear that had been produced by the informant. He further stated that the underwear had been sealed and a recovery memo had been prepared, which was available before the Court and was in his handwriting and bore his signature. After going through its contents, he identified the said document as having been prepared by him. The same was marked as Exhibit Ka-7.

33. In his cross-examination, P.W.-6 stated that the informant, Vasudev, had come to the police station carrying the underwear (Material Exhibit-2) in his hand. The said underwear was seized and sealed at the police station. He further clarified that the underwear had not been removed from the person of the victim at the police station.

34. Dr. V.L. Raijada was examined as P.W.-7. He stated that on 11.07.1982, he was posted as a Medical Officer at the Women's Hospital, Fatehpur. On the same day, at about 6:30 p.m., he medically examined the victim, who was present in Court. She had been brought to the hospital from Police Station Hathgaon by Constable Umashankar Bajpai in connection with Case Crime No. 94. He prepared her medical examination report, which contained her identification marks, including her thumb impression.

35. He further stated that the general condition of the victim was good. Her height was 4.52 cm and her weight was 22 kg and 400 grams. Her chest was not developed, and there was no axillary or pubic hair. No external injury was found on her body.

36. On internal examination, her hymen was found to be ruptured. There was slight bleeding at the 7 o'clock position, and she complained of pain on being touched. Only one finger could barely be admitted into her vagina. Apart from this, no other internal injury was found. A vaginal smear was taken and sent for examination, and an X-ray examination was advised to ascertain her age.

37. He further stated that he had prepared the medical examination report at the time of examination, which was in his handwriting and bore his signature. He identified the same, which was marked as Exhibit Ka-8.

38. After receiving the X-ray report, he examined it and prepared a supplementary report, which was also in his handwriting and bore his signature. The said report was marked as Exhibit Ka-9. On the basis of the X-ray report, he assessed the age of the victim to be approximately 14 years. In his opinion, the victim had been subjected to rape.

39. He further stated that the rape might have been committed within 12 to 24 hours prior to her medical examination. It was possible that she had been subjected to rape at about 4:00 p.m. on 10.07.1982.

40. In his cross-examination, P.W.-7 stated that he had not mentioned the duration of the injuries in his report (Exhibit Ka-8), but had given the approximate time of occurrence on the basis of the nature of the injuries

found on the victim. He stated that the injury found on the body of the victim could not have been caused at 4:00 p.m. on 09.07.1982. He denied the suggestion that he had prepared the medical examination report on the instructions of the constable who had accompanied the victim.

41. He further stated that the aforesaid injury could also have been caused if the girl had fallen face downwards and her vagina had struck against a pigeon pea stalk or some other hard object.

42. In his statement under Section 313 Cr.P.C., the accused, Ram Raj alias Lala, stated that the entire prosecution case was false and concocted. He expressed his ignorance regarding the report and the medical examination of the victim. According to him, his father and the complainant had quarrelled and, owing to that animosity, the complainant had falsely implicated him in the present case. He further stated that the victim's cattle had entered the Berh of his uncle, namely, Bachani. When he objected to the same, she paid no heed. Thereupon, he abused the victim, who started crying and ran away. While attempting to flee, she fell face downwards on the ground and, as a result, sustained injuries to her vagina.

43. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case on account of previous enmity between the parties. It is contended that there are material contradictions and inconsistencies in the statements of the victim recorded under Section 161 Cr.P.C. and during trial, particularly with regard to the manner of the alleged occurrence and the nature of the act attributed to the appellant. It is further submitted that the alleged eyewitnesses did not actually witness the occurrence, and their presence at the place of incident is doubtful. The medical evidence does not conclusively establish the commission of rape, particularly when the doctor admitted that the injury could also have been caused by a fall on a hard object or a pigeon pea stalk. Learned counsel further submits that no external injury was found on the victim's body and that the prosecution has failed to establish its case beyond reasonable doubt. The appellant is, therefore, entitled to the benefit of doubt, and the impugned judgment and order are liable to be set aside.

44. Learned A.G.A. for the State vehemently opposes the appeal and submits that the prosecution has successfully established the guilt of the appellant through the consistent and cogent testimony of the victim, which finds corroboration from the medical evidence and the statements of the prosecution witnesses. It is further submitted that the victim was a minor girl aged about 14 years at the time of the incident. The medical examination revealed a ruptured hymen and bleeding, which supports the prosecution version. The prompt lodging of the F.I.R. and the recovery of the blood-stained underwear further lend assurance to the prosecution case.

45. Learned A.G.A. has contended that minor discrepancies should not be given undue importance, as they do not go to the root of the matter. In this regard, reliance has been placed upon the following decisions of the Hon’ble Supreme Court: **Yogesh Singh v. Mahabir Singh, (2017) 11 SCC 195**, and **Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127**.

46. Learned A.G.A. has placed reliance upon the judgment rendered by the Division Bench of this Court in **Ramayan Singh and Others v. State, 2011 (2) ACR 1930 (All. H.C.)**, wherein it has been held that medical evidence, if not in consistent with the ocular testimony, lends corroboration to the prosecution case. In the present case, the medical evidence is in no manner inconsistent with the ocular testimony. Rather, the direct evidence of the witnesses finds full corroboration from the medical evidence. The recovery of blood from the place of occurrence further lends support to the prosecution version. The witnesses have consistently supported the prosecution case on all material particulars. Undue importance cannot be attached to minor discrepancies or contradictions which do not go to the root of the matter. Likewise, lapses or deficiencies on the part of the Investigating Officer, by themselves, are not sufficient grounds to discard otherwise reliable and trustworthy prosecution evidence.

47. **375. Rape**. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:-

First.-Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With or without her consent, when she is under sixteen years of age.

Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

48. **376. Punishment for rape**. Whoever commits rape shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

49. The victim has specifically stated that the accused lifted her and laid her down on the tahmat spread there. Thereafter, the accused attempted to remove her undergarment (knicker), but when he could not do so, he broke its drawstring. Thereafter, the accused attempted to insert his penis into her private part. When he failed to do so, he inserted two fingers into her private part. Blood started oozing from her private part. She further stated that she raised a loud alarm.

50. The commission of an offence generally involves three stages, namely, intention, preparation and execution. In the present case, according to the statement of the victim, the accused had proceeded through all three stages in furtherance of his intention to commit rape.

51. In the circumstances narrated by the victim, the accused repeatedly attempted to insert his private part into her private part. When he failed to do so, he inserted two fingers into her private part, resulting in bleeding. During the entire process, the possibility of some degree of penetration cannot be ruled out, although complete penetration may not have taken place. Thus, even if the act did not culminate in the commission of completed penetration, the conduct of the accused clearly demonstrates that he had proceeded beyond the stages of intention and preparation and had entered the stage of execution of the intended act.

52. As observed in **Ratanlal & Dhirajlal's The Indian Penal Code, 32nd Enlarged Edition, Reprint 2011, at page 2072**, under the heading "Sexual Intercourse and Penetration", the following observation was made in **State of Kerala v. Kundumkara Govindam, 1969 Cri LJ 818**:

"The crux of the offence under Section 376 I.P.C. is rape and it postulates a sexual intercourse. The word "intercourse" means sexual connection. It may be defined as mutual frequent action by members of independent organisation. By a metaphor the word "intercourse" like the word "commerce" is applied to the relation of sexes. In intercourse there is temporary visitation of one organisation by a member of the other organisation for certain clearly defined and limited objects. The primary object of the visiting organisation is to obtain euphoria by means of a detent of the nerves consequent on the sexual crisis. There is no intercourse unless the visiting member is enveloped at least partially by the visited organisation, for intercourse connotes reciprocity. In intercourse between thighs the visiting male organ is enveloped at least partially by the organism visited, the thighs; the thighs are kept together and tight."

53. It is well settled that rupturing of hymen is not necessary for constitution of crime and chances of false implications are too remote as nobody would like to do it by placing family reputation at stake. Rape leaves a permanent scar and has a serious psychological impact on the victim and also her family member's. Reliance is placed on **Rajendra Datta Jarekar v. State, 2008 CrLJ 710 (SC)**.

54. The decision of the Kerala High Court in **State of Kerala v.**

Kundumkara Govindam (supra), while explaining the meaning of the word "penetration", observes that the word 'penetrate' means in the concise Oxford Dictionary 'find access into or through, pass through.' When the male organ is inserted between the thighs kept together and tight, is there no penetration? The word 'insert' means place, fit, thrust.' Therefore, if the male organ is 'inserted' or 'thrust' between the thighs, there is 'penetration' to constitute unnatural offence. There is a distinction between vulval penetration and vaginal penetration. It is not necessary that the hymen should be ruptured in every case. In order to constitute rape, what Section 375, I.P.Ć. requires is medical evidence of penetration, and this may occur and the hymen remain intact. Reliance is placed on **Mt. Jantan v. Emperor, AIR 1934 Lah 797**. In view of the explanation to Section 375 mere penetration by penis in vagina is an offence of rape. In a rape case while there must be penetration is the technical sense, slightest penetration is sufficient for conviction. Reliance is placed on **Myilsamy, In re, (1970) 2 Mad LJ 422.**

55. Reliance is placed upon the following decisions: **Ghanashyam Mishra v. State, AIR 1957 Ori 78, and Nathu Ram v. State of Haryana, 1994 Cri LJ 1095 (SC)**.

56. In the aforesaid case, Dr. accused alongwith appellant attempted to commit a rape on the lady patient in the absence of her father in law who had gone to fetch hot water demanded by the Doctor to whom they had come for treatment. Eye witness account and the fact that the patient was unconscious and her salwar was half folded and accused was in scanty dress, were sufficient to prove the case of prosecution.

57. The depth of penetration is immaterial. For rape partial penetration of the penis within the labia majora of the vulva or pudendum with or without emission of semen or even an attempt of penetration is quite sufficient for the purpose of the law. The only thing to be ascertained is whether the private parts of the accused did enter into the person of the woman. It is not necessary to enter into any nice discussion as to how far they entered. Reliance is placed on **Allen, (1839) 9 C& P 31**.

58. It was held by the Division Bench of the Orissa High Court in

Ghanashyam Misra v. The State, decided on 27 November 1956 and reported in **AIR 1957 Ori 78**, that the depth of penetration is immaterial for the purposes of Section 376 of the Indian Penal Code.

59. It was further held by the Orissa High Court in **Bhudanlal Sharma v. State of Orissa, 1961 (1) Cri LJ 689**, in paragraph 11, as follows:

"...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 the hymen. Partial penetration of the penis within the labia majora of the vulva or pudendum, with or without emission of semen, or even an attempt at penetration, is quite sufficient for the purposes of law."

60. Paragraph 12 further records that the evidence in this case is that P. W. 1 was made naked by the appellant, brought inside the room and was laid downoon the floor and the appellant immediately got upon her and put in his penis in-side her vagina and pressed the same hard.

If that evidence is accepted, I do could be physically impossible to have the sexual intercourse in the position in which it is described…"

61. The facts of the present case and the evidence adduced therein are almost identical to those of the aforesaid case.

62. It was held by the Kerala High Court in **State of Kerala v. Kundumkara Govindam, 1969 Cri LJ 818**, in paragraph 17, that it is then urged that the penetration might have been the result of the sexual act 'by one of the respondents may be Govindan Nair or Kannan Nair. The counsel argues that since it is not clearly established as to who had the sexual act with penetration, neither of the respondents can be convicted under Section 376. I do not see any force in this argument. The evidence is fairly clear that Govindan Nair had sexual intercourse and that his organ touched the vagina of the girl. The girl says that the act was committed touching her organ and then between her thighs. There is no reason to think that the male organ did not penetrate into the vagina of the girl.

The evidence regarding the act of Kannan Nair is similar. He also committed sexual intercourse touching the organ of the girl; and there

must have been penetration in this case as well. If at all, the maximum that may be said is that in neither case was there full penetration. Therefore, I have no hesitation in holding that both of them are liable for the offence under Section 376 of the Penal Code.

63. In paragraph 18, it was recorded that even if I am to hold that there was no penetration into the vagina and the sexual acts were committed only between the thighs, I do not think that the respondents can escape conviction under Section 377 of the Penal Code. The counsel of the respondents contends (in this argument the Public Prosecutor also supports him) that sexual act between the thighs is not intercourse. The argument is that for intercourse there must be encirclement of the male organ by the organ visited; and that in the case of sexual act between the thighs, there is no possibility of penetration.

64. In paragraph 19 it was recorded that the word 'intercourse' means 'sexual connection' (Concise Oxford Dictionary). In **Khanu v. Emperor AIR 1925 Sind 286** the meaning of the word 'intercourse' has been considered:

> Intercourse may be defined as mutual frequent action by members of independent organization.

> Then commercial intercourse, social intercourse, etc. have been considered; and then appears:

> By a metaphor the word intercourse, like the word commerce, is applied to the relations of the sexes. Here also there is the temporary visitation of one organism by a member of the other organization, for certain clearly defined and limited objects. The primary object of the visiting organization is to obtain euphoria by means of a detent of the nerves consequent on the sexual crisis. But there is no intercourse unless the visiting member is enveloped at least partially by the visited organ, for intercourse connotes reciprocity.

> Therefore, to decide whether there is inter, course or not. what is to be considered is whether the visiting organ is enveloped at least partially by the visited organism. In intercourse between the thighs, the visiting

> male organ is enveloped at least partially by the organism visited, the thighs: the thighs are kept together and tight.

65. In paragraph 20 it was recorded that then about penetration. The word 'penetrate' means in the concise Oxford Dictionary 'find access into or through, pass through.' When the male organ is inserted between the thighs kept together and tight, is there no penetration? The word 'insert' means place, fit, thrust.' Therefore, if the male organ is 'inserted' or 'thrust' between the thighs, there is 'penetration' to constitute unnatural offence.

66. In paragraph 21 it was recorded that unnatural offence is defined in Section 377 of the Penal Code; whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal commits unnatural offence. The act of committing intercourse between the thighs is carnal intercourse against the order of nature. Therefore committing intercourse by inserting the male organ between the thighs of another is an unnatural offence. In this connection, it may be noted that the act in Section 376 is "sexual inter, course" and the act in Section 377 is carnal intercourse against the order of nature."

67. The testimonies of PW-1 to PW-3 with regard to the actual occurrence and the specific roles attributed to the accused person are consistent, natural and probable, and stand duly corroborated by the medical evidence. Accordingly, upon an overall appreciation of the oral and documentary evidence available on record, this Court is of the considered opinion that the prosecution has successfully established its case against the accused person beyond reasonable doubt. Thus, the conviction of the accused person recorded by the learned trial court does not warrant any interference.

68. The testimony of the victim (P.W.-2) is material and inspires confidence. She has categorically described the manner in which the appellant forcibly took her to the ground and committed the alleged act upon her. Her testimony finds substantial corroboration from the medical evidence furnished by P.W.-7, Dr. V.L. Raijada, who found the hymen of the victim ruptured, slight bleeding at the 7 o'clock position and tenderness on internal examination. The doctor also opined that the victim had been subjected to rape and that the injuries could have been sustained

within 12 to 24 hours prior to her medical examination, which is consistent with the prosecution version regarding the time of occurrence.

69. It has been held in **Vijay v. State of U.P., 2010 (3) SCC (Cri) 639**, that the sole testimony of the prosecutrix is sufficient to sustain a conviction. Her testimony is to be considered at par with that of an injured witness and not that of an accomplice. It is not mandatory to seek corroboration of her testimony. Thus, the law that emerges on this issue is that the statement of the prosecutrix, if found to be worthy of credence and reliable, does not require any corroboration, and the Court may convict the accused on the basis of her sole testimony.

70. No leniency should be shown in the matter of sentencing. No corroboration is required to sustain a conviction based on the sole testimony of the prosecutrix, as her testimony is to be treated on the same footing as that of an injured witness. In this regard, reliance has been placed upon **State of U.P. v. Chhotey Lal, (2011) 2 SCC (Cri) 674**.

71. The medical evidence further indicates that the victim was a young girl, and the radiological examination also supports her minority. The statement of her father (P.W.-3) establishes that the victim had narrated the incident to him immediately after returning home. The evidence of P.W.-4, Rameshwar, also lends assurance to the prosecution case, as he heard the cries of the victim and saw the appellant getting up, adjusting his dhoti and fleeing from the place of occurrence. His testimony, therefore, provides corroborative circumstances supporting the version of the victim.

72. Section 134 of the Indian Evidence Act, 1872, provides that no particular number of witnesses is required to prove a fact. Therefore, a conviction can be based on the testimony of a solitary eyewitness, provided that such testimony is reliable and trustworthy. The evidence is to be weighed and not counted. In this regard, reliance may be placed upon T**akdir Shamsuddin Sheikh v. State of Gujarat and Others, AIR 2012 SC 37**.

73. The submission of learned counsel for the appellant that there are contradictions in the statements of the victim does not find favour with

this Court. Some variations regarding the precise manner of the occurrence and the part of the victim's body involved are discernible in the statements recorded during investigation and trial. However, such variations, when considered in the context of the overall testimony, do not demolish the substratum of the prosecution case. The victim has consistently maintained that the appellant forcibly subjected her to a sexual assault, resulting in bleeding.

74. The argument that the medical injuries could have been caused by a fall on a hard object or a pigeon pea stalk also does not advance the case of the appellant. Merely because the doctor admitted a possible alternative explanation for the injury does not render the entire prosecution version unreliable, particularly when the medical findings are considered alongside the testimony of the victim and the surrounding circumstances. It is well settled that medical evidence is generally corroborative in nature and cannot, by itself, displace otherwise reliable ocular testimony.

75. The absence of external injuries on the body of the victim is also not sufficient to discredit her testimony. The nature of the assault, as described by her, and the internal findings recorded by the doctor cannot be ignored merely because no external injury was noticed.

76. The plea of false implication on account of previous enmity has not been substantiated by any reliable evidence. The defence taken by the appellant in his statement under Section 313 Cr.P.C. is not supported by any independent material. On the contrary, the explanation offered by him does not satisfactorily account for the medical findings and the circumstances established by the prosecution.

77. It is also relevant that the incident took place in the year 1982, and the evidence has to be appreciated in the light of the circumstances prevailing at that time. The delay in lodging the F.I.R. has been satisfactorily explained by the father of the victim, who stated that as the incident had occurred in the evening, he could not approach the police station on the same day and lodged the report on the following morning. Such delay cannot be treated as fatal to the prosecution case.

78. It is true that the prosecution is required to establish its case beyond

reasonable doubt; however, this does not mean that the degree of proof must be beyond a shadow of doubt, as held by the Hon'ble Supreme Court in **Iqbal Moosa Patel v. State of Gujarat, 2011 (2) ACR 1897 (SC)**.

79. Having considered the rival submissions advanced by learned counsel for the parties and upon careful examination of the evidence available on record, this Court finds that the prosecution has successfully established the guilt of the appellant beyond reasonable doubt.

80. Upon an overall assessment of the oral, documentary and medical evidence, this Court finds that the learned trial court has properly appreciated the evidence and has rightly recorded a finding of guilt against the appellant. The findings recorded by the trial court do not suffer from any perversity, illegality or misappreciation of evidence warranting interference by this Court.

81. In view of the aforesaid submissions, the learned trial court has rightly appreciated the evidence on record and convicted the appellant. Therefore, no interference with the impugned judgment and order is warranted, and the appeal is liable to be dismissed.

82. Consequently, this Court finds no merit in the present criminal appeal. The conviction and sentence awarded to the appellant under Section 376 IPC by the learned trial court are hereby affirmed.

83. The present criminal appeal is, accordingly, **dismissed**.

84. As the appellant, Ram Raj @ Lala is on bail, he is directed to surrender before the learned trial court within fifteen days from today. His bail bonds will be cancelled, and the sureties will be discharged as soon as he surrenders before the learned trial court.

85. Learned trial court shall complete the necessary formalities. The appellant shall undergo the remaining sentence awarded by the learned trial court, and the period of incarceration already undergone by him, if any, shall be adjusted against the sentence in accordance with law.

86. In case the appellant fails to surrender within the aforesaid period of

fifteen days, learned trial court shall be at liberty to take all necessary steps to secure his presence and ensure compliance of this order.

87. Let a copy of this order along with the original trial court record be transmitted immediately to the Court concerned for compliance and necessary action.

88. A copy of this judgment shall be immediately sent by e-mail to the learned District and Sessions Judge, Fatehpur, by the Registrar (Compliance), for forthwith compliance.

November 16, 2026
M. Tarik

(Abdul Shahid,J.)

Digitally signed by :-
MOHD TARIK
High Court of Judicature at Allahabad