

Reserved on 2.9.2024

Delivered on 28.2.2025

Neutral Citation No. - 2025:AHC:28236

Court No. - 79

Case :- CRIMINAL APPEAL No. - 199 of 1982

Appellant :- Tej Pal Singh And Others

Respondent :- State

Counsel for Appellant :- Nitin Raj Singh,Raj Singh,Shyam Singh
Sengar,T.S.Dabas,Veer Singh

Counsel for Respondent :- A.G.A

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Nitin Raj Singh, learned counsel appearing on behalf of appellants and Sri Gyan Prakash Singh, learned AGA appearing on behalf of the State.

2. This appeal is against the judgment and order dated 16.01.1982 passed by learned Additional Sessions Judge-II, Bijnor in Sessions Trial no. 523 of 1980 convicting and sentencing appellant no. 1 namely Tej Pal under Section 376 IPC to four years rigorous imprisonment and under Section 366 IPC to four years and appellant nos. 2 to 5 under Section 368 IPC to two years rigorous imprisonment.

Introductory Facts

3. As per the prosecution case, the complainant Tansukh Rai had his house in mohalla Chahshirin, Bijnor. At the relevant time, he was posted as Branch Manager of Cooperative Bank at Seohara and used to live there with his wife and younger son, his elder son Rakesh Kumar with his wife namely Sushila Devi used to live in Chahshirin, Km. Yashoda Rani (prosecutrix) who was minor daughter of the complainant aged about 14 years was living with her brother Rakesh Kumar. Accused Tej Pal who belongs to complainant's caste, used to live with his brother in law in Chahshirin, he was in search of employment and used to visit the complainant's house. On 26.11.1979 at about 4 p.m, accused Tej Pal came to the house of complainant's son Rakesh Kumar, at that time Rakesh Kumar was not present at his house, he had gone to purchase vegetables, some masons and labourers were working in the house. Accused Tej Pal told the wife of Rakesh Kumar that the complainant had met with an accident and he called her daughter (prosecutrix), after hearing such news, prosecutrix and her sister-in-law were shocked and the wife of Rakesh

Kumar sent the prosecutrix with accused Tej Pal. Tej Pal accompanied with the prosecutrix proceeded to Noorpur road where he told the prosecutrix that they will get some bus and board the same. Km. Kunno who was cousin of Tej Pal, met them near Payal Talkies and expressed grief for the accident and also expressed her desire to accompany with them. Thereafter, all the three persons proceeded towards Jhaloo and after covering some distance, Km. Kunno expressed the urge to ease herself and for doing the same, she went inside an arhar field. From the arhar field, she called the prosecutrix and Tej Pal on the pretext that she is feeling fear and when both reached near her in the field, Km. Kunno told the prosecutrix that she would have to live as wife of Tej Pal and if she does not agree, she would be done to death. Tej Pal whipped out one knife due to which the prosecutrix had frightened. In the arhar field the prosecutrix was detained by Km. Kunno and Tej Pal for about 3-4 hours, when it became dark, Km. Kunno had returned and Tej Pal took the prosecutrix to village Naseeri and kept her there in a house pertains to his friend. On the next day, at about 5 a.m., friend of Tej Pal brought a tempo by which Tej Pal took the prosecutrix village Nawada via Nazibabad, from there, Tej Pal took another tempo which was coming from Nagina and reached Kanth with the prosecutrix. In Kanth, Tej Pal kept the victim in the house of one Nanhey Singh (co-accused) who was related to Tej Pal, for two days, where Tej Pal and Nanhey Singh committed rape upon the prosecutrix by threatening her. Thereafter, Nanhey Singh and Tej Pal shifted the prosecutrix into the house of one Budhu Singh which was situated near the house of Nanhey Singh where the prosecutrix was detained for three days and during that period, Budhu Singh and Tej Pal had ravished her. From the house of Budhu Singh, Nanhey Singh and Tej Pal took the prosecutrix to Moradabad and kept her in a hotel namely Grand Hotel. At Moradabad, they obtained signatures of prosecutrix on some blank papers, from Moradabad, they took her to Thakur Dwara and detained her in a house of one Munshiram (in-laws house of Nanhey Singh). One Chhotey Lal (co-accused) who was son of Munshiram used to keep guard over the prosecutrix. From Thakur Dwara Tej Pal and Nanhey Singh took the prosecutrix to village Issopur and kept her there in a house of one Mohar Singh (co-accused) who was their relative. From Issopur, Tej Pal, Nanhey Singh and Mohar Singh took the prosecutrix to village Khaikheri and kept her there in the house of one Shiv Charan Ahir, from that place, they took her back to Issopur and kept in the house of Mohar Singh where Tej Pal and prosecutrix were kept in a kothri (room) and Mohar Singh and his wife Smt. Kala Wati (co-accused) used to keep guard on them.

4. On 11.12.1979, Investigating Officer namely Sri Ram Prakash along with complainant and Kewal Singh went to village Thakur Dwara and arrested Nanhey Singh (co-accused), when he was interrogated, he along with the said persons went to the house of Mohar Singh situated at Issopur where Mohar Singh and his wife Smt. Kala Wati were found sitting in front of the kothri, Nanhey Singh co-accused opened the doors of said kothri where Tej Pal and the prosecutrix were found lying on a cot inside the kothri. Accused Tej Pal tried to run but apprehended and Mohar Singh (co-accused) managed to escape by jumping the wall but his wife Smt. Kala Wati (co-accused) was arrested. A memorandum (Ex. Ka-1) in connection with the recovery of Km. Yashoda Rani (prosecutrix) was prepared by the Investigating Officer. Thereafter, prosecutrix was brought to Bijnor where she was medically examined on 12.12.1979. According to medical examination report (Ex. Ka-9), she was used to sexual intercourse and her age was about 17 years. Accused Mohar Singh was arrested on 12.12.1979.

5. On 27.11.1979 at about 8:00 p.m., Rakesh Kumar (brother of the prosecutrix) went to Seohara to see his father, then he came to know that his father had not met with any accident and as such, Yashoda Rani and Tej Pal did not reached there, he told his father that on 26.11.1979 at about 4:00 p.m., Tej Pal came to his house and brought Yashoda Rani on the pretext that his father had met with an accident. On the next day, when the Bank opened at 10:00 a.m., complainant took leave and came to Bijnor with Rakesh Kumar and after reaching at Bijnor at about 12:30 p.m., the complainant went to house of Bhole Singh (brother of accused Tej Pal) to enquire about Tej Pal. He also went to other places to inquire about Tej Pal but he could not get any information thereafter he preferred written report within (Ex. Ka.-2) at the concerned police station whereupon a case under Section 363 IPC was registered against Tej Pal and Chik report (Ex. Ka.-8) was prepared at 2:30 p.m. The investigation of the case was entrusted to Sri Ram Prakash (P.W-6) and after completion of investigation he submitted charge sheet (Ex. Ka-7) whereupon cognizance was taken on 31.07.1981 and all the accused pleaded not guilty and claimed to be tried.

6. The prosecution had examined, Km. Yashoda Rani-prosecutrix (P.W-1), Nathu Singh-resident of village Issopur who was witness of recovery of prosecutrix (P.W-2), Kewal Singh-who was present at the time of recovery of prosecutrix (P.W-3), Rakesh Kumar-brother of prosecutrix (P.W-4), Tansukh Rai-complainant (P.W-5), Ram Prakash-Investigation Officer

(P.W.-6) and Ram Bharose Singh-constable (P.W.-7) in supported of its case.

Prosecution Evidence

7. The testimony of above mentioned prosecution witnesses in brief is as under:

(i) Km. Yashoda Rani-prosecutrix (P.W-1) – She stated that her house is situated at mohalla Chashirin, Bijnor where she lived with her brother namely Rakesh Kumar and her sister-in-law namely Sushila Devi. Her father namely, Sri Tansukh Rai was posted as Manager in Sahkari Bank at Sheohara and he used to live there with her mother and brother. Her father used to visit Bijnor on Saturday and lives there till Sunday. Accused Tej Pal is present in the court room who belongs to her caste. He lived in the same mohalla with her sister and brother-in-law. At that time he was unmarried and used to visit her house to meet her brother in search of employment and prior to the incident, she was known to him. On 26.11.1979 at 4:00 p.m., Tej Pal came to her house and at that time she along with her sister-in-law were present and some labours were working. Her brother Rakesh was not present at that time, he had gone to market. Accused Tej Pal told her sister-in-law that her father was met with an accident and he called her, hearing the said news her sister-in-law sent her with Tej Pal. After taking her, Tej Pal went to Noorpur road and on the said place, he told her that a private bus will be available and they will board the same. On that way, a girl namely Kunno met her who was daughter of aunt of Tej Pal. Kunno expressed her grief over the accident of her father and desires to accompany with her. Thereafter all the three persons proceeded towards Jhaloo and after covering some distance, Kunno said that she had nature's call and she went in the arhar field. From the arhar field, she told that she was frightened and called both of us there. After reaching in the said field, Kunno told her to live with Tej Pal as her wife and if she did not do so she would be done to death. Then Tej Pal whipped out a knife and on seeing it she was frightened. Kunno and Tejpal detained her for 3-4 hours in the arhar field and after getting dark, Kunno returned from there. Tej Pal took her to village Nasiri to his friend's house. On the next day about 5:00 a.m., Tej Pal's friend came with a tempo and from that tempo, Tej Pal took her towards Nawada via Nazibabad and before reaching Nawada, he took her out from the tempo. A vacant tempo which was coming from Nagina was stopped by Tej Pal and from that tempo, he took her to Kanth. In Kanth, Tej Pal kept her in the house of accused Nanhey who is present in the court. Accused Nanhey Singh and Tej Pal are relatives. In that house, one lady asked her to live

with Tej Pal as his wife and Tej Pal, Nanhey and the lady were used to keep eye on her and Nanhey Singh and Tej Pal were used to show her pistol and also told her not to go anywhere otherwise they will kill her and they committed rape on her several times. Tej Pal, first time committed rape upon her at the house of Nanhey Singh. Tej Pal and Nanhey Singh both committed rape for two times at the house of Nanhey Singh. They forcibly committed rape upon her and whenever she opposes the same, they take out knife. She was kept for two days at the house of Nanhey Singh and from there, Nanhey Singh and Tej Pal took her to the house of Budhu Singh because of arising of some whispers, among some womens. Budhu Singh is not present in the court room. At the house of Budhu Singh, Tej Pal and Nanhey Singh kept her for three days and on that place, Budhu Singh and Tej Pal committed rape upon her. House of Budhu Singh was situated besides the house of Nanhey Singh. From the house of Budhu Singh, she was taken by Tej Pal and Nanhey Singh at Moradabad. First they took her to Grand Hotel and kept her there. They got signatures from her on blank papers. Tej Pal and Nanhey Singh took her to Thakur Dwara from Moradabad. At Thakur Dwara they kept her at the house of Munsiram (in-laws house of Tej Pal) where Munsiram's son Chote Lal was also present. Munsiram has died, his son Chote Lal is present in the court room. While living in Thakur Dwara, Munsiram and Chote Lal used to keep an eye on her. From Thakur Dwara, Tej Pal and Nanhey Singh took her to Issopur.

At Issopur, they kept her at the house of Mohar Singh. Mohar Singh seems to be their relative. Mohar Singh's wife name is Kelawati. They both are present in the court room. From Issopur, Mohar Singh, Tej Pal and Nanhey Singh took her to .. Khai Kheda. At Khai Kheda, she was kept at the house of Ravi Charan Ahir. From Khai Kheda, all three of them brought her back to Issopur and kept her at the house of Mohar Singh. Mohar Singh's house was mud house. She along with Tej Pal was kept in a kothri (closet). For keeping an eye, Mohar Singh and Kelawati were used to sit outside. They brought me from Khai Kheda to Issopur, thereafter Nanhey Singh returned to Thakurdwara. At Khai Kheda and Issopur, she was kept for about 5 days and at Moradabad for about 4-5 days. At Thakur Dwara she was kept for 2 days at the house of Nanhey Singh and at the House of Budu Sinngh for 3 days. On 22.12.1979, Sub Inspector along with Head Constable and her father along with Kewal Singh arrived at 5:00 clock in the morning. The Sub Inspector arrested Tej Pal at the house of Mohar Singh. When they came to arrest Tej Pal, Nanhey Singh was with Tej Pal. When police came, Mohar Singh was

also present. It was not known whether Mohar Singh was arrested or not. Sub Inspector brought Yashoda Rani along with Tej Pal and others at Thakurdwara. Mohar Singh and his wife Kela Devi did not come along with them. Mohar Singh and Kela Devi are present in the court room.

Next day, she was medically examined at Bijnor. Then, she was handed over to her father. When Tej Pal etc. took her to anywhere, before that, they used to threaten her that if she will raise some noise in the way they will shoot her. Wherever they kept her, they locked her from outside. They did not let her to meet nearby peoples.

During cross-examination: PW1 stated that since one year before the incident, her father was at Seohara. He came to Seohara after transfer. Before the incident, she had lived at Seohara with her father. She went to live at Seohara from Bijnor. She had lived at Seohara only for one month. She do not know that after living for one month at Seohara, how many days before the incident, she came to Bijnor. Her father is resident of village Chudauli, Police Station Nagina. Tularam and Khairati are resident of mohalla Chahrira. They belong to our caste and they are our relative. She did not know in what relation they are with her. Khema lives at some distance from her home. Khema is her relative. She knew Tej Pal for 2 years before the incident and she did not know, he is resident of which village. When Tej Pal came to her house, two men were working there. One man was mixing cement and other was making floor. Her brother went to market for vegetables. Her sister-in-law waited for some time for her brother to return. Mason or labour was sent to bring her brother back. The news of accident was not given to the relatives of the mohalla and Tej Pal had told that accident occurred at Seohara. He had not told that her father is in hospital. She and her sister-in-law had not asked that her father is in hospital or where. She waited for 15 minutes Tej Pal had hurried and told her that the bus will leave. Her brother went for vegetables on foot. Her brother went for vegetables at 3:00 clock. She asked her sister-in-law to accompany her. She had went to live with her father at Sheohara by bus. She further stated that from Government bus stop, there was direct bus to Seohara. The bus goes via Kotwali, Nahrora and Dhanupur. It would not be incorrect to say that no bus goes via the road which heads towards Noorpur from her house. While moving from home to Payal Talkies, there were houses on both the sides. She did not know who is Tula Ram and his house is situated just before reaching Payal Talkies. She did not know the house of Tula Ram. While moving away from home, on the way there was house of Khema which is nearby to her house. She did not know Nand Kishore or his house. On the way from her house to Payal

Talkies there is a trivium (place where three roads meet) where the bus halts but there is no bus stop. From there, passengers took on buses. Kunno's house is near the house of Khema. Khema's house is in between her house and Kunno's house. She never went to Kunno's house. Kunno sometimes used to come to her house along with Tej Pal. Kunno never came to her house alone. Kunno was unmarried and elder in age than she. Kunno never studied with her. There is no shop in between her house and Payal Talkies. There is tea shop in front of Payal Talkies. Kunno met her alone. Kunno was coming from her home. Kunno was not along with her since she met her at Payal Talkies. Tej Pal had told that they will board bus way forward hence they not boarded it at trivium. This was told by Tej Pal, not Kunno. Arhar's field is near goddess temple. That field was about 50 steps away from Payal Talkies. While going from here, the field is on the right side of the road. The field is connected with the road. PW1 further stated that she passed class 10th that year. She studied till class 6th at Bijnor then she went to Afzalgarh thereafter she passed class 8th from Afzalgarh and she passed 10th from Rajkiya Mahila Vidyala. Her date of birth is 25.06.1964. The arhar field is before temple and is on east side of it. The temple and field are connected. She did not know whether priest or saints live at temple. Day and night, people used to go at temple and garden. The temple is one kilometre away from her house. The trivium where the bus stops, is about 50 steps away from her house. The road which goes to ram leela, her house is situated at that road. In line to her house and after the road, people belonging to her caste live. Her house in which she lived is her father's and was purchased before she knows. First time, she came to know that the news of accident is false in the arhar field, since Tej Pal showed knife to her, hence she did not made noise. From the field, Nasiri was far away but how many kilomteres, she could not tell. She also could not tell that Nasiri is in which direction from the field. She did not know the name of Tej Pal's friend who was at Nasiri and his house was not in between the village but was on outer side but she could not tell that in which direction from village the house was situated. She could not tell that in which direction from Bijnor the said house is situated. The tempo by which she went to Nasiri, she does not know its number or driver's name. Tej Pal and his friend were used to take the name of Nasiri village, hence she came to know about it. Chudauli village was on east side of Nawada. Nawada and Chudauli are on the side of road which is coming from Najibabad to Nagina. She did not know that there was crossroad adjoining to Chudauli. She did not know there was any bus stoppage or there was parking for tempo or horsecart. She did not know that Nawada is on the road which goes from Najibabad to Rampur. She

did not know that Nawada is on the road from Najibabad to Kotkadar. She also did not know that Nawada is on the road from Chudauli to Nagina. She never went to Chudauli. When they sat in the tempo in Nawada then it was 3 'o' clock at night. She did not know that in how much time, she reached nearby Nawada to Nadiro. She did not know that while going to Kanth, whether Nagina, Dhampur, Seohara came across or not. The tempo did not halted at Nagina and Dhampur for toll. In the tempo, Tej Pal and his friend was with her. Tej Pal's friend returned after reaching Kanth. She further stated that she had informed the Police Inspector that Tej Pal and his friends were in the tempo. However, later, she stated that she had not provided this information to the officer. Even in the statement recorded in court, this fact was not mentioned. The officer had recorded her statement at that time in Issopur. She was unaware of whether there was a police station on the way because she was seated inside the tempo. The back panel of the tempo was kept closed. The front and sides of the tempo were not open; instead, they were covered with cloth. She did not know whether Nagina and Dhampur were on the route went from Nawada to Kanth or if there was any other way. Nanhe Singh's house was located to the west of the populated area. At Nanhe's house, she encountered only one woman. The women from the nearby area did not interact with her but rather communicated with Tej Pal's aunt. The womens of nearby areas used to whisper and sound of whisper could be heard. However, she had no conversation with them. Those women also never spoke to her, as she remained confined to the room. She was unaware that Nanhe was Tej Pal's real uncle. Tej Pal used to call him "mama". Tej Pal's aunt was Nanhe's wife. She did not know whether they had children or not. She was also unaware that they had three children. Nanhe's house was made of bricks but did not have a proper floor. It was newly constructed. His house was not adjacent to the main road of the town but was located in between streets. A shop was built within the premises where she was kept. The shop was not separate from the house but was part of it. It's door faced the road, with rooms situated both at the front and back. The window of the second room did not open toward the road, but its door did. The room where she was kept had only one door, which opened inside the house. That room had no window. After the incident of rape, Tej Pal and Nanhe did not stay together in the room. Tej Pal's aunt used to stay outside the room day and night. When the rape took place, Tej Pal's aunt was outside. It is incorrect to say that Nanhe did not commit rape against her. It is also wrong to claim that she was giving false testimony against Nanhe just because he was Tej Pal's uncle. Likewise, it is incorrect to state that Tej Pal did not commit rape against her. Nanhe and Buddhu's

houses were in the same locality, adjacent to each other. She further stated that they reached at Kanth station to go Moradabad. Nanhe and Tej Pal had stopped her before the platform. They reached there at around 9:00 PM. They stopped there for about five minutes. Nanhe went to buy the ticket. After five minutes, the train arrived. Then, she was brought to the platform and made to board the train. The platform was crowded. The train was fully occupied. When they arrived at Moradabad railway station, there was a large crowd. She had kept her head lowered. She did not see any police officer arriving there. She was unaware whether there was a police station at the railway station. She did not make any noise at the station because she was already frightened, and these individuals were accompanying her. From Moradabad railway station, they took a rickshaw. She did not know whether they passed through a crossroads. When they left Kanth, she was made to lower her head. She had already informed the Inspector that they had instructed her to keep her head down. If the Inspector did not record this statement, she could not explain why. The day her medical examination was conducted, her statement was also recorded in court. They reached the hotel at 8:00. She did not know how long it took to reach Moradabad from there. From the station, they went directly to the hotel and then to a hotel room. They did not go to any other place apart from the hotel. In Moradabad, she stayed only at the hotel and nowhere else. She had given this statement to the Inspector. On 3.12.1979, during the day, Nanhe Singh, along with Tej Pal, kept her in an empty room and thereafter Nanhe left. The next day, he came back to take her along with Tej Pal, took her to district court and got her signatures on three blank papers and they returned at the same room at evening. On the next day, in the evening, Nanhe Singh took both of them to the Grand Hotel which is situated near the cinema via station. She further stated that two days after arriving in Moradabad, she was taken to the district court, reaching there at 10:00 AM. She did not go to any lawyer's chamber. There were Tin sheets placed at one place, where she signed. Then, she was taken inside the courtroom. Nanhe Singh had instructed her to read out the statement written in the application. The court asked her whether the contents were correct. The application had been typed beforehand. Tej Pal had arranged for the typing. After typing, her signatures were obtained on the document. However, she was not informed about the contents of the application before signing it. She was not allowed to read it. The typed document was simply presented to her, and she was made to sign it. She had already informed the Inspector that her signatures were taken on the typed document. Her statement was recorded in the Collector's Court, where she also signed a stamp paper along with affidavit. She had not

read the affidavit. She went before the Oath Commissioner to have the affidavit attested. He informed her that it was an affidavit and that she was giving it voluntarily. She does not know whether the advocate's clerk also attested it. It is incorrect to say that she is now stating, at her father's instruction, that Tej Pal took her forcibly and she had given a statement in the Moradabad court that she wanted to marry Tej Pal and that her father had arranged her marriage with him. She had done this act at the insistence of Tej Pal and Nanhe. She travelled from Moradabad to Thakurdwara by bus. They left Moradabad at around 3 'o'clock and reached Thakurdwara at night. She does not know how far Issopur is from Thakurdwara. She travelled from Thakurdwara to Issopur by auto. They left Thakurdwara for Issopur at 3 o'clock, but she does not know in which direction Issopur is located from Thakurdwara. She reached Issopur within one hour. She was accompanied by Tej Pal and Nanhe Singh. Due to fear, she did not make any noise during the journey nor mention anything to anyone. In the Moradabad court, she only stated what she had been instructed to say. She informed the Inspector that Tej Pal and Nanhe had shown her a pistol and threatened to kill her. However, she cannot explain why this statement was not included in her testimony. In her statement recorded under Section 164 CrPC, she did not mention anything about being shown a pistol. Before giving her statement in this court, she had not told anyone else about the incident involving the pistol. She had informed the Inspector that wherever she was kept, the place was locked from the outside. However, in her statement recorded under Section 164 Cr.P.C, she did not mention that the place where she was kept was locked from the outside. She stated this detail about the lock in her testimony yesterday. She did not inform the officer that whenever Tej Pal and Nanhe took her somewhere, they first threatened her, saying that if she made any noise, they would shoot her. She also did not mentioned this before the Magistrate. It would be incorrect to say that before the incident, her father had discussed her marriage with Tej Pal. Her father did not discussed her marriage proposal anywhere else. It is also wrong to say that her father did not want her to marry Tej Pal, while she wanted to marry him. She did not write any letter to Tej Pal regarding this matter. Furthermore, it is incorrect to state that she left her home willingly on the day of the incident and that she is mentioning the incident only because her father told her to do so. The house in Issopur where she stayed is located within a populated area. She did not know side of the house or door wherein she was stayed, there were three rooms in that house, but its main door did not have a frame or shutters. It is incorrect to say that the incident did not happen as stated. It is also wrong to claim that she went there of her own

will and stayed with Tej Pal willingly. It is incorrect to say that Nanhe was falsely implicated because he is her maternal uncle and that Mohar Singh was falsely implicated because he is Tej Pal's paternal cousin uncle. In Thakurdwara, she was kept in a room with a roof, where Chhote Lal used to come. She came to know his name because Tej Pal used to call him by his name. It is incorrect to say that there is no room on the upper floor of Chhote Lal's house. It is not true that the room in Thakurdwara, where she was kept, belongs to Chhote Lal, son of Bhukkan Singh. She does not know whether Chhote Lal, son of Bhukkan Singh, is married to the sister of the accused Nanhe Singh. She cannot say where the room in which she was kept is located. She also cannot state in which direction she went from that house. It is incorrect to say that she never went to Thakurdwara and that she is giving a false statement under the influence of her father and the police. It is incorrect to say that she did not mention Chhote Lal's name in her statement recorded under Section 164 CrPC. If his name was not written in that statement, she cannot provide any reason for it. She does not know how many rooms are in Chhote Lal's house. She also cannot say where Chhote Lal's house is located. She did not know Nanhe previously. She is unaware of whether Nanhe has a younger brother and does not know if his younger brother's name is Chhote Lal. In Thakurdwara, apart from Chhote Lal, the name Mushi Ram was also mentioned in her presence. Nanhe is married to Chhote Lal's sister. It is incorrect to say that she is making these statements under the influence of her father or Chhote Lal. She addresses her father as "Babu Ji." Upon seeing paper no. 35/3, the witness stated that it bears her signature. However, she does not know whether that application was prepared in Moradabad. The same has been marked as Ex. Ka. -1. Paper no. 34/12, 34/13, 34/14, 34/15, 34/15 bears her signatures. When signatures were made on these papers, the same were blank. Paper nos. 34/2 including 34/12 were not written by her. It is incorrect to state that the said papers were written by her and she was giving wrong statement.

(ii)Nathu Singh-resident of village Issopur who was witness of recovery of prosecutrix (P.W-2)- He stated that it was 4 o'clock in the morning when he went out for nature's call. He saw that there was some activity at Mohar Singh's house. Five constables, an inspector, Pradhan, Mrs. Kela Yashoda, and Tej Pal were seen warming their hands. After that, the inspector took his signature on a paper. Upon seeing the recovery memo of Yashoda Devi, the witness stated that his signature was on it. It has been marked as Ex. Ka.-1. He mentioned that it had been placed before him, and he signed it without reading its contents. He further stated

that he went to make tea for the inspector because serving tea was his duty. He was not aware that Tej Pal and Yashoda Rani had been recovered by the inspector in the morning. He also mentioned that the police officers did not enter the house in front of him. Additionally, he did not know that Mohar Singh had run away from the police. He did not know that the room from which Yashoda Rani was recovered, Mohar Singh and his wife were sitting there and keeping an eye. The inspector did not record his statement. After hearing the statement recorded by him, he stated that he did not give such statement. He further stated that it is incorrect to say that he is giving wrong statement in collusion with the accused. The memo that he signed, he stated, was not written in his presence. It had been prepared before he arrived. That is why he was unaware of its contents and did not question why his signature had been taken by someone else. He reiterated that the memo was not written in front of him.

During cross-examination – There are 7-8 houses in between his house and Mohar Singh's. House of Ram Chandra, son of Nathu, is adjacent to his house.

(iii) Kewal Singh-who was present at the time of recovery of prosecutrix (P.W-3)- He stated that, approximately two years had passed when the Inspector, along with Head Constable Roop Chandra, Tan Sukh Rai manager, went to Thakurdwara. The Inspector took four constables from Thakurdwara police station and conducted a raid at Mushi Ram's place. Nanhe is present in the courtroom. After his arrest, the Inspector interrogated Nanhe Singh. From Thakurdwara, he along with the police team proceeded to Issopur, with Nanhe Singh guiding them to Mohar Singh's house. They arrived at around 5 in the morning. Upon reaching the location, Mohar Singh and his wife were seen sitting in front of the room. When the police entered the house, Mohar Singh jumped over an approximately 4-foot-high wall and fled. The Inspector subsequently arrested Mohar Singh's wife. Both Mohar Singh and his wife are present in the courtroom. Nanhe Singh and Mohar Singh's wife opened the attic door, where Tej Pal and Yashoda Rani were found. The police took both of them into custody. He further stated that for the purpose of recovery, the Inspector prepared the memo in his presence along with some other witnesses, which is marked as Ex. Ka.-1. His signatures were on it. After reading it aloud, the Inspector made the witnesses to sign on it. From there, the police took the arrested individuals and proceeded to Thakurdwara. The witness also accompanied them. Upon reaching Thakurdwara, the police went to Mushi Ram's house.

During cross-examination - The witness stated that Tan Sukh Ram's son is Ashok, who is also his son-in-law. The police took him from Seohara from his house. At that time, Tan Sukh Ram was with the police. It was around 12 to 12:30 at night. The witness further stated that Nanhe Singh and Mohar Singh were not known to him before. He saw Mohar Singh for the first time the previous day. Prior to that, he had only seen him while he was running away. In the intervening period, he did not see him anywhere. When Mohar Singh fled, the witness was approximately 5-6 steps away. Initially, Mohar Singh ran in the direction of them but then turned the other way before jumping over the wall. By that time, daylight had already appeared. It is further stated that he did not wear spectacles. Mohar Singh's house is located on the southern side of the village. His haveli comprises one attic (kotha) and a thatched shed. There is no gate at the front of the Haveli. The attic (kotha) from which Yashoda Rani and Tej Pal were recovered is situated in the western direction, positioned in the eastern corner inside the main entrance. The witness further stated that upon entering Mohar Singh's haveli, Mohar Singh and his wife were sitting. They entered the attic later. The attic door was opened by Tej Pal, and it was locked from the inside. Upon exiting the attic, they warmed their hands and the Inspector was engaged in reading and writing. No villagers were specifically summoned, but two villagers arrived on their own. Later, a larger crowd gathered. While the police and witnesses were warming themselves by the fire, more villagers arrived. He denied the allegation that no arrest took place in his presence and that he supported Tan Sukh Ram due to their relationship. It was clarified that, at the time, no relation existed between the witness and Tan Sukh Ram, it was established a year later. He also stated that Mushi Ram was not known to him before. However, in the same village, a person named Ram Singh belongs to the witness's community. Ram Singh is married in Chudaili village, but the witness does not know the name of his father-in-law. The witness further stated that it is unknown whether Mushi Ram and Moti Ram are real brothers. No enmity or friendship exists between the witness and Ram Singh, nor does any electoral rivalry exist between them. The witness denied the allegation that false testimony was given due to his relationship with Ram Singh and Mushi Ram. The witness clarified that no familial relations exist in Kanth. He does not know Chhote Lal, son of Bhukkan, nor was he aware that Bhukkan's son Chhote Lal, is married to Nanhe Singh's sister. The Inspector recorded the witness's statement. The witness stated that he did not remember whether he had told the Inspector that Nanhe Singh was caught at Mushi Ram's house.

(iv)Rakesh Kumar-brother of prosecutrix (P.W-4)- About 1 year 9 months ago, he returned home from the market at 6 p.m. He found his wife Shushila Rani at home. She told him that at about 4 p.m Tej Pal came and told her that his (Rakesh kumar's) father had met with an accident, on hearing this, she got worried and she sent his (Rakesh Kumar's) sister Yashoda Rani with Tej Pal. During those days, he, his wife and Yashoda Rani lived at home. His mother and his younger brother lived with his father in Seohara. Now there is a rift between his wife and him, for about one and a half years his wife is living at her maternal home. Hearing the news of his father's accident, he went to Seohara by bus the very next day at 5:30 hrs. When he reached there, he found his father was absolutely fit & fine, he didn't meet any accident. He told him about Tej Pal and asked about Yashoda Rani. His father told that Tej Pal and Yashoda Rani didn't come there. His father was sad for a while and then he took leave from the Bank at 10 a.m. Then he and his father came to Bijnor at about 12:30 pm. Then he and his father went to the house of brother-in-law of Tejpal in the search of Yashoda Rani. The brother-in-law of Tej Pal, Bhole Singh, told that no body had come there. Then they searched for Tej Pal at many other places but he couldn't be found. Then on his father's dictation he wrote the report regarding incident which is before him. It is in his hand writing and signature. It has the signature of his father also. Ex. Ka-2 was marked on it. Then his father lodged this report at police station. Then after 14 days, his sister got recovered.

During cross-examination- Tej Pal was living in Bijnor 3-4 years before the incident. He used to live with his brother-in-law (Jeeja) Bhole Singh. Bhole Singh, his wife and children did not used to visit his (Rakesh Kumar's) house. People from his (Rakesh Kumar's) house did not used to visit Bhole Singh's house. Tej Pal had been visiting his father on holidays for about a year. It is not like that they used to go to Bhole Singh's house and meet Tej Pal. It is not like that he is stating such fact deliberately. Buses for Seohara and Dhampur run from 5 am to 8 pm. On his return after buying vegetables, he tried to go to Seohara at that moment itself but he could not find any means to go. About 2 months after this incident, he and his wife started having disputes. Since then, his wife Susheela has gone to her maternal home and he has not brought her back. It is not like that his wife wanted that Tej Pal and Yashoda Rani should get married. It is wrong to state that since his wife had sent Yashoda Rani with Tejpal, he was angry at her and for this reason, he has not brought her with him. It is wrong to state that Yashoda Rani had gone on her own will and that he

was making the accident related statement on being instructed by his father.. Tula Ram and Nand Kishor amin are their relatives and lives in their locality. But they are not on talking terms. He had gone to Seohara alone. Since, only his wife was staying at home so he did not took her with him. He stated, it is not like that he did not go to Seohara in the morning time. He and his father went to Bhola's house to inquire about Tejpall and they also inquired about Tejpall at his other known places and his friends. He did not know their names. They did not go to Tejpall's village Sherpur. They did not go to any other relative of Tejpall outside Bijnor to look for him and Yashoda Rani. Before this incident, his father had not initiated for marrying Yashoda to any man. It is not like that they had been planning for marrying Yashoda to Tej Pal and for this reason, they used to call Tej Pal at their house. He stated, it is not like that his father had dropped the plan of marrying Yashoda to Tej Pal because of him (Tej Pal) being unemployed and that Yashoda wanted to marry Tej Pal. It is not like that Yashoda Rani used to visit at Tej Pal's place before the incident. He is two brothers. He had two sisters. His sister is the eldest. It has been around 10 years since his eldest sister got married. He is younger to the eldest sister. It has been around 02 years since he got married. His younger brother Ashok is married. Ashok got married after 01 years of his marriage. Yashoda Rani is unmarried. It is wrong to state that he is giving false testimony on the instruction of his father.

(v)Tansukh Rai-complainant (P.W-5)- At the time of the incident, the complainant was the manager of the Cooperative Bank in Seohara. He had a house in Mohalla Chahshirin in Bijnor. At the time of the incident, his son Rakesh Kumar, his (Rakesh Kumar's) wife Sushila Devi and his daughter Kumari Yashoda Rani lived in that house. The complainant's wife and younger son lived with him in Seohara. At that time Yashoda Rani was a little over 14 years of age. He used to visit Bijnor once or twice a week to take care of his daughter. Tej Pal used to live with his brother-in-law Bhole Singh in their locality. Whenever he used to come to Bijnor, Tej Pal would come to him and ask him to get him a peon's job somewhere. That is why the complainant and his family knew Tej Pal before the incident. On 27.11.1979 complainant's son Rakesh Kumar reached Seohara at 8 a.m. He told the complainant that Tej Pal had brought Yashoda Rani saying that your father has met with an accident. Complainant's son told him that Tej Pal has taken Yashoda Rani at around 4 p.m on 26.11.1979. He also told the complainant that he was not present at home at that time and had gone to the market. The complainant had not met with any accident. Tej Pal and Yashoda had not reached at

complainant's place. Knowing this the complainant remained worried for a long time. When the bank opened at around 10 am the complainant applied for leave and transferred the charge to the accountant. Then he came to Bijnor with Rakesh Kumar. They reached Bijnor at around 12:30 pm. The complainant went to Bhole Singh's place to enquire about Tej Pal and then went to the places where Tej Pal used to visit but could not find anyone. Then the complainant got Rakesh Kumar to write a report of this incident. Ex. Ka-2 is the report which he wrote as per complainant's dictation and then the complainant signed it. The complainant lodged this report at the police station. On 11.12.1979, the Sub-Inspector went to Seohara to meet the complainant. The sub-inspector took the complainant along with him and also took Kewal Singh and Ram Chandra. Then they went to Thakurdwara by jeep. The Sub-inspector took constables from Thakurdwara police station with him. Then they took everyone together and reached Munshiram's house. On raiding there, the accused Nanhe, who was present in the court, was caught. The Sub-Inspector had interrogated him. After interrogation, Sub-Inspector tied his hand with rope and took him to Issopur in jeep. In Issopur, Nanhe took them at the house of Mohar Singh. In Issopur at Kurra, Sub-Inspector took Ramchandra Singh and Nathu Singh with them. When they reached at the house of Mohar Singh, Mohar Singh and his wife Kela were sitting above thatch of '*puraal*'. On seeing them and police, Mohar Singh fled after jumping from wall. Sub-Inspector arrested Kela Devi and when they did the interrogation about Yashoda Rani, Nanhe made the door opened after calling. On opening the door, he saw that Tej Pal and Yashoda Ranu were present on one cot. Sub-Inspector had arrested Yashoda Rani and Tej Pal. Then Sub-Inspector had prepared memo regarding the recovery of Yashoda Rani. Ex. Ka-2 is the same memo, which the Sub-Inspector prepared and read over its contents and obtained his signature. Mohar Singh and his wife is present in the court room. From there, Sub-Inspector had returned with the accused persons, Yashoda Rani and with him (complainant) to Thakur Dwara. Then Sub-Inspector had gone to the house of Munshiram along with Yashoda. On the indication of Nanhe, Sub-Inspector had caught Chhote and Munshiram. Munshiram has passed away. Chhote Lal is the son of Munshiram and he is present in the court room. After getting conducted the medical examination of Yashoda Rani, the police handed over her to him. Sub-Inspector prepared the handing-over memo regarding the same which was before him. It bears his signature which he did after reading its content. Ex. Ka-3 was marked on that.

During cross-examination - Sub-Inspector had interrogated with him. On the day of occurrence Yashoda Rani was not in any school rather she was doing preparation in private. She has passed class 8th examination. She has passed High School after the occurrence. She has obtained the certificate of class 8th in year 1972. She has passed class 8th in 1972. When Tejpal used to go near him, he never asked his qualification. Tejpal did not come at home. However, nothing was hidden from him (Tejpal). It is not so that Tejpal used to call him, uncle (Mausa) and his wife as aunty (Mausi). Tejpal has been visiting at his home for job since 1968-69. He (complainant) also used to teach Yashoda Rani at home. His house is situated at Ram Lila road. There is no person named Tansukh s/o Kathera Singh in that mohalla except him. No one else lived in the mohalla except accused Bhole's relative Tej Pal, resident of Moradabad. Seeing the paper 20 attached with the list filed by the accused, the witness stated that none of these is in the handwriting and signature of his daughter Yashoda Rani. His brother Tulsi Singh lives in Rampur. Tula Ram and Nathu Singh are his relative. When Rakesh got married, his wife Sushila Devi had studied till class 8. His elder daughter was married in 1969. She was 18 years old at that time. Rakesh was 3 years younger than the elder daughter, not 2 years. Yashoda was born in 1964. It is not that he (complainant) had got his operation conducted in 1962 to avoid giving birth to child. It is wrong to say that Yashoda was born before 1962. It is not that his wife used to come to Bijnor 1-2 times a month. His daughter did not go out of the house alone.

Question:- Both Rakesh and the girl were instructed not to go out anywhere?

Answer- She used to stay at home. There was no question of her going out.

Question- Where the girl was recovered, when the door of the kothri was opened, Yashoda Rani was lying with Tejpal?

Answer- She was not lying but both were on the bed.

Question- The door was locked from inside?

Answer- I don't know but the door was open.

Question- After pushing the door it opened?

Answer- Nanhey called out and Tej Pal opened the door.

Question- Seeing you, Tej Pal and Yashoda Rani ran inside the kothri?

Answer- They did not run. They remained sitting there.

Question- Yashoda told you that she have married. She will not go?

Answer- She did not tell me.

Question- She did not say anything?

Answer- She did not say anything.

Question- Yashoda told you that she has submitted an application at Moradabad?

Answer- She did not tell me.

Question- Yashoda told you that she was not in the court at Moradabad?

Answer- She did not tell me.

Question- Yashoda ever told you that she had written a letter to Tej Pal?

Answer- She did not tell me.

It is wrong to say that he wanted to get Yashoda married in since 1979. He have not talked to anyone regarding her marriage till date. It is wrong to say that he had talked about Yashoda's marriage with Tej Pal. It is wrong to say that Yashoda went with Tej Pal of her own free will. It is wrong to say that Yashoda was 19 years old at that time.

He did not know Nanhey before. When Nanhey was arrested, he did not know that he is from *Kanth*. At that time the Sub-Inspector had asked him his name and address, then he came to know about him. The Sub-Inspector asked Nanhey about his relationship with Tej Pal. He told that he was maternal uncle of Tej Pal and he is resident of *Kanth*. First of all he went to Thakur Dwara with the Sub-Inspector to search for the girl. The Sub-Inspector questioned Nanhey that where the girl is?

Question:- Nanhey told that Mohar Singh is his relative?

Ans. It was not told at that time.

Question:- You knew Mohar Singh and his wife before?

Ans. I did not know them before.

Question:- Mohar Singh's in-laws's house is in Jatan Mohalla of Binjor?

Ans. I do not know.

Question:- When you reached Issopur, it was dark?

Ans. It was around 5.30 a.m and it was light.

Question:- As soon as you reached Issopur, a person jumped over the wall and ran away?

Ans. Mohar Singh jumped over the wall and ran away.

Question:- Did you dictate the written report? .

Ans. Yes.

Question:- You got written in report that when you used to come, then Tej Pal used to come to meet you?

Ans. It was not written.

Question:- Why it was not written?

Ans. This was not something to be written.

It was not written in the report that we did not search for Tej Pal at Bhole's place and at the place of people who met to Tej Pal. There was no need to

write this down. When the Sub-Inspector questioned Yashoda in Issopur, she told that she had been taken to Kanth. Then further stated that he was not told about Kanth. Daroga ji had gone to Kanth with Yashoda on departure but he did not go with them. Yashoda had stated before him that Nanhey had raped her.

Ques- Did she also stated the place ?

Ans- No.

It is wrong to say that Nanhey and Mohar Singh have been falsely implicated because they are relatives of Tej Pal.

After catching the girl, Inspector had recorded his statement in Bijnor. His statement was probably recorded on 12.12.1979. It is not that he had got his statement recorded earlier. Earlier, I went to Thakur Dwara. He did not know accused Chhotey Lal earlier. He cannot tell the boundaries of house of Chhotey Lal. He cannot tell that whose houses are built near his house. It is wrong to say that he has got mentioned the name of Chhotey Lal from his daughter being a relatives of Nanhey and Tej Pal. It is wrong to say that his daughter had never gone to Thakur Dwara.

(vi) Ram Prakash-Investigation Officer (P.W.-6)- He stated that, till 1979 and June 1980, he held the position of Sub-Inspector in Bijnor city. In this case, he was called for inquiry. On 29-11-1979, the statement of Smt. Sushila, Tan Sukh Ram, Ashok Kumar, Rakesh Kumar, etc., were recorded. On the same day, an inspection of the incident site was conducted, and a site map (Naksha Nazari) was prepared which is present before him. It was prepared in his handwriting and bears his signature. It has been marked as Ex. Ka.-4. On 03-12-1969, he went to Kanth, District Moradabad in search of accused and Yashoda Rani, however, nothing was found there. On 10-12-1969, he reached Thakur dwara along with constable. From there after receiving police personnel from Thakurdwara, the police proceeded to the house of Chhote Lal in Thakurdwara to conduct a search (dabish) but Kumari Yashoda was not found. Nanhe, the accused, was present in the court at that time who upon seeing the police, attempted to flee but was apprehended and then interrogated. Thereafter, the police, along with witnesses, accused and the complainant, reached to the house of Mohar Singh by jeep. Nanhe Singh, who was in custody, was also taken along. In Issopur, witnesses Ram Chandra and Nathu Singh were also included in the team. A search was conducted at Mohar Singh's house, where Mohar Singh, and his wife, were found sitting in front of a kothri, keeping watch over Kumari Yashoda. The accused, Nanhe, opened the door of the room, which was upside down and upon opening it, he

pointed toward, Tej Pal and Kumari Yashoda Rani who were found lying on a cot. Seeing the police, the accused Tej Pal attempted to flee but was apprehended. Kumari Yashoda Rani was also recovered. The complainant identified his daughter, Yashoda Rani. He wrote the recovery memo Ex. Ka. 1 and after reading out to the witnesses, their testimonies were recorded. The memo was in his handwriting and bears his signature. The accused, Mohar Singh, fled by jumping over the wall upon seeing the police. His wife, Kela Devi, was arrested on the spot. At the scene, the statement of Yashoda Rani, accused Tej Pal, Nathu Singh, Ram Chandra Singh, Ram Chandra, Kewal Singh, accused Nanhe, and Constable Jangraj Singh were recorded. The statement of Nathu Singh was also entered in the case diary, which is presently before him. A complete copy of the same is being submitted, and it has been marked as Ex. Ka-5. He inspected the place of recovery and prepared a site map (Naksha Nazari), which is present before him. It was in his handwriting and bears his signature and accurately represents the site as per the situation at the time. It has been marked as Ex. Ka.-6. From Issopur, the accused, the complainant Yashoda Rani, and the police returned to Thakurdwara. At the pointing of Yashoda Rani, searches were conducted at the houses of Chhote Lal and Munshi Ram. Based on the information provided by her, both Chhote Lal and Munshi Ram were arrested, and their statements were recorded. The names of Constable Satish Chandra, Ghan Pal Singh, Babu Ram were also recorded. On his way to Thakurdwara, he passed through Seohara. From there, Tan Sukh Ram and witnesses Keval Singh and Ram Chandra were taken along in a jeep. On 22-12-1979, the medical examination report of Kumari Yashoda Rani was received, and a copy of the same was recorded in the case diary. On the same day, the accused Mohar Singh was arrested, and his statement was recorded. On 12-12-1979, Kumari Yashoda Rani was handed over to Tan Sukh Ram. Her delivery note 'supurdiginama' was recorded as Ex. Ka.-3, which is in his handwriting and bears his signature. Kumari Yashoda Rani's statement under Section 164 CrPC was recorded before the concerned Judicial Magistrate. After completing the investigation, he submitted the chargesheet against the accused, which is in his handwriting and bears his signature. It has been marked as Ex. Ka.-7. Upon seeing the chik report, the witness confirmed that it was written by Som Pal. He is familiar with him and has seen him reading and writing. That document has been marked as Ex. Ka.-8.

During cross-examination - The application of Yashoda Rani, dated 03-12-1979, was received by him. The said application is present before him.

On 14-12-1979, he submitted a report for recording Yashoda Rani's statement under Section 164 Cr.P.C. The report must be on record, but it is not presently before him. The learned Magistrate fixed a date for the statement but the Magistrate was on leave on that day and the statement was recorded on 15.01.1980. It would be incorrect to say that till 15-01-1980, Yashoda Rani was not willing to give statement against the accused Tej Pal, and that is why her statement was not recorded earlier. After a detailed inquiry with Yashoda Rani, a map of the arhar (pigeon pea) field was prepared, which is not currently available before him. That map was sent along with the supplementary case diary. The said field was far away from Payal Talkies. Since the supplementary case diary was not available before him at that moment therefore, he was unable to specify the exact distance between Payal Talkies and the arhar field. It would be incorrect to say that he had not seen the Arhar field or that the statement regarding the field is false. The village from where Yashoda Rani was recovered, statement of only two persons were recorded from that village. He did not prepare the map of Nahney Singh's house. He recorded the statement of Tan Sukh Ram on 29.11.1979 and never thereafter. He recorded the statement of Kewal Singh on 11-12-1979. He had prepared the map of Chhote Singh's house at Thakurdwara, but it was not available before him that day. That map was included with the supplementary case diary. It would be incorrect to say that he did not prepare the map of Chhote Lal's house. Without reviewing the map, he cannot confirm whether he had marked the boundaries (Chauhaddi) on it or not. Chhote Lal's house is located in Mohalla Chowk, and the house faces north. Mohalla Chowk is also known as Fateh Ullah Ganj. In the case diary, he recorded that location as Fatah Ullah Gang. He was informed by the locals that the name of the area is Muhalla Chowk. However, he was that there is no Mohalla Chowk in Thakurdwara.

(vii) Ram Bharose Singh-constable (P.W.-7)- He stated that, on 27.11.1979, he was serving as a constable at Kotwali City Police Station, Bijnor. At that time, Shri Som Pal Singh was posted as the Head Moharrir at the police station. Som Pal Singh has been transferred to P.T.C. Moradabad. The witness had seen him reading and writing and is familiar with his handwriting and signature. Upon examining Chik Report Ex. Ka. 8, the witness stated that it was written and signed by Som Pal Singh. The station's original general diary dated 27.11.1979 was before him, wherein the entry of the statement of the accused has been mentioned which was in handwriting of Sompal and also his signature was made.

Statement under Section 313 Cr.P.C.

8. The incriminating circumstances appearing in the prosecution evidences, were put to all the accused persons and their statements under Section 313 Cr.P.C. were recorded.

9. In his statements recorded under Section 313 Cr.P.C. on dated 21.11.1981, accused Tejpal stated that he did not know the age of prosecutrix and denied all the allegations which were put before him through questions. He further stated that he was living in Bijnor in a rented room and worked there, prosecutrix loved her and her marriage was fixed with him. She sent him letters and also visited him. She went with him with her free will and also application for marriage with him was preferred by her. He never threatened her and also used to go for seeing movies. He also stated that all the witnesses are relatives of the complainant.

10. In his statement recorded under Section 313 Cr.P.C. on dated 25.11.1981, accused Chhotey Lal denied all the allegations which were put before him through questions and stated that accused Nanhey Singh is his brother-in-law due to which, police had called him and he had been falsely implicated.

11. In his statement recorded under Section 313 Cr.P.C. on dated 25.11.1981, accused Mohar Singh denied all the allegations which were put before him through questions and stated that accused Tejpal is his nephew due to which, he had been implicated in the case.

12. In her statement recorded under Section 313 Cr.P.C. on dated 25.11.1981, accused Smt. Kalawati denied all the allegations which were put before her through questions and stated that she is relative of the accused Tejpal due to which, he had been implicated in the case.

13. In his statement recorded under Section 313 Cr.P.C. on dated 25.11.1981, accused Nanhey Singh denied all the allegations which were put before him through questions and stated that he is maternal uncle of accused Tejpal due to which, he had been implicated in the case.

Defence Evidence

14. After the statements under Section 313 Cr.P.C. of the appellants were recorded, one defence witness, namely, Sri Prem Pal Singh was examined. His testimony in brief is noticed below:-

D.W.-1- Sri Prem Pal Singh:- He stated that from the year 1976, he was working as Clerk in Arya Vaidik Kanhaiya Inter College, Bijnor

and he knows Yashoda D/o Tan Sukh Rai resident of Mohalla Chahsirin. Prosecutrix who was one of the students of the said school and he had seen her writing and reading and there were signatures and writing of Yashoda Rani over paper nos.34k/1 to 34k/18. There was also signature of Yashoda Rani over vakalatnama paper no.34kh/18 and he recognized those which were marked as Ex.kh-2 to Ex.kh-20.

During cross-examination, D.W.-1 stated that Yashoda Rana studied in the said school in the year 1977-78 and during that period, there were 600-700 students in the school. He cannot recognize writing and signature of all the students. Yashoda Rani was his sister in distant relation. Whenever Yashoda Rani wanted leave, he used to make her write leave application in the office of school. Yashoda Rani never written any letter to him. Sometimes he asked teachers of Yashoda Rani that how does she work and sometimes her teachers showed copies of Yashoda Rani to him and due to that, he recognized the handwriting of Yashoda Rani. Neither he known the accused persons nor they were his relatives. He also not met with them. It is wrong to say that he did not see Yashoda Rani during writing. It is also wrong to say that the accused persons were his relatives and due to this reason, he is giving false testimony.

Trial Court Findings

15. The trial court held that it was proved by the evidence on record that Tejpal had abducted the prosecutrix and committed rape upon her and as such, he was convicted and sentenced under Section 366 and 376 IPC. Insofar as accused Nanhey Singh in pursuance of commission of offence under Section 376 IPC is concerned, trial court held that being maternal uncle of Tejpal and also his wife was guarding from outside the room, it is impossible to believe that he would be a party to commit rape upon the prosecutrix and as such, acquitted him from the commission of offence under Section 376 IPC. Insofar as accused Chhotey Lal, Mohar Singh and Smt. Kala Wati with regard to offence under Section 366 IPC are concerned, trial court held that they were involved in placing the prosecutrix from one place to another place and keep guarding on her and as such, they had committed offence under Section 366 IPC and as they were sentenced in said section.

Submissions of learned counsel for appellants

16. Learned counsel for appellants submitted that accused Tejpal has falsely been implicated because he was in love with the prosecutrix. Learned counsel for appellants further submitted that prosecutrix went along with accused Tejpal by changing autos at several places and resided

at houses of several persons but during that period i.e about 16 days, at no point of time, prosecutrix had raised any alarm with regard to her abduction, meaning thereby, prosecutrix went with the accused Tejpal with her consent. It has also been submitted by learned counsel for appellants that as per medical report, no injury, internal or external was found on the body of prosecutrix and she was used to intercourse but no definite opinion was given about last sexual activity. It has also been further argued that as per the statement of complainant/father, age of prosecutrix was 14 years but as per the medical report, she was aged about 17 years at the time of alleged incident and it is well settled by Hon'ble the Apex Court in several cases that through the ossification test, it is difficult to determine the exact age of a person and further held that the judicial notice of margin of error in the age ascertained by radiological examination is two years on either side therefore, at the time of alleged incident, age of prosecutrix was about 19 years and as such, she was major. Learned counsel for appellants also submitted that the prosecutrix herself had written several letters to the accused Tejpal and her handwriting over the said letters, was also verified by Prempal Singh (D.W.-1) who was Clerk of the school wherein prosecutrix was studying and as such, prosecutrix was consented party but without considering the above mentioned grounds and applying its judicial mind, learned court concerned convicted and sentenced the accused Tejpal along with others under Sections 376 and 366 IPC merely on the ground of suspicion and as such, the order of conviction may be set aside being illegal.

Submissions on behalf of complainant and State

17. Learned counsel for respondent no.2 as well as learned AGA submitted that at the time of alleged incident, prosecutrix was minor and as per medical report, age of victim was determined as 17 years and taking two years on either side, learned court concerned treated it 15 years correctly since her father had also stated that age of the prosecutrix was 14 years at the time of said incident. They further submitted that due to threat given by the accused persons, prosecutrix could not raise any alarm and as such, learned trial court justified in recording conviction on the basis of material and documentary evidence available before him during trial.

Analysis

18. After having perusal of the paper book which contains FIR, recovery memo of victim, medical conducted by concerned doctor relating to the victim, charges framed by concerned learned Additional Sessions Judge,

deposition of victim along with other prosecution witnesses, examination of all the accused, statement recorded under Section 313 Cr.P.C., judgment and order passed by learned Additional Sessions Judge with the grounds involved therein for determining sentence against the accused and grounds for preferring the instant appeal, certain important facts related to the incident which culminated into lodging FIR at the initial stage and thereafter the same has been corroborated with the statement recorded by prosecution witnesses, has to be examined in consonance with especially statement recorded by victim herself through which it is transpired that there is a weapon also which has been alleged to be used by prime accused i.e. Tejpal Singh/appellant no. 1 but there is hardly any recovery in shape of weapon i.e. knife and country made pistol.

19. As per the statement recorded by victim, it is Tejpal, Nanhey Singh and Buddhu Singh who committed rape but as per the judgment and order dated 16.01.1982 only Tejpal was found guilty and convicted for the offence under sections 366 and 376 IPC, at the same time Nanhey Singh found guilty and convicted only under Section 368 of IPC and acquitted of the charges under Section 376 of IPC, Buddhu Singh was not even charge sheeted.

20. By fine scrutiny of the medical-examination, which has been proved during trial, it crystal clearly shows that the victim had been the habitual of intercourse and as such no definite opinion has been made by concerned doctor in respect of attraction of Section 376 of IPC, moreover as per the deposition of the victim, Tejpal was the regular visitor of her house and as such the chances of proximity developed between Tejpal and victim cannot be ignored.

21. The entire incident continued i.e. from the date of disappearance and from the date of recovery of the victim upto 15 days, during that period, victim has been carried by the accused from one place to another and some time she had been carried from the public conveyance but at no point of time, any alarm has been raised by the victim for seeking any type of help for safeguarding herself from the illegal action carried out by the accused.

22. As per the statements recorded by the prosecution witnesses for substantiating the charges framed against the accused relates to confinement of victim within the vicinity surrounded by several other houses and no independent witness has ever been put to examine by the prosecution. The story of the incident framed by the prosecution is having several lapses and latches and there are missing events which are the

normal and natural proceeding happened during 15 days but unfortunately the same has not been found at the time of deposition of testimony of the prosecution witnesses.

23. If in any case, certain events are missing, to complete the chain of incident which leads to conviction of the accused or to be suggested or to be brought out during trial by learned court concerned but in the instant matter only on the missing facts and without completing the chain of events, the directly jumping over the determination drawn in shape of conviction of the accused is strictly not in consonance of law.

24. In view of aforementioned facts and circumstances, judgment and order dated 16.01.1982 is not sustainable in the eye of law, precisely on the grounds taken up while preferring the instant appeal and the same is hereby quashed. During pendency of the instant appeal, only appellant nos. 1 and 2 are surviving who have been already extended bail. Their personal bonds and bail bonds are cancelled and sureties are discharged. However, it is directed that the appellant nos. 1 and 2 will ensure compliance of provisions of Section 437A Cr.P.C. by appearing before the concerned trial court at the earliest.

25. The instant appeal stands *allowed* accordingly.

26. Let a copy of the order be sent to the trial court for information and compliance.

Order Date :- 28.2.2025

Shaswat/Vivek

(Saurabh Srivastava,J.)