

Neutral Citation No. - 2025:AHC:95876-DB

Court No. - 45

Case :- CRIMINAL APPEAL No. - 5934 of 2021

Appellant :- Smt. Radha Devi And Another

Respondent :- State of U.P.

Counsel for Appellant :- Abhishek Kumar Jaiswal, Alkesh Singh, Rakesh Kumar Rathore, Sanjay Kumar Yadav, Sanjeev Kumar

Counsel for Respondent :- G.A.

And

Case :- CRIMINAL APPEAL No. - 523 of 2025

Appellant :- Rizwan @ Rahul

Respondent :- State of U.P.

Counsel for Appellant :- Mohammad Haadi Zaidi, Zia Naz Zaidi

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Sandeep Jain, J.

1. Heard Ms. Zia Naz Zaidi and Sri Jaideep Mishra, holding brief of Sri Raghuvansh Mishra, learned counsel for the appellants; Sri Surendra Singh, learned AGA for the State and Sri Kalyan Sundaram Srivastava, learned counsel for the informant.

2. Present criminal appeals arise from the judgement and order dated 22.11.2021 and 24.11.2021 passed by Ms. Poonam, learned Special Judge (POCSO) Act, Mainpuri, in Special Sessions Trial No. 46 of 2015 (State of U.P. Vs. Rizwan @ Rahul & 2 Ors.), arising out of Case Crime No. 450 of 2015, under Sections - 354, 376, 323, 120-B, 506 I.P.C. and Section 34 POCSO Act and Section 3(1)xii of SC/ST Act, Police Station – Kotwali, District – Mainpuri. By that order the learned court below has convicted the appellant – **Rizwan @ Rahul** (hereinafter referred to as 'Ri') and sentenced him to undergo rigorous life imprisonment and to pay fine Rs. 50,000/- for the offence under Section 4 of POCSO Act and in default of payment of fine to further undergo rigorous imprisonment of

one year; to undergo rigorous imprisonment of five years and to pay fine Rs. 5,000/- for the offence under Section 354 I.P.C. and in default of payment of fine to further undergo additional rigorous imprisonment of six months; to undergo rigorous imprisonment of one year and to pay fine Rs. 1,000/- for the offence under Section 323 I.P.C. and in default of payment of fine to further undergo additional rigorous imprisonment of one month; to undergo rigorous imprisonment of one year and to pay fine Rs. 2,000/- for the offence under Section 506 I.P.C. and in default of payment of fine to further undergo additional rigorous imprisonment of one month and, to undergo rigorous imprisonment of five years and to pay fine Rs. 5,000/- for the offence under Section 3(1)xii of SC/ST Act and in default of payment of fine to further undergo additional rigorous imprisonment of two months. All the sentences have been ordered to run concurrently. The appellant – **Smt. Radha Devi** (hereinafter referred to as 'R') has been convicted and sentenced with rigorous imprisonment of fourteen years and to pay fine Rs. 10,000/- for the offence under Section 115 I.P.C. and in default of payment of fine to further undergo additional rigorous imprisonment of two months. The appellant – **Kumari Shikha** (hereinafter referred to as 'S') has been convicted and sentenced with rigorous imprisonment of fourteen years and to pay fine Rs. 10,000/- for the offence under Section 115 I.P.C. and in default of payment of fine to further undergo additional rigorous imprisonment of two months.

3. The prosecution story emerged on the typed Written Report dated 25.05.2015 submitted by the victim 'H' to the Superintendent of Police, Mainpuri. On that, a hand written note dated 25.05.2015 was made by the Superintendent of Police directing the Station House Officer, Police Station - Kotwali, District - Mainpuri to register the case and take legal action. It has later come on record that the said typed Written Report was got prepared by 'H' with help from 'K', a neighbour of the victim 'H' who was 14 years of age (P.W.-2 at the trial), at that time. The typed Written Report is Ex.Ka-1 at the trial. In that report, it was disclosed that the

mother of 'H' namely 'R' was a widow. Also, 'H' described herself as a member of the Scheduled Caste. 'H' alongwith mother 'R' and her sister 'S' used to live together at a house under the jurisdiction of Police Station - Kotwali, District - Mainpuri. In that, the appellant 'Ri' frequently visited her house. At present, he was living with her mother 'R' and sisters. 'Ri' developed ill-intent towards 'H' and her sister. 'Ri' used to pressure 'H' to do wrong things. 'R' and 'S' used to support 'Ri' and that those three persons wanted to sell/traffic 'H'. They also used to indulge in obscene acts and 'Ri' used to misbehave with her. He was a fearless bully who used to threaten the members of her family. Fearing 'Ri', her family members were not ready to speak against him.

4. On that typed Written Report and upon the written direction issued by the Superintendent of Police, Mainpuri, an F.I.R. was registered at Police Station - Kotwali in Case Crime No. 450 of 2015 on 25.05.2015 at 17:15 hours. The F.I.R. is Ex.Ka-5 at the trial.

5. The next day, statement of 'H' was recorded under Section 161 Cr.P.C. She disclosed her age to be 14 years. Now, she stated that 'Ri' had performed Court marriage with her mother ('R'). 'Ri' used to live at their house. From February 2015 to March 2015 he had misbehaved with her. On 20.03.2015, 'Ri' committed wrong act (*galat kaam*) with her. Upon 'H' complaining that she would tell her mother, 'Ri' assaulted and threatened to kill her. She further narrated that 'Ri' was also having relations (*sambandh*) with her elder sister. Later, upon 'Ri' entering into some quarrel with a neighbour, he was arrested. On being released from jail his behaviour towards 'H' became very odd. He started assaulting her. He assaulted her on 24.05.2015 which fact she reported to her neighbour 'K' (P.W.-2 at the trial) on 25.05.2015. Thereupon, 'K' took her to the Superintendent of Police and thus she lodged the Written Report i.e. Ex.Ka-1 at the trial.

6. Seven days after her statement was recorded under Section 161

Cr.P.C., on 02.06.2015, her statement was recorded under Section 164 Cr.P.C. by the learned Judicial Magistrate-II, Mainpuri. In that, she disclosed, according to her mother, her age was fifteen years and three months. Her father died three years earlier. Her mother 'R' had married 'Ri' during the lifetime of her father who was unaware of the second marriage performed by 'R'. She further disclosed that she had three sisters and a brother and that two of her sisters were elder to her (aged about 20 and 16 years). All used to reside with their mother/'R'. She admitted that she had lodged the F.I.R. with the assistance of 'K' (P.W.-2). She further stated that she had made the Written Report because her mother 'R' was making her do wrong things and that she was asked to live with 'Ri'. In that statement she further narrated, 'Ri' had established physical intimacy with her in February, 2015 on the desire of her mother 'R'. Now, she roped in both her sisters - 'S' & 'S-1' alongwith 'R'. She stated, all three used to force her to establish physical intimacy with 'Ri'. She further stated that her mother 'R' had no relations with her grandparents and that she ('H') wished to live with her grandparents and not her mother.

7. In the meanwhile, on 28.05.2015, the victim 'H' was subjected to medical examination by Dr. Nimmi Begum (P.W.-4 at the trial). She recorded the history of 'H' as below:

“Pt c/o She has beaten by the second husband of her and he tried to make relation with 'H'. He tried to kiss and touch her breast.”

8. As to the medical examination, she recorded her observation as below:

“There is no mark of injury at any part of the body. Under written consent pubic & per vaginal exa. done. Her secondary sexual characters are developed. At present, there is no mark of injury in pelvic & vaginal region. She is menstruating as her mensis started on 26.5.2015. Vag smear is taken and send for ex. She is also referred to CMO MP for Age determination.”

9. The said medical examination report was prepared by Dr. Nimmi Begum. It is Ex.Ka-3 at the trial. On 30.05.2015, Dr. Amit Kumar,

Radiologist (P.W.-5 at the trial) prepared the radiological report. It is Ex.Ka-4 at the trial.

10. Upon completion of the investigation, Investigating Officer Bhupendra Pal Singh (P.W.-6 at the trial) submitted the charge-sheet.

Upon the case being committed for trial, following charges were framed:

“I, Rajesh Kumar II, Addl. Sessions Judge Court No.4 Mainpuri hereby charge you 1. ‘Ri’, 2. ‘R’, 3. ‘S’ and 4. ‘S-1’ as follows:-

That you on 25-05-2015 at the house of complainant in Mohalla Katra within the circle of Police Station Kotwali District Mainpuri, committed sexual harassment of ‘H’ minor aged about 14 years and thereby you committed an offence punishable under section 354 I.P.C. and within the cognizance of this Court.

Secondly that on the aforesaid date time and place, you ‘Ri’ committed rape of ‘H’ minor aged about 14 years and thereby you committed an offence punishable u/s 376 I.P.C. and within the cognizance of this Court.

Thirdly that you on the aforesaid date time and place voluntarily caused hurt to ‘H’ complainant and thereby you committed an offence punishable under section 323 I.P.C., and within the cognizance of this Court.

Fourthly that you on the aforesaid date time and place committed criminal intimidation by threatening to ‘H’ complainant and thereby you committed an offence punishable u/s 506 I.P.C. and within the cognizance of this Court.

Fifthly that you on the aforesaid date time and place made a criminal conspiracy to commit an offence and thereby you committed an offence punishable u/s 120-B I.P.C. and within the cognizance of this Court.

Sixthly that on the aforesaid date time and place you ‘Ri’ committed rape upon ‘H’ minor aged about 14 years against her will and thereby you committed an offence punishable u/s 3/4 POCSO Act and within the cognizance of this Court.

Seventhly, that you on the aforesaid date time and place intentionally insulted informant with intention to humiliate a member of a Scheduled Caste (Kori) and thereby you committed an offence punishable under section 3(1)xii of the Scheduled Castes and the Scheduled Tribes and within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the said charge.”

11. At the trial, besides the above documentary evidence, the prosecution relied on oral evidence of six witnesses. In that, ‘H’ was examined as P.W.-1. She proved the typed Written Report submitted by her. She now claimed 'Ri' was living at her home since the death of her

father. Her mother 'R' had formed illicit relationship with 'Ri' after the death of her father. She then claimed that the appellant 'Ri' had first forcibly established physical relations with her, on 20.02.2015 and not 20.03.2015. She narrated that occurrence to 'R'. The latter reacted indifferently and asked her to not tell anyone about it and to keep quiet. Now, she further narrated, her mother 'R'; her sister 'S' and the other sister 'S-1' had forced her to do wrong things with 'Ri'. On her resisting such efforts, she was beaten. She further proved her Written Report (Ex.Ka-1) and her statement recorded under Section 164 Cr.P.C. as Ex.Ka-2. She denied having made statement to the Investigating Officer (under Section 161 Cr.P.C.) that 'Ri' had married 'R' through a Court Marriage. She also denied that she had made any statement to the Investigating Officer that 'Ri' had committed wrong on her, on 20.03.2015. She now stated, that the occurrence was of the date 20.02.2015. During her cross-examination, she stated, her grand-parents did not visit her when she used to live with her mother but that her father (since deceased), used to take her, to meet them.

12. She denied any relation with 'K'. She further denied having worked as a domestic help at the residence of 'K'. At the same time, she admitted that her younger uncle/s i.e. younger son/s of her paternal grand-parents were friend/s of 'K' and that she was in contact with her uncle (*Chhotey*).

13. She denied suggestions thrown at her that there was some litigation with respect to her house, in which 'K' was a witness. Though she had normal relations with her younger sister 'P', she had not told her about the occurrence.

14. She admitted, she attended school during the relevant period but she did not tell anyone (at school), because of threats held out by the accused persons. Contrary to her earlier statement she now stated, others were not afraid of 'Ri'. She denied the suggestion that the false F.I.R. had been lodged because 'K' and her uncle (*Chhotey*) wanted to usurp the

property in which 'Ri' and 'R' used to live together with the children born to 'R'.

15. During her further cross-examination, she stated, 'Ri' used to assault her with his bare hands and with sticks. On being questioned why no allegation of rape was made in the Written Report, she stated, she had made such complaint but was not aware why it was not recorded in the F.I.R. She also admitted, at the time of her statement recorded under Section 164 Cr.P.C., she had gone to the Court with her grand-father.

16. Thereafter, 'K' was examined as P.W.-2. He first proved, the victim 'H' met him on 25.05.2015 at about 4:00 p.m. when he was returning home from his shop. He alongwith one or two other persons found 'H' was crying. On enquiry, 'H' told him that 'Ri' who used to live with her family, had assaulted her and committed wrong act (*galat kaam*) on her and that when she approached her mother and sisters - 'R', 'S' and 'S-1', they had supported 'Ri'. All three of them forced her to do wrong act (*galat kaam*) with 'Ri'. In that circumstance 'K' and others took 'H' to the Police Station, but they could not meet anyone. Therefore, he alongwith others (not named) took 'H' to the Superintendent of Police, Mainpuri who advised 'H' to submit a Written Report. Thus, the Written Report was prepared on the dictation of 'H' and presented to the Superintendent of Police, Mainpuri, by 'H'. On that the Superintendent of Police, Mainpuri passed an order, to register the case. On that the FIR was registered. He further proved, 'Ri' had started living with 'R' giving out a different/Hindu name. On objection raised by their neighbours, 'R' claimed marriage with 'Ri'. Last, he proved, stray incidents of violence suffered by 'H' were witnessed by him.

17. During his cross-examination, he admitted, prior to the occurrence on 25.05.2015, 'H' had not told him about such occurrence. Though he was not aware for how much time 'Ri' had been living with 'R', he had been living with her since the death of her husband. Initially, he specifically denied he had ever seen any occurrence involving any

assault committed by 'Ri' on 'H' or of any harassment caused to her.

18. He further admitted to be the next door neighbour of 'R' inasmuch as he stated that his house was opposite that of 'R'. He denied he was a member of the organization ('*Hindu Vahini Sangathan*'). He claimed complete ignorance about the religion practiced by 'Ri'. He also tried to feign ignorance if 'H' was a Hindu.

19. During his further cross-examination, he disclosed that he was a silversmith, as was his father. He specifically admitted that the father of 'H' died three to four years earlier. He further admitted that his 'father' had helped the family of 'R' at the time of the death of her husband.

20. Later, he altered his stand and stated, earlier, he had seen 'Ri' do wrong things (*galat harkat*) to 'H' from his terrace, 2-3 times. However, he could not specify either the day of occurrence or the month or year of such occurrence/s. On being questioned further, he stated that he had not reported that occurrence to 'R'.

21. At this stage, he also tried to deny that he had got the Written Report prepared. He claimed, 'H' got prepared the Written Report on her dictation, in his presence. At the same time, he admitted that he had reached the Kotwali at about 4:00 p.m. - 4:15 p.m. At this stage, he admitted that he had accompanied 'H' to the Superintendent of Police. He again switched stand and denied having witnessed any occurrence of assault by 'Ri' on 'H'. He denied the suggestion that 'H' used to work at his place as a house help, after the death of her father. He further denied that he had intimate relations with 'H' and consequently she had developed pregnancy, or that Dr. Poonam had refused to abort that pregnancy, at Agra. He denied that 'H' had started living with him. He denied the suggestion that he had colluded with 'H' to lodge a false F.I.R. against 'Ri' 'R', 'S' and 'S-1'.

22. Thereafter, 'A' was examined as P.W.-3. He tried to prove that he had seen 'Ri', 'R', 'S' and 'S-1' assault 'H' about one year earlier. At that

time, he heard 'Ri' tell 'H' - not only he had established physical intimacy with her but that he will now make her do the same with others. He also claimed to have heard 'R', 'S' and 'S-1' command 'H' to form physical relations with others, to earn money for the family. He also claimed that he saw those four persons had assaulted 'H'. At that stage, 'H' had told him, the entire occurrence. As to the reason for his presence at the residence of 'H', he disclosed that he had gone there in connection with a taxi booking made by him with 'Ri'. Since he could not find 'Ri' at the taxi stand, he decided to visit his residence. There he witnessed the occurrence, as disclosed by him.

23. During his cross-examination, he admitted, he had visited the residence of 'H' for the first time, when he witnessed the occurrence as narrated by him. He could not recollect if any injury had been suffered by 'H'.

24. During his further cross-examination, he denied that he knew the father of 'H' (since deceased). He further denied that he had ever gone to the residence of 'H'. He first denied that his statement was based on hearsay. Later, he denied that he knew 'R' or 'S' or 'S-1'. He further denied that he knew 'Ri'. He denied knowledge of the location of the house of 'H'. Yet, he claimed, it was wrong to say that he knew nothing about the occurrence.

25. Thereafter, Dr. Nimmi Begum was examined as P.W.-4. She proved the medical examination report. Further, she tried to state that there was no evidence of sexual assault suffered by 'H'.

26. Next, Constable Clerk Amit Kumar was examined as P.W.-5. He proved the registration of the F.I.R.

27. Last, the Investigating Officer, Bhupendra Pal Singh was examined as P.W.-6. He proved the investigation.

28. Thereafter, the statement of the accused were recorded under

Section 313 Cr.P.C. They denied adverse circumstances confronted to them. They claimed that 'K' (P.W.-2) and the other witnesses had involved the accused person in a false criminal case.

29. Submission is, the prosecution story is entirely false and inherently improbable. A disgruntled child opposed to the second marriage of her widow mother i.e. 'R' may have felt neglected or isolated for reasons not explained by the prosecution and reasons that the defence may never have successfully proved, has been exploited by 'K' (P.W.-2) for ulterior motive.

30. As to the occurrence and its narration, it has been submitted, the prosecution story progressed from molestation to rape accompanied with collusion by none other than the victim's biological mother 'R' and her sister 'S' of the alleged victim 'H'. At the stage of her statement recorded under Section 164 Cr.P.C. she implicated her sister 'S' and 'S-1' as well. However, 'S-1' was never charged or tried. Thus, the prosecution story has been materially improved, at every stage. At the same time it has remained contradicted, on material aspects.

31. Third, it has been submitted, the prosecution story suffers from material inconsistencies and contradictions. The prosecution witnesses have never spoken the truth. They tried to present a story as if 'Ri' had started living with 'R' a little before the death of her husband. On being confronted, they admitted that 'R' had lost her husband 3-4 years ago and that 'Ri' had married 'R' thereafter. He was living with her and her children, since then. Yet, that statement made by 'H' (under Section 164 Cr.P.C.) was denied at the trial.

32. Then, in the first place, 'K' and 'H' both maintained that the Written Report dated 25.05.2015 (Ex.Ka-1 at the trial) was got typed and it was submitted to the Superintendent of Police, Mainpuri with active help of 'K'. No other person who may have helped 'H' in that regard was examined at the trial. It is on record that the first information report was

registered upon the written direction of the Superintendent of Police, Mainpuri, on the typed Written Report. It is otherwise unbelievable that the minor girl 'H' placed in such peculiar vulnerable circumstance would be in a position to get her Written Report typed that too, on her own and would have succeeded to register the Criminal Case, on her own industry. However, once it came out through the cross-examination of 'K', that 'H' had first disclosed to him about the occurrence on 25.05.2015 at about 4:00 p.m. and he took her to meet the Superintendent of Police whereafter the Written Report was typed and submitted to the Superintendent of Police, Mainpuri, he backtracked from his role played in that effort by feigning false ignorance of the manner in which the Written Report came to be prepared and submitted. He suggested, it was dictated by 'H'.

33. Insofar as 'H' is concerned, she has offered a wholly unnatural and unbelievable/inherently improbable account. Once it was stated by her that 'Ri' had married 'R' and was living with her as her husband for the last 3-4 years and in any case, those adults were living together with consent, it was wholly unnatural for 'Ri' to have committed such offence on 'H' suddenly, in February, 2015. Falsity in her claim is apparent from the fact that though she was offered active help by 'K' and according to 'K', the Written Report (Ex.Ka-1) was prepared on her dictation, after meeting the Superintendent of Police, no allegation of rape emerged in that application. It only contains allegation of molestation. Yet, in her statement recorded the next day (under Section 161 Cr.P.C.), she disclosed that the occurrence took place on 20.03.2015. At the same time, she further alleged that her mother as also her elder sister were forcing her to form physical intimacy with 'Ri'. A few days later, at the time of her statement being recorded under Section 164 Cr.P.C., she changed her version to disclose that rape was committed on her by 'Ri' in February, 2015.

34. Third, at this stage she tried to involve both her elder sisters by naming them as the persons who along with 'R' had forced her to form physical relations with 'Ri'. Such nature of material improvement made, brings out the inherent falsity in the prosecution story. It establishes deep grudge borne by 'H' with her family as may have prompted her to disregard her relations with her mother and elder sisters. Referring to the medical report, it has been submitted, there is no corroboration of rape in that report.

35. On the other hand, learned AGA and learned counsel for the informant would submit that the victim 'H' is a minor girl. She could not have found strength and purpose of her own, to lodge the F.I.R. of the occurrence, as disclosed by her. She had been sexually abused at her home by her step-father, with the active participation/abetment of her mother and elder sisters. Therefore, no adverse inference may be drawn from the fact that her F.I.R. was lodged upon help offered by 'K'. Referring to the statement of 'H', it has been submitted, she has clearly proven the occurrence as also the role played by 'R' and 'S'. No material contradiction or vital inconsistency has arisen in her detailed evidence recorded before the learned trial Court. Doctor's opinion as to commission of rape is indefinite. Therefore, it may not be read adverse to the prosecution case. To the extent, Dr. Nimmi Begum (P.W.-4) has tried to prove facts that are not borne out from the medico legal report dated 28.05.2015 (Ex.Ka-3) prepared by her, her oral evidence on that count is inadmissible. Thus, it has been submitted, all appeals are liable to be dismissed.

36. Having heard learned counsel for parties and having perused the record before we consider the account offered by the victim 'H', we may first look at the attending circumstances in which her allegation emerged. It is a fact proven by the prosecution that the father of 'H' died 3-4 years prior to the occurrence. Second, from before, 'H' was living with her

family comprising her father, her mother 'R' and her siblings (2 elder sisters and others younger). All siblings are sisters. 'Ri' (even if not married to 'R'), was living with 'R' at least since the death of her first husband, who died of cancer. In that regard, it was initially claimed by 'H' and 'K' that 'Ri' had married 'R' in Court. Third, it is also a fact proven/admitted to the prosecution that 'K' had his residence, right in front of the house of 'R'. Fourth, 'K' further proved that his father had helped 'R' and her family at the time of illness of her first husband. Fifth, according to 'H', while her father was alive, her paternal grand-parents never visited her, though her father used to take her to them. Yet, her paternal grand-parents were not on good terms with her mother 'R'. Sixth, 'K' was friend with the uncle/(*Chacha*) of 'H'. Therefore, it has to be recognised not only those parties were known from before but they had a social relationship/interaction amongst them as may have led the father of 'K' to help 'R' at the time of her need.

37. In that circumstance and relationship enjoyed by those parties, it is not established or claimed by the prosecution that prior to 25.05.2015, 'H' ever reported any fact or occurrence to 'K' or to her paternal grandfather or her uncle (*Chacha*).

38. In such facts, we find 'K' admitted, prior to 25.05.2015, 'H' had never told him about wrong doing by 'Ri'. He made inconsistent and self-contradicted statements at the trial, with respect to that fact. First he did not claim knowledge of such occurrence/s. Then he denied any prior occurrence. Later, he claimed he was told by 'H' of such occurrence. Still later, he claimed he had not seen any such occurrence. Last, he again switched stand and claimed he had seen 'Ri' do wrong things to 'H', from his terrace.

39. In such circumstances, 'K' further admitted that 'H' first told him about the occurrence on 25.05.2015, at about 4:00 p.m. Yet, he did not try to or meet 'R' and her family to verify the facts or to make any effort

to speak to 'Ri'. In any case, it is wholly unnatural that 'K' chose to act on his own without informing either his friend (uncle/*Chacha* of 'H') or grand-parents of 'H'.

40. What 'K' did on 25.05.2015 was wholly unnatural inasmuch as, as soon as 'H' first disclosed to him the occurrence at about 4:00 p.m., he straightaway took 'H', (his neighbour's daughter), to the Police Station; from there to the Superintendent of Police, and from there to the Collectorate to get typed her Written Report. He did not take 'H' to the Child Helpline. He did not take her to her paternal grand father or her uncle and he did not speak to 'R' or to his friend who is the uncle (*Chacha*) of 'H' or her grand-parents. In fact he proceeded with full expedience to ensure the F.I.R. was lodged at 05:15 p.m., the same day.

41. In view of the fact that 'H' has specifically stated that the Written Report was got typed with the assistance of 'K', it has to be accepted that the same has been prepared in his presence and with his assistance. The reason to make that direct approach to higher police officials remained unexplained by the prosecution. No real effort is shown to have been made by 'K' to first get the F.I.R. lodged at the Police Station, first. Having obtained a written direction from the Superintendent of Police, Mainpuri, the F.I.R. was registered, the same day, within 1 hour and 15 minutes of 'K' first learning about the occurrence.

42. Once 'K' was confronted with this unnatural occurrence, during his cross-examination, he became wiser and tried to wriggle out of the same by feigning ignorance about the manner in which the Written Report came to be prepared. During his cross-examination conducted on 31.03.2016, he maintained that the Written Report was not prepared on his intervention but at the dictation of 'H' and that he had not submitted the Written Report. Yet, he neither denied his presence nor he denied the help provided by him, to 'H'. During his cross-examination, he gave full description of the family of 'H' except the name of the youngest sister of

'H'. He claimed to know every member of her family by name. He also remembered at the time of death of father of 'H', she may have been about 8-9 years of age. Contrary to his earlier statement (made during his cross-examination), he tried to deny knowledge of help offered by his father to 'R' at the time of illness/death of her first husband.

43. For all the above reasons we find the testimony of 'K' ridden with material improvements made and inconsistent and conflicted evidence led. In view of material inconsistencies as also his wholly unnatural conduct accompanied with inherently doubtful narration of the manner in which the F.I.R. came to be registered, we are unable to act on any part of his testimony. He knew 'R', 'S' and 'S-1' from before. He knew the paternal uncle (*Chacha*) of 'H', as proved by her. It is not consistently proven, if he had ever witnessed any offence committed by 'Ri' on 'H'. Yet, on first hearing her complaint at about 4:00 p.m. on 25.05.2015, he helped 'H' and got the F.I.R. registered at 5:15 p.m., that too after helping her meet the Superintendent of Police first. In that process, he a next door neighbour, never met 'R' to apprise her about the complaint of 'H' and he did not speak to the paternal uncle (*Chacha*) of 'H' or her grand father though he knew them well, from before and with whom 'H' has resided immediately since the F.I.R. was lodged. He is a wholly unreliable witness. We discard his testimony.

44. The prosecution evidence of 'A' (P.W.-3) is wholly unreliable. In the first place, he disclosed himself as a pure chance witness. He did not know 'H' or her family from before. Then, during his cross examination, he broke down and rendered himself completely unreliable by stating that he neither knew 'H' nor her place of residence nor about the occurrence.

45. Insofar as testimony of Dr. Nimmi Begum (P.W.-4) is concerned, we may only note that she did not find any external injury on the body of 'H', during examination offered by her on 28.05.2015. Besides the delay

in the medical examination, it is apparent, no internal examination was conducted, as according to her, 'H' was menstruating, since 26.05.2015. Therefore, her further statements made to the Court that she had examined 'H' internally and found her hymen intact are not based on the medical examination report proven by her. It is not admissible as evidence. That part of her deposition is not based on material on record. There is no corroboration. It has to be ignored. She remains a partially reliable witness, for that reason.

46. It may not be denied that in rape cases, the statement of a rape survivor stands on a higher pedestal as that of an injured witness. At the same time, it is not the law that evidence led by the rape survivor must always be treated as the gospel truth. The Courts must remain vigilant to first ascertain if the prosecution story arising on such statement is plausible, true and reliable. If any doubt exists, exercise may be undertaken to check if any corroborative material exists as may inspire confidence in the statement of the victim.

47. In **Tameezuddin Vs. State (NCT of Delhi), (2009) 15 SCC 566**, the Supreme Court observed as below:

50. "9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that the story is indeed improbable."

Also, in **Narendra Kumar Vs. State (NCT of Delhi), (2012) 7 SCC 171**, testimony of the rape victim was found suffering from serious infirmities and inconsistencies with other material. Also, it was noted that the victim may have made deliberate improvements on a material point. Thus, it was observed as below:

"22. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, the prosecutrix making deliberate improvement on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide Suresh

N. Bhusare v. State of Maharashtra [(1999) 1 SCC 220: 1998 SCC (Cri) 1595].)".

48. 'H' has narrated an inconsistent and materially improved account of the occurrence as the case progressed. Though lodged, upon help provided by 'K', others and the Superintendent of Police and typed on the dictation of 'H', the typed Written Report did not make any allegation of rape committed by 'Ri' or participation/abetment in that occurrence by 'R' or 'S' or by 'S-1' the second sister of 'H'. Narration of rape first appeared in the statement of 'H' recorded the next day, under Section 161 Cr.P.C on 26.05.2015. In that, that occurrence may have been described as '*galat kaam*'. It was further narrated that 'R' had asked her to keep quiet. Further, improvement was made at that stage by alleging that 'Ri' had also formed relations with her elder sister. On 02.06.2015, in her statement recorded under Section 164 Cr.P.C, 'H' now implicated not only 'R' and 'S' but also her other sister 'S-1', clearly alleging rape committed on her by 'Ri' in February, 2015.

49. Thus, we are mindful that the deposition made by 'H' at the trial as to commission of rape does not find corroboration with the facts narrated in the Written Report submitted by her on 25.05.2015 and the F.I.R. lodged, consequently. Her statement recorded under Section 164 Cr.P.C. and at the trial suffer from material improvements, in that regard.

50. Then, as to the marital status of her mother 'R', she stated in her Written Report dated 25.05.2015, 'R' was a widow and 'Ri' was living with her. The next day, in her statement recorded under Section 161 Cr.P.C., she may have claimed, 'R' had entered into a Court Marriage with 'Ri'. A few days, thereafter, in her statement recorded under Section 164 Cr.P.C., she claimed 'R' had married 'Ri' during the lifetime of her father. At the trial, she denied her earlier statements, though she admitted, she was accompanied to Court, by her paternal grand father for recording of her statement under Section 164 Cr.P.C. In any case, it remained admitted to her that 'Ri' had been living with her mother 'R',

since the death of her father.

51. Thus, at the trial, she tried to wriggle out of her earlier statement made under Section 164 Cr.P.C. and further tried to make out a case-where she first tried to hide the second marriage of her mother 'R'. Later, she admitted to the same. At the trial, she denied that statement. As to the date of occurrence, even if we accept the discrepancy of the date 20.03.2015 and 20.02.2015 as to the real date of occurrence, there is no plausible explanation why the allegation of rape finds no corroboration in the Written Report, though according to 'H' and 'K', all facts were known to both, on 25.05.2015 and the occurrence was such as had compelled 'K' to help 'H' meet the district Superintendent of Police, to lodge the FIR. Clearly, 'K' had offered help to 'H' to lodge the F.I.R. There is absolutely no reason or explanation, why the allegation of rape made later, is not corroborated from the F.I.R. At the same time, 'H' clearly proved the facts that her paternal grandparents were not on good terms with her mother 'R' from before the death of her father and that 'K' was a friend of her paternal uncle (*Chacha*). Further, it is also undisputed that after the case being lodged 'H' has been residing with her paternal family. She appeared alongwith her grand father to record her statement under Section 164 Cr.P.C. and with her paternal uncle (*Chacha*), at the trial. The defence had thrown suggestions both at 'K' and 'H' of bad relations between the parties and of property disputes existing - as the real reason for the F.I.R. being lodged against 'Ri', 'R' and 'S'. Defence had also thrown suggestions at the prosecution witness that the F.I.R. came to be lodged for reason of 'Ri' practicing another religion.

52. In view of the above, we observe, 'H' is an unreliable witness who had not maintained a clean and consistent stand as to the occurrence. The allegation of rape was not made in the F.I.R. That emerged the next day. A few days later, in her statement recorded under Section 164 Cr.P.C. she roped in her sisters 'S' and 'S-1' (not charged), with abetment to rape.

53. Thus, 'H' has offered unexplained material improvement in her stand, as the case developed. Also, her testimony suffers from material inconsistency, both as to role of 'S' and 'S-1', as also as to marital status of 'R' and 'Ri'. On both counts, serious doubts arise as to her reliability as a witness.

54. In the backdrop of not-good relations between 'R' and her in-laws with whom 'H' went as soon as she lodged the F.I.R. and who got her statement recorded (under Section 164 Cr.P.C.) also in view of further undisputed fact that though 'K' is a friend of the paternal uncle (*Chacha*) of 'H', yet, the F.I.R. was registered with the help of 'K', without involving her paternal grandfather and uncle, leads us to the conclusion that 'H' may have suffered influence tutoring by 'K'. Therefore, her evidence requires corroboration.

55. 'K' is an unreliable witness. 'A' was a chance witness. He was set up by the prosecution. He did not offer a consistent account as to first have knowledge about any wrong behaviour of 'Ri' toward 'H'. Testimony of 'K' and 'A' has been discarded. The medical examination also does not corroborate the occurrence. There are no recoveries. Thus, no corroboration exists, of rape, alleged by 'H'.

56. It thus appears, arising from bad relations existing between 'H' and 'R' and perhaps occasioned by the fact that 'R' re-married or had chosen to live with a person practicing another religion (after the death of her first husband), and perhaps also emanating from non-cordial or bad relations arising between 'H' and 'Ri' and/or for other reasons, 'K' may have been prompted by his friend, paternal uncle (*Chacha*) of 'H' to play out the prosecution story, as narrated. Being wholly unnatural and untrue to begin, that story found material improvements, exaggerations and was visited with consequent material inconsistencies, as the case progressed.

57. In view of the above, we have no hesitation to record that the prosecution story is riddled with more than reasonable doubts. It has not

been proven beyond reasonable doubt on the strength of cogent evidence.

58. In view of the above, both the appeals are **allowed**. The impugned orders dated 22.11.2021 and 24.11.2021 are set aside. The accused appellants are acquitted of all the charges framed against them. The appellants are in jail. They shall be released forthwith unless wanted in any other case and subject to compliance of Section 437-A Cr.P.C.

59. Let the trial court record be returned forthwith alongwith a copy of this order.

60. At the time of dictation of the order, it is noted that application no. 7 of 2022 is pending in Criminal Appeal No. 5934 of 2021. By that application the appellant no.2 Kumari Shikha has claimed juvenility. The said application was not pressed during hearing of the appeal. Hence it has not been considered, at this stage. Since the appeal itself has been allowed for the reasons noted above, at present, the said application is found to be infructuous. It is accordingly dismissed as infructuous.

61. Let a copy of this order be also communicated through Registrar (Compliance) to the Juvenile Justice Board, Mainpuri where the juvenility claim of the appellant Kumari Shikha is stated to be pending.

Order Date :- 23.5.2025

Abhilash/Prakhar/Salman/Faraz

(Sandeep Jain, J.) (S. D. Singh, J.)