

Reserved on – 24.02.2026

Delivered on – 23.03.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 357 of 2016

Ravi Kumar

.....Appellant

Versus

State of Uttarakhand

.....Respondent

Present:-

Ms. Pushpa Joshi, Senior Advocate assisted by Mr. Akram Parvej, Advocate for the appellant.

Mr. Pankaj Joshi, AGA for the State.

JUDGMENT

Coram: Hon'ble Ravindra Maithani, J.

Hon'ble Siddhartha Sah, J.

Per: Hon'ble Ravindra Maithani, J.

Present appeal is preferred against the judgment and order dated 11.07.2017 passed in Special Sessions Trial No. 61 of 2014, State of Uttarakhand v. Ravi Kumar, by the court of Fast Track Court/Special Judge (POCSO)/Additional District and Sessions Judge, Dehradun. By it, the appellant has been convicted under Sections 363, 366A, 376(2), 307 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 ("the Act") and sentenced under Sections 376(2), 363, 366A and 307 IPC as under:-

- (i) Under Section 376(2) IPC – Life imprisonment with a fine of Rs. 50,000/-. In default of payment of fine, to undergo additional imprisonment for a period of one month.

- (ii) Under Section 363 IPC – Rigorous imprisonment for a period of three years and a fine of Rs. 500/-. In default of payment of fine, to undergo additional imprisonment for a period of fifteen days.
- (iii) Under Section 366A IPC – Rigorous imprisonment for a period of seven years and a fine of Rs. 500/-. In default of payment of fine, to undergo additional imprisonment for a period of fifteen days.
- (iv) Under Section 307 IPC – Rigorous imprisonment for a period of ten years and a fine of Rs. 10,000/-. In default of payment of fine, to undergo additional imprisonment for a period of one month.

2. According to the prosecution case, on 17.08.2014, at about 09:30 in the late evening, the victim, a young girl of seven years, along with her brother had left their home to go to a Shiva Temple. On the way, the brother of the victim was given money by a person to purchase toffee. Thereafter, he lifted the victim. Subsequent to it, the victim returned to her home crying and revealed that that person took her on the roof top and did wrong with her forcibly. The victim was in pool of blood. Based on the FIR given by PW 1, father of the victim, chik FIR was recorded and Case Crime No. 35/2014 under Sections 341, 366A, 376(2) (i) IPC and Section 3/4 of the Act was registered at Reporting Out Post Selakui, P.S. Sahaspur, District Dehradun. The

copy of the FIR is Ex. A-1, chik FIR is Ex. A-4 and the extract of General Diary entry is Ex. A-5. After the incident, the Investigating Officer visited the place of incident with PW 1, the father of the victim and PW 2, the brother of the victim, where the blood was spread on the floor. He took the blood sample and prepared its memo, Ex. A-2. On 18.08.2014, the appellant was arrested, as he was identified by PW 2, the brother of the victim. His underwear was also taken into custody, recovery memo of which is Ex. A-11. The victim and her brother, both were examined under Section 164 of the Code of Criminal Procedure, 1973 ("the Code"). They have reiterated the prosecution story. The appellant was medically examined and his pant was also taken into custody by the Investigating Officer. Recovery memo of it is Ex. A-12. On 17.08.2014, at 11:40 p.m., the victim was medically examined. Her underclothes (panty and undershirt) were sealed and given to the police. There were following injuries on the person of the deceased:-

- “(i) Bruise on both cheeks more on right side.
- (ii) Small subconjunctival haemorrhage Left eye.
- (iii) Swelling over upper lip. Nasal bleed present.
- (iv) Bruise on anterior surface of neck.
- (v) P/A soft, tenderness lower abdomen.

L/E: IInd degree perineal tear. Bleeding. Vaginal smear made and sent for spermatozoa. Mid line tear upto anus.”

3. A supplementary medical report was also obtained. In fact, the victim was referred to a very higher centre, where she was operated also. The Investigating Officer prepared a site plan. He collected the clothes of the appellant and the victim and sent them for forensic examination. The Forensic Examination Report confirms semen on the crime scene and the underwear of the accused. Blood was also detected on crime scene, on the underwear of the victim, on the T-shirt of the victim and on the underwear of the appellant. The DNA examination also connected the prosecution case with the appellant. The conclusion of the report *qua* DNA is as below:-

“CONCLUSION

The DNA test performed on the exhibits provided is sufficient to conclude that,

1. The DNA obtained in a mixed autosomal DNA profile from the Exhibit – 1 and 4 (Blood sample from crime scene and underwear of accused) match with the DNA obtained in the autosomal DNA profiles from the Exhibits – 7 and 8 (Blood sample of accused and victim).
2. The DNA obtained in a female autosomal DNA profile from Exhibit – 3 (T-shirt of victim) match with the DNA obtained in a female autosomal DNA profile from Exhibit – 8 (Blood sample of victim).
3. The DNA obtained in a another female autosomal DNA profile from Exhibit – 2 (underwear of victim) do not match with the

DNA obtained in a female autosomal DNA profile from Exhibit – 8
(Blood sample of victim).”

4. After investigation, charge sheet under Sections 376(2)(i), 366A, 341, 307 IPC and Section 3/4 of the Act was filed against the appellant. On 24.12.2014, the charges under Sections 363, 366A, 376 (2), 307 IPC and Section 4 of the Act were framed against the appellant, to which he denied and claimed trial.

5. In order to prove its case, the prosecution examined as many as 10 witnesses, namely, PW 1, father of the victim, PW 2, brother of the victim, PW 3, the victim, PW 4 constable Manoj Kumar, PW 5 constable Amit Kavi, PW 6 Dr. Archana Pandey, PW 7 SI Dilbar Singh Negi, PW 8 Dr. Nidhi Kumari, PW 9 Arvind Kumar Pandey and PW 10 SI Pratibha.

6. The appellant was examined under Section 313 of the Code. According to him, he has falsely been implicated. The appellant has taken a plea of *alibi*. According to him, he was in Selakui office and the police had forcibly arrested him on the next day in the morning from the railway station. In his defence, the appellant has got examined DW 1 Smt. Sushma.

7. Heard learned counsel for the parties and perused the record.

8. Learned Senior Counsel for the appellant submits that the prosecution has not been able to prove its case. Learned Senior Counsel submits that the police has prepared the evidence; the police

has planted the story with regard to as to who committed the offence.

She has also raised the following points in her submission:-

- (i) The appellant is a poor person; he has falsely been implicated.
- (ii) Only DNA report has been made the basis of conviction, which cannot be a basis of conviction.
- (iii) The victim and her brother, both are tutored.
- (iv) The victim and her brother has not stated anywhere about the identity of the appellant, the assailant.
- (v) The site plan has been prepared at the instance of the PW 1, father of the victim and PW 2, brother of the victim; they are not eyewitnesses.

9. It is argued that in the instant case, the identity of the appellant has not been established as the person, who committed rape on the victim; therefore, it is a case of acquittal; accordingly, the appeal deserves to be allowed.

10. On behalf of the appellant, it is also argued that with regard to the story as to what happened after the incident, the sequel is not correct as to how the victim came back; as to how she met with her brother and father; there is contradiction as to how the appellant was arrested; whether the PW 1, father of the victim, was present or not.

11. On the other hand, learned State Counsel submits that the PW 2, brother of the victim had identified the appellant. It is he, who spotted the appellant with the police and, thereafter, the police arrested the appellant. Learned State Counsel also raised the following points in his submission:-

- (i) The victim has identified the appellant in court.
- (ii) The appellant was arrested within twenty-four hours of the incident.
- (iii) There is no question of falsely implicating the appellant and letting the real assailant go through.
- (iv) The place of incident was quite close to the place from where the victim was lifted by the appellant after inducing her brother PW 2 to go to purchase some articles; therefore, the site inspection by the Investigating Officer in the presence of PW 2, brother of the victim and PW 1, father of the victim, does not doubt the prosecution case. The place of incident was quite close in the vicinity.
- (v) The Investigating Officer collected blood from the site of inspection on 17.08.2014; the clothes of the accused and the victim were lawfully taken into custody; they were

forwarded for forensic examination and the forensic examination report confirms the prosecution case.

12. It is also argued by the learned State Counsel that there are minor contradictions, which do not create any doubt in the prosecution story. Accordingly, learned State Counsel submits that the prosecution has been able to prove its case beyond reasonable doubt and the appeal deserves to be dismissed.

13. PW 1 is the father of the victim. According to him, on 17.08.2014, on the occasion of *Janamashtami*, his son, PW 2 and his daughter, the victim, PW 3 wanted to go to temple. On the way, a boy met them, who sent PW 2, brother of the victim to purchase toffee. Thereafter, the boy lifted the victim in his lap and took her in a complex and raped her, due to which she bled profusely. The victim returned, she met her brother and thereafter they revealed the entire story to this witness, who took the victim to a doctor in Selakui. The doctor told that it is a police case and thereafter, he lodged a report at police station, Ex. A-1.

14. According to PW 1, father of the victim, on the same day, at 11:10 p.m., he along with his son PW 2, joined the company of the Investigating Officer and took him to the place of incident, where the police took sample of fresh blood and prepared a recovery memo, Ex. A-2. This witness has also proved the photographs of the place of incident, which are Exs. 1 to 4. This witness has also stated that on the same day, the victim was medically examined. According to PW 1, father of the victim, the appellant was arrested on the next day at

08:40 a.m., when his son, PW 2 had identified the appellant. He has proved the arrest memo, Ex. A-3 as well.

15. According to PW 1, father of the victim, the clothes worn by the victim were taken into custody by the doctor. He has proved the undershirt, Ex. 8 and T-shirt, Ex. 10. According to him, the victim is still under shock due to the act committed on her.

16. PW 2 is the brother of the victim. He was in the company of the victim, when the incident took place. It would be appropriate to refer to the statement of the PW 3, the victim first.

17. PW 3 is the victim. She is a young girl of 6-7 years. She was examined by the court first before ascertaining as to whether she is able to give statement on oath. She has narrated as to what had happened on the date of incident. According to her, on the date of incident, she along with PW 2, her brother, was going to temple. They met a person, who gave Rs. 10/- note to her brother and asked him to bring *Dilbagh* and toffee. When her brother denied, he slapped him. Thereafter, her brother proceeded to get *Dilbagh*. According to the victim, thereafter that person lifted her in his lap, muffled her mouth, made her jump to a wall and took her on a roof top, where he inserted his penis in her vagina due to which she bled. Thereafter, according to PW 3, the victim, that person made her lay down on the ground, tried to strangulate her and attacked her with his fists. He hit the victim on her chest and warned her not to name him and ran away. Thereafter, this witness also ran away from there. She was bleeding from her vagina. She met her brother. This witness has identified the appellant in the court. She says that she had identified

the appellant in the light where she was caught and where she was raped. She has stated that her statement was recorded by the Magistrate also.

18. PW 2, brother of the victim has corroborated the statement of PW 3, the victim. According to him, after the incident, he met his sister and thereafter they also met their parents. He has also stated about the features of the person, who assaulted the victim, in para 7 of his statement. According to PW 2, brother of the victim, on the same day, he joined the police and the police recovered blood from the roof top and took the samples. He has also proved the statement given to the Magistrate, which is Ex. A 4.

19. PW 4 constable Manoj Kumar has proved the chik FIR, Ex. A 4, extract of GD, Ex. A 5. He has also proved the GD report, when the Investigating Officer returned after the investigation, making site plan and collecting the blood sample, Ex. A6. He has also proved the extract of GD Report No. 12 of 12:10 hours, by which after medical examination, the clothes of the victim were also lodged at police station, Ex. A7. He has also proved the extract of GD report, by which the appellant was arrested and confined to police station, Ex. A-8. Ex. A 9 is another GD by which the offence under Section 307 IPC was added. GD report No. 27 is of 17:45 hours of 18.09.2024, by which the report was lodged that the articles have been submitted at the Forensic Science Laboratory, recovery memo, Ex. A-11 by which underwear of the appellant was taken into custody by the Investigating Officer, Ex. A-12, by which the Investigating Officer had collected the clothes of the victim.

20. PW 5 constable Amit Kavi is the person, who took the articles to Forensic Science Laboratory for examination, where he deposited them on 05.09.2014.

21. PW 6 Dr. Archana Pandey did the medical examination of the victim on 17.08.2014 at 11:40 p.m. The contents of the report have already been narrated hereinabove. She has proved the medical report, Ex. A-14 and supplementary medical report, Ex. A 15. According to her, the victim was referred to higher centre to be examined by the gynaecologist.

22. PW 8 Dr. Nidhi Kumari was working in Mahant Indresh Hospital, Dehradun on 18.08.2014, when the victim was admitted in the hospital at 03:00 p.m. The victim was complaining of bleeding. Thereafter, under general anaesthesia, procedure was done and perineal tear was repaired. According to this witness, there were two deep tears in the lateral vaginal wall, which could not be repaired, therefore, the vagina was packed. This witness has proved all those documents, Ex. A-18 to Ex. A 23.

23. PW 7 Dilbar Singh Negi had initiated investigation in the matter. He prepared site plan, which is Ex. A 16. This witness took the appellant into custody. He collected the blood samples from the place of incident, which is Ex. A-2. According to this witness, on 18.08.2014, they spotted the appellant, as identified by the PW 2, the brother of the victim and he was arrested at 08:40 p.m. and its memo, Ex. A-13 was prepared. He also stated that the underwear of the appellant was taken into custody and thereafter, according to this witness, investigation was completed by PW 10 SI Pratibha.

24. PW 9 Arvind Kumar Pandey was the Sub Divisional Magistrate on 28.08.2014. According to him, on that day, he recorded the statement of the victim under Section 164 of the Code. PW 10 SI Pratibha is the Investigating Officer, who finally submitted the charge sheet, Ex. A-31, in the case. This witness has also stated that the blood samples of the appellant and the victim were also taken in the presence of the court. The samples were taken and forwarded for examination to Forensic Science Laboratory, from where the report had been received.

25. DW 1 Smt. Sushma is the cousin of the appellant. According to her, her father died on 02.08.2014. The appellant had reached at the railway station from where the police took him. In her cross-examination, she says that a day after *Janmashtami*, the appellant was apprehended. This witness has not stated that on the day of *Janmashtami*, which is the date of incident, the appellant was at any other place. In last sentence of her cross-examination, she also admits that the appellant was not arrested before her. Her testimony has less significance.

26. Admittedly, in the instant case, the Test Identification Parade ("TIP") has not been done. What would be its effect? It is also admitted that the appellant was not known to the victim prior to the date of incident.

27. Law is well settled that the TIP helps to decide the direction of investigation. It is not substantive evidence. It is also settled that identification in the court, which is generally known as dock identification is substantive evidence. If it precedes TIP, it gains a little more weight. But, if without TIP, dock identification is done, though it is substantive evidence, it needs to be cautiously scrutinized. It may require corroboration from other facts.

28. In the case of *Sidhartha Vashisht v. State (NCT of Delhi)*, (2010) 6 SCC 1, the Hon'ble Supreme Court has laid down the principle on the subject and in para 255 to 257, observed as follows:-

“255. Mr Jethmalani has further argued on the proposition that mere dock identification is no identification in the eye of the law unless corroborated by previous TIP before the Magistrate. It has been further argued that in any case, even identification in court is not enough and that there should be something more to hold the accused liable. In support of his arguments, he placed heavy reliance on the decision of this Court in *Hari Nath v. State of U.P.* [(1988) 1 SCC 14 : 1988 SCC (Cri) 14] and *Budhsen v. State of U.P.* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343]. A close scrutiny of these judgments will reveal that they in fact support the case of the prosecution. **These judgments make it abundantly clear that even where there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.**

256. The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:

Munshi Singh Gautam v. State of M.P. [(2005) 9 SCC 631 : 2005 SCC (Cri) 1269] : (SCC pp. 642-45, paras 16-17 & 19)

“16. As was observed by this Court in *Matru v. State of U.P.* [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See *Santokh Singh v. Izhar Hussain* [(1973) 2 SCC 406 : 1973 SCC (Cri) 828] .) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It

is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. **Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.** (See *Kanta Prashad v. Delhi Admn.* [AIR 1958 SC 350 : 1958 Cri LJ 698] , *Vaikuntam Chandrappa v. State of A.P.* [AIR 1960 SC 1340 : 1960 Cri LJ 1681] , *Budhsen v. State of U.P.* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] and *Rameshwar Singh v. State of J&K* [(1971) 2 SCC 715 : 1971 Cri LJ 638] .)

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Malkhansingh v. State of M.P. [(2003) 5 SCC 746 : 2003 SCC (Cri) 1247] : (SCC pp. 751-52, para 7)

“7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. **The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence.** It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.”

257. Mr Ram Jethmalani has further placed heavy reliance on two books by foreign authors, namely, *Proof of Guilt by Glanville*

Williams, 3rd Edn. and *Eye Witness Identification in Criminal Cases* by Patrick M. Wall, to urge that identification of an accused in court is a serious matter and the chances of a false identification are very high. These texts only reiterate what the various courts have held time and again. The view of the said author has been quoted by this Court, the earliest judgment being *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033] : (SCC p. 799, para 6)

“6. ... The evil of acquitting a guilty person light heartedly as a learned author (Glanville Williams in *Proof of Guilt*) has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted ‘persons’ and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that ‘a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent. ...’”

(emphasis supplied)

29. Identification in the court also depends as to what was the opportunity for a person to identify the accused. The duration of earlier encounter is another determining factor. But, before that, arguments have also been raised as to how the incident took place? What was the sequel of it? It may be examined by reading the statement of PW 3, the victim herself.

30. The victim has categorically stated that she along with her brother was going to temple; in the way, a person intercepted them and sent her brother to purchase toffee and *Dilbagh*, after slapping him. He took the victim at a place and raped her, beat her, tried to press her neck, she bled profusely and thereafter the victim ran away from there and met her brother.

31. PW 2, brother of the victim has also corroborated the statement of PW 2, the victim and material particulars. In para 6 of the

statement, PW 2, brother of the victim tells that after return, he met her sister first and thereafter their parents also came.

32. PW 1, father of the victim has been asked on this aspect. In his examination, page 11, para 18, PW 1, father of the victim tells that when the children did not return after twenty minutes, they proceeded to search them and in para 19, he says that they met PW 2, their son first, who narrated as to what happened to him and after five minutes, the victim also met them. She was crying and was drenched in the blood.

33. The sequel is not any different. All the witnesses are consistent that the appellant first forcibly sent PW 2, brother of the victim to purchase *Dilbagh* and toffee, lifted the victim, took her at the roof top and raped her. The victim returned. She met PW 2, her brother, first and meanwhile, their parents were also out in search of them. They met them and went to hospital, etc.

34. There is one more aspect. PW 3, the victim has stated that the appellant took her in the lap, muffled her mouth and made her to jump on the wall. He also jumped on the wall and thereafter he took the victim on the roof top of a house and raped her. PW 3, the victim, in page 4, last paragraph of her statement tell that after raping her, when the appellant ran away, she walked down through stairs and then she somehow jumped the wall, and thereafter they met their parents.

35. PW 7 SI Dilbar Singh Negi is the Investigating Officer, who initially investigated the matter. He corroborates the statement of

the victim, wherein in page 4 of the statement, he tells that there is a wall in between and there are staircases also and there only they found the blood.

36. The statements of the witnesses are consistent with regard to the sequence of the events.

37. An argument is made that the victim did not identify the place of incident, which was visited by PW 7 SI Dilbar Singh Negi with PW 1, father of the victim and PW 2, brother of the victim. The incident has to be looked into the totality. What is the distance between the temple and the house of the victim? PW 1, father of the victim tells that there are 3-4 shops in between and PW 2, brother of the victim tells that it takes them five minutes to reach the temple from their home.

38. Site plan, Ex. A-16 is on record. It is proved by the Investigating Officer. From the place of incident through stair cases on the roof top, the place of incident is shown by Letter 'A'. PW 1, father of the victim and PW 2, brother of the victim have categorically stated that after the incident, when PW 3, the victim returned, she narrated as to how she was lifted and taken to roof top through the stairs and raped. The distance between the place from where the victim was lifted and where she was raped was not far. It was in close proximity. It was in the commercial complex near a temple, on the date of *Janamashtami*. Immediately, PW 7, Dilbar Singh Negi visited the place of incident and found fresh blood. The photographs have also been proved by the Investigating Officer. There has been no cross-examination on it. The Forensic Science Laboratory report connects the appellant with the blood, that was

found on the place of incident. On the underwear of the accused and the crime scene, blood was detected. Merely because, PW 7 Dilbar Singh Negi had taken the blood sample from the place without presence of the victim does not doubt the prosecution story on this aspect.

39. The most important question is of identity.

40. PW 1, father of the victim, in para 13 of his statement, has stated that on the way to temple from home, there are shops, residences and electricity lights. He has stated that from where the appellant lifted the victim, there was electricity light. Although, in the site plan, no electricity pole has been shown, but, can it doubt the prosecution case on this aspect? The evidence has to be examined in totality.

41. PW 2, brother of the victim is categorical. In page 7 of his statement, he tells that at the place where the appellant gave him money, it was dark. But, according to him, when the appellant held the hand of his sister, he could see the appellant because there was light. The appellant was identifiable.

42. PW 3 is the victim. In answer to a question, in page 3 of her statement, she identifies the appellant in court. She tells that where the appellant had held her, there was light and there was also light at the place of incident, where she was raped. PW 2, brother of the victim and the PW 3, the victim had immense opportunity and occasion to identify the appellant. After all, it was not hit and go case. The appellant first induced and forcibly sent PW 2, brother of the

victim, away from her under the pretext of getting *Dilbagh*/toffee and thereafter he lifted the victim in his lap, took her at a distance and raped her. There was light on those places, as stated by the victim. They had identified the appellant in court. Therefore, this dock identification is credible. The identity of the appellant is not in crisis. Moreover, the prosecution case is further supported by the forensic examination report.

43. The prosecution has proved that the blood samples that were taken from the spot were lodged at the police station. Ex. A 6 is the general diary entry. The underwear and the undershirt of the victim were also handed over to the lady constable by the doctor, who lodged them into police station and thereafter they were sent for forensic examination. These articles were placed before the court from police custody. The court's letter is on the trial court record, paper no. 24A. A judicial notice shall be taken that the court had forwarded the articles in accordance with law.

44. Not only this, after the articles were sent for forensic examination, an application was given by the Investigating Officer for taking of the blood samples of the appellant and the victim on 09.12.2014. An order of the trial court dated 09.12.2014 (Paper No. 87A) records that the court had permitted to take the blood samples and the court had recorded that the blood samples were taken in the court in the presence of Dr. A.K. Mishra and were sent for forensic examination. The forensic examination report records that the seals were intact. The DNA of the accused and the victim both were matched with the blood samples that were taken from the crime scene and the underwear of the accused. It confirms the complicity of the appellant

with the offence, coupled with the oral testimonies of PW 3, the victim and PW 2, brother of the victim.

45. Arguments have also been raised as to how the appellant was arrested?

46. According to the prosecution case, on 18.08.2014, when the search of the appellant was made, he was spotted by PW 2, brother of the victim and in his presence the appellant was arrested. Though PW 1, father of the victim, at one stage, states that he was also present, but at another stage, he says that he was not with the police when the arrest of the appellant was made (statement of PW 1, father of the victim, para 30). Whatever contradictions have been indicated on behalf of the appellant, they are much minor. They do not affect the prosecution case.

47. In view of the foregoing discussions, this Court is of the view that in fact the prosecution has been able to prove its case beyond reasonable doubt. The court below has not committed any error in convicting and sentencing the appellant. Accordingly, the appeal deserves to be dismissed.

48. The criminal appeal is dismissed.

49. Let a copy of this judgment along with lower court record be forwarded to the court concerned for onward compliance.

(Siddhartha Sah, J.)
23.03.2026

(Ravindra Maithani, J.)
23.03.2026