



2026:AHC:211983

Reserved on 29.5.2026
Delivered on 9.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 891 of 1986

Kanta And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Dhirendra Kumar Srivastava, V. Singh
Counsel for Respondent(s)	:	A.G.A.

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. This criminal appeal was filed in the year 1986 on behalf of the appellants – Kanta and Ramji with a prayer to allow the appeal and acquit the appellants by setting aside the judgment and order dated 13.3.1986 as well as sentence and conviction dated 14.3.1986 passed by IInd Additional District & Sessions Judge, Varanasi in Sessions Trial No.214 of 1983 (State vs. Kanta & Anr.), whereby the appellants were convicted under Section 376(2)(g) IPC and sentenced to undergo ten years, rigorous imprisonment for offence under Section 376 IPC.

2. It is to be noted that during pendency of this appeal, **the appellant no.2-Ramji was reported to be dead and, hence, by the order dated 13.4.2026, this appeal was declared abated against the appellant no.2-Ramji.**

Factual Matrix of Case

3. The prosecution case, as emerges from the FIR dated 10.09.1982, lodged by the victim, wife of Nathe, resident of Mauza Rema, Police Station Alinagar, District Varanasi, is that on 06.07.1982, she was alone in her house and was waiting for her husband and other family members to return.

4. At about 9:00 p.m., when she was present near the main door of her house, the appellants Ramji and Kanta, who were completely drunk, suddenly entered into her house. They closed the door and, threatening her with a knife, both of them committed rape upon her. After committing rape, they escaped from the spot.

5. At about 10:00 p.m., her husband and other family members returned to the house. She narrated the entire incident to her husband. On the same night, she, along with her husband and his elder brother, went to the police station for lodging the FIR, but the police refused to register the case. They waited for some time hoping that the police would take necessary action, but no action was taken. Thereafter, the victim sent a written complaint to the Chief Minister, with copies thereof to the Home Minister, Inspector General, Deputy Inspector General, District Magistrate and Superintendent of Police. On receipt of the complaint, the Senior Superintendent of Police, Varanasi, directed an enquiry. Subsequently, on his intervention, the FIR was lodged on 10.09.1982 as Case Crime No. 110 of 1982, under Section 376 IPC, at Police Station Alinagar, District Varanasi.

6. After investigation, charge-sheet was submitted against both the appellants. Initially, charge under Section 376 IPC was framed against

both the appellants on 25.10.1985. Subsequently, the charge was amended on 23.01.1986 and both the appellants were charged under Section 376(2)(g) IPC. In support of its case, the prosecution examined four witnesses. The victim was examined as P.W.-1 and her husband Nathe was examined as P.W.-2. The Investigating Officers were examined as P.W.-3, S.I. Sri A.K. Singh, and P.W.-4, Sri Ram Bahadur Singh.

Findings of the Learned Trial Court

7. The learned Trial Court convicted both the appellants for the offence under Section 376(2)(g) IPC and sentenced each of them to undergo 10 years' rigorous imprisonment. The learned Trial Court observed that the principal and, in fact, the sole evidence against the appellants was the testimony of the victim. It found that the victim had fully supported the prosecution case and that her testimony remained unshaken during cross-examination. Certain infirmities in the prosecution case were pointed out by learned counsel for the defence. The learned Trial Court considered each of the said points in detail and, after appreciating the evidence on record, found that the said infirmities were not material and did not affect the credibility of the victim's testimony.

8. An objection was also raised before the learned Trial Court that the offence was committed in the year 1982, whereas Section 376(2)(g) IPC, relating to gang rape, was introduced by way of amendment in the year 1983. It was, therefore, argued that the appellants could not have been convicted under the amended provision for an offence committed prior to the amendment. The learned Trial Court considered the said objection and rejected the same. It observed that even under the unamended Section 376 IPC, the punishment could extend to imprisonment for life, whereas the

amendment mainly provided for a minimum sentence of 10 years. On this reasoning, the learned Trial Court held that the conviction under Section 376(2)(g) IPC was legally sustainable and accordingly convicted and sentenced both the appellants.

Submissions on behalf of the Appellants

9. Shri Dhirednra Kumar Srivastava, learned counsel for the appellants has submitted that the prosecution case suffers from unexplained and inordinate delay in lodging the FIR. The incident is alleged to have taken place on 06.07.1982, whereas the FIR was lodged only on 10.09.1982. Though it is stated that the victim had approached the police station immediately after the incident, no satisfactory explanation has been given for such a long delay. It is further submitted that the FIR is quite detailed and contains several facts, which indicate that it was lodged after due deliberation and legal consultation. It is further submitted that the investigation was also delayed and the prosecution has failed to offer any plausible explanation for the same.

10. Learned counsel has next submitted that the testimony of the victim contains material improvements over the FIR. In the FIR, there is no mention as to the source of light by which she could have identified the appellants. For the first time, during her deposition before the Court, she stated that an earthen lamp was burning inside the house. According to learned counsel, this is a material improvement and creates doubt regarding the identification of the appellants.

11. It was also submitted that there is no mention in the FIR regarding any Panchayat having been held in connection with the alleged incident. The victim, however, referred to such Panchayat for the first time during her

deposition. In this regard, reliance has been placed upon the statement of D.W.-1 Nakhru, examined on behalf of the appellants, who stated that a Panchayat had in fact been held. Another submission is that the victim, for the first time during her deposition, stated that she had become unconscious during the incident. According to learned counsel, this fact was material and, if true, ought to have found place in the FIR or in her earliest version.

12. Lastly, learned counsel has submitted that the appellants have been falsely implicated due to existing enmity. There was rivalry between the husband of the victim and the appellants. It is also submitted that there was a land dispute between the grandfather of P.W.-2 Nathe, husband of the victim, and the appellants. According to learned counsel, the said dispute provided a motive for false implication of the appellants in a serious criminal case.

Submissions on behalf of AGA

13. Shri R.K. Singh, learned A.G.A. has supported the judgment and order passed by the learned Trial Court. It was submitted that the testimony of the victim is clear, consistent and trustworthy. She has specifically stated that both the appellants entered her house, threatened her with a knife and committed rape upon her. Her testimony remained substantially intact during cross-examination and no material contradiction has been brought on record which may create doubt about the occurrence. Learned A.G.A. has submitted that merely because the victim is the sole witness of the occurrence, her testimony cannot be discarded. In a case of sexual assault, the testimony of the victim, if found reliable, is sufficient to sustain conviction and no corroboration as a

matter of law is required.

14. As regards the delay in lodging the FIR, learned A.G.A. submitted that the victim had immediately narrated the incident to her husband and thereafter went to the police station along with her husband and his elder brother. The police, however, refused to register the case. She thereafter approached the higher authorities by submitting a written complaint to several authorities, pursuant to which an enquiry was directed and ultimately the FIR was registered on the intervention of the Senior Superintendent of Police. Thus, the delay has been satisfactorily explained by the prosecution and cannot be treated as a circumstance indicating false implication.

15. It was further submitted that the FIR was lodged after the victim had approached the higher police and administrative authorities and, therefore, the fact that it contains details cannot by itself lead to an inference of legal consultation or deliberation. The contents of the FIR have to be considered in the background of the circumstances in which it came to be lodged.

16. Learned A.G.A. has further submitted that the alleged omissions regarding the source of light, Panchayat or the victim having become unconscious are not material contradictions. The FIR is not expected to contain every minute detail of the occurrence. The subsequent clarification regarding the earthen lamp cannot be treated as a material improvement when the core allegation regarding the commission of rape by the appellants has remained consistent.

17. It was also submitted that the defence has attempted to create a case of false implication on the basis of alleged enmity and land dispute.

However, no convincing material has been brought on record to establish that the victim would falsely implicate the appellants in such a serious offence merely on account of an alleged dispute between the parties. On the contrary, the existence of such dispute, if any, may equally provide a reason for the appellants to commit the offence, and in any event cannot by itself discredit the otherwise reliable testimony of the victim.

18. Learned A.G.A. has lastly submitted that the learned Trial Court considered all the objections raised by the defence and, after careful appreciation of the evidence, recorded a finding of guilt. The findings are based upon proper appreciation of evidence and do not suffer from any perversity or illegality warranting interference by this Court.

Conclusion

19. Before proceeding to examine the submissions advanced by learned counsel for the parties and the evidence available on record, certain aspects of the case need to be kept in mind throughout the process of appreciation of evidence.

20. First, the offence in question is alleged to have been committed in the year 1982. The victim is a woman belonging to a Scheduled Caste and the occurrence is alleged to have taken place in a rural area. The manner in which evidence is required to be appreciated cannot be completely divorced from the social and factual circumstances prevailing at the relevant time. In the year 1982, particularly in rural areas, a woman alleging that she had been subjected to rape could not be expected to act in the same manner in which a victim may ordinarily be expected to act today. The social stigma attached to such an allegation, the fear of humiliation and the consequences which such an accusation could have

upon the victim and her family are relevant circumstances while examining her conduct after the occurrence.

21. Therefore, while appreciating the evidence, the Court has to examine the substance and core of the prosecution case rather than insist upon every minute detail having been stated at the earliest opportunity. At the same time, this does not mean that every discrepancy or omission has to be ignored merely because the allegation is one of rape. The evidence has to be tested on the touchstone of consistency, probability and the circumstances brought on record, keeping in view the nature of the offence and the social circumstances in which the occurrence is alleged to have taken place.

22. The testimony of the prosecutrix, therefore, has to be considered as a whole. Minor omissions or variations, which do not affect the basic substratum of the prosecution case, may not be sufficient to discard her testimony. However, where an omission or subsequent improvement relates to a material circumstance having a direct bearing upon the manner of occurrence, identification of the accused or credibility of the witness, the same cannot be brushed aside merely on the ground that the case relates to an offence of rape.

23. The delay in lodging the FIR stands explained from the FIR itself. It was initially a complaint which was not acted upon by the police and was converted into an FIR only after intervention of the higher authorities. The FIR not only contains the allegations regarding the occurrence but also reflects the agony and suffering which the victim and her family had to undergo for getting the case registered.

24. Keeping in view that the occurrence is of the year 1982, the rural

background of the parties and the social status of the victim and her family, it can reasonably be understood that the complaint may have been drafted with the assistance of some other person and the victim and her family members may have been advised to narrate in detail the difficulties and humiliation suffered by them in getting the FIR registered. In these circumstances, the submissions regarding legal consultation, delay in lodging the FIR and delay in investigation lose much of their significance and cannot, by themselves, create doubt in the prosecution case.

25. The first submission relates to the source of light. The omission in the FIR regarding the source of light does not create any doubt about identification of the appellants. The victim was admittedly present at the doorstep of her own house, fully awake and conscious. Both the appellants were residents of the same village and appellant Kanta was her next-door neighbour. Thus, this was not a case where the victim was required to identify unknown persons in darkness. The identity of the appellants was otherwise well known to her. Therefore, the subsequent statement regarding the earthen lamp cannot be treated as a material improvement affecting the prosecution case.

26. As regards the actual commission of rape, the learned Trial Court has rightly observed that no further corroboration is required where the testimony of the rape victim is found convincing and reliable. The victim was subjected to rigorous cross-examination by the defence. This Court has carefully perused her entire deposition, including the questions put to her during cross-examination. The defence went to the extent of asking her even minute and intimate details regarding the alleged act. This Court does not consider it appropriate to reproduce those questions; suffice it to observe that such questioning subjected the victim to a further ordeal in

the courtroom. Leaving aside this aspect, even on a careful examination of her testimony, nothing material has emerged in cross-examination to discredit her version. Her testimony, on material particulars, remains consistent and inspires confidence.

27. As regards the plea of false implication on account of enmity, there is no substantive evidence on record to establish any such enmity between the parties. More importantly, no such suggestion regarding the alleged rivalry or land dispute was put to P.W.-2 Nathe in his cross-examination. The plea of false implication, therefore, remains a bare assertion of the defence and cannot be given any weight in the absence of supporting evidence.

28. As regards the alleged holding of Panchayat, the same is essentially a matter of defence and has no bearing upon the actual occurrence. The acts or events preceding or following the commission of an offence are not, by themselves, relevant unless they fall within the scope of the provisions of the Evidence Act, including Section 8.

29. There is admittedly no mention of any Panchayat in the FIR. However, the victim was specifically cross-examined on this aspect. She stated that on the following day, her husband and brother-in-law (Jeth) called a Panchayat. She attended the Panchayat convened by members of her community and narrated the agony suffered by her, but the appellants refused to comply with the directions given therein. Thus, even if the holding of Panchayat is taken into consideration, it does not affect the core prosecution case or render the testimony of the victim unreliable.

30. In view of the discussion made above, the delay in lodging the FIR stands satisfactorily explained and the allegation of legal consultation

does not, in the facts of the present case, create any doubt. The omission regarding the source of light is also of no consequence, particularly when the appellants were known to the victim and one of them was her next-door neighbour. The alleged enmity has not been established by any evidence and was not even put to P.W.-2 Nathe in cross-examination. The alleged Panchayat, even if accepted, has no bearing upon the actual occurrence or the credibility of the victim.

31. The testimony of the victim, after careful scrutiny, remains consistent on the material aspects and inspires confidence. Nothing substantial could be elicited from her in the lengthy cross-examination so as to discredit her version. Her testimony, therefore, is sufficient to establish the occurrence and does not require any further corroboration.

32. So far as the conviction under Section 376(2)(g) IPC is concerned, the learned Trial Court specifically considered the objection that the occurrence was of the year 1982, whereas the provision relating to gang rape was introduced by the subsequent amendment. It noticed that even under the then prevailing Section 376 IPC, the punishment could extend to imprisonment for life, and the amendment prescribed a minimum sentence of 10 years for the aggravated form of the offence. Thus, the learned Trial Court had considered the said legal objection while recording the conviction. Even if the conviction is examined with reference to the provision under which the appellants were convicted, the same would not provide any benefit to them so far as the sentence awarded is concerned. Keeping in view the gravity of the offence and the manner in which it was committed by the appellants, the sentence of 10 years' rigorous imprisonment cannot be said to be excessive or disproportionate.

33. Accordingly, the findings recorded by the learned Trial Court regarding the commission of the offence by the appellants call for no interference on the ground of appreciation of evidence.

34. In view of the foregoing discussions, **the impugned judgment and order of conviction dated 14.3.1986** passed by IInd Additional District & Sessions Judge, Varanasi in Sessions Trial No.214 of 1983 (State vs. Kanta & Anr.), **is hereby confirmed.**

35. This criminal appeal is, accordingly, **dismissed.** The appellant, namely Kanta, is on bail. The appellant-Kanta is directed to immediately surrender before the concerned court, failing which the court concerned shall issue NBW against the said appellant. If accused appears or brought before concerned court, he shall be sent to jail for execution of his sentences. Bail bond, if any, stands cancelled.

36. Let the copy of this judgment as well as the trial court's record be transmitted to the concerned Trial Court forthwith for necessary compliance. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

(Anil Kumar-X,J.)

October 9, 2026
SK