

Form No. J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta**

**C.R.A. 14 of 2016
With
I.A. No. CRAN 5 of 2022
Tasirul Islam & Ors.
Versus
The State of West Bengal
With
C.R.A. 15 of 2016
Mumtaj Hussain
Versus
The State of West Bengal
With
C.R.A. 52 of 2016
Naimul Hoque
Versus
The State of West Bengal**

For the Appellants: Mr. Arnav Chatterjee,
Mr. Amit Ray,
Mr. Avik Ghosh,
Ms. A. Ghosh.
....in CRA 14 of 2016, CRA 15 of 2016
and CRA 52 of 2016 for Naimul,
Mumtaja and Jahidul.

For the appellants: Mr. Niladri Sekhar Ghosh,
Mr. Marghoob Shalik,
Ms. Sompurna Chatterjee.
Ms. Labani Sikder,
Mr. Souvik Dey.
...in CRA 14 of 2016 for Tashirul Islam.

For the appellants: Mr. Sumanta Ganguly,
Mr. Rajiv Lochan Chakraborty,
Mr. Debapratim Guha,
Ms. Pallavi Chatterjee,
Ms. Anchita Sardar,

Ms. Sneha Bakshi.
...for the appellant no. 3, Md. Batul in
CRA 14 of 2016.

For the State: Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta.

For the de facto:
complainant: Mr. Partha Ghosh,
Mr. Arijit Ghosh,
Mr. Debashis Das,
Mr. Bratin Suin.

Heard on: November 11, 2025 & November 13, 2025.

Judgment on: November 13, 2025.

Rajasekhar Mantha, J.:

1. The subject appeals are directed against the judgment of conviction dated 3rd December 2015 and order of sentence dated 4th December 2015, passed by the learned Additional Sessions Judge, F.T.C. Court No. 1 at Islampur, Uttar Dinajpur in Sessions Trial No. 11/2014 arising out of the Sessions Case No. 143 of 2013. The appellants in the four appeals were convicted under Sections 363/366/376(2)(g)/34 of the Indian Penal Code.

THE PROSECUTION CASE:

2. On 20th April, 2012, the victim girl “X” was going to her school around noon time, to fetch her results of the 11th standard examination. She first, by bicycle, reached her friend’s house, Sikha Pal, (PW-11), to change into her school uniform. She thereafter boarded a rickshaw.

3. On the way rickshaw van, was followed by four persons, namely, Jahidul Rehman, Md. Batul, Naimul Hoque and Tasirul Islam on two motor

cycles. They were preceded by a Maruti van, driven by Mumtaj Hussain. There were four other masked persons in the Maruti van.

4. The rickshaw vanpuller initially picked up speed noticing the chase. He however gradually slowed down as the Maruti Van, followed by the said two motorcycles sped to overtake him.

Jahidul Rehman is stated to have inflicted some blows on "X", when the rickshaw van came close to the said three vehicles. Jahidul then kicked "X" out from rickshaw van and she fell on the road. The Maruti van was also stopped at when the incident was unfolding. Tasirul Islam, Naimul Hoque and Jahidul Rehman came out and put a tape on the mouth of the victim girl and tied her hands, and carried her into the Maruti van.

5. Initially, Jahidul Rehman suggested that the victim should be killed by inflicting fist and blows. The appellants however thereafter changed their mind and drove away with "X".

6. The appellants stopped in front of Kusum Tea Garden and carried "X" into it. They kept on assaulting "X" and laid her on a drain inside the tea garden. They removed the tape on the mouth of the victim, disrobed her and committed rape upon her. "X" deposed that she was raped by at least eight persons. The assailants including the appellants are stated to have bitten the victim on private parts on the victim's torso, scratched the victim and inflicted injuries on various parts of the body while and after the ravaging.

7. After assaulting and committing rape upon the victim, Jahidul Rehman is stated to have initially wanted to kill the victim with a gun. He was however restrained by others who said that noise of the firing would

alert others. Jahidul Rehman tried to strangle the victim "X" by pressing his foot on X'sneck.

8. As a result of assault and rape, "X" was rendered partially conscious. She, however, played dead, when Jahidul Rehman put his ear on her chest to ascertain her heartbeat. Upon being satisfied that the victim had died, the assailants fled the scene.

9. Jahidul Rehman is stated to have come back later to the tea garden on a red motorcycle. Upon seeing that the victim was crying and some tea garden workers had assembled, who confronted him he left the bike and fled.

10. The disrobed and brutally assaulted victim, is stated to have crawled in the drain in mud and slush with a lot of pain and difficulty for some timeand sat at a shed where freshly cut tea leaves werestored.The victim found a discarded net in the drain and wrapped herself in it to cover her modesty. She was left scratched, beaten and was inflicted injuries on her upper part of the body, particularly, her private part by the assailants.

11. Initially, the victim was assumed to be dead by the locals since she was lying on the floor. Subsequently, however, when PW-3, namely, Talamai Soren, a tea garden worker came to the place of occurrence, the victim was found awake. She was given water and some clothes.

12. PW-9, Sadhan Pal, came to the place where the victim was sitting. He was most likely alerted by the other tea garden lady workers about the incident. He informed Samim, a friend of the elder brother of the victim. Samim is stated to have informed the elder brother (**name with-held here**)

of the victim over the telephone of the incident and came to the spot. He took the victim along with others to the Chopra Police Station.

13. The police immediately sent the victim to the Dolua PHC where she was treated by PW-21, Dr. Nikhil Chandra Bhakta. The said doctor found several injuries on the body of the victim including bite marks, scratch marks, abrasions. The victim did not inform PW-21 of any details of the incident nor had named any of her assailants or the number thereof.

14. From the PHC, she was taken to the Islampur Hospital and later to North Bengal Medical College. At North Bengal Medical College, she was once again examined by PW-22, Dr. Samiran Dey, who described several injuries on her body.

15. The initial statement under Section 161 of the Cr. P.C. was recorded by the Chopra P.S. She remained in hospital at North Bengal Medical College for 12 days. Her statement under Section 164 of the Cr. P.C. was recorded on the 14th day before a learned Magistrate. In the said statement as well, as the earlier statement under Section 161 of the Cr. P.C., the victim named 5 appellants but could not name the others.

16. One of the other elders brothers of the victim, PW 20, **(name withheld here)** went to the house of Jahidul Rehman and therein he found the four assailants along with others. One Jahida Khatoon, wife of Nasiruddin, was also present thereat. PW 20, is stated to have been assaulted. PW 20 is stated to have gone there based on the information that the appellants and other assailants of the victim have taken shelter at the house of Nasiruddin.

17. The police arrived at the said house and also found the appellants there. The police later arrested Naimul Hoque, Tasirul Islam and Jahidul Rehman. Mumtaz Hussain and Md. Yayub was arrested later. Md. Batul was absconding.
18. PW 2, the eldest brother of the victim, lodged a formal complaint with the Chopra P.S. and named 9 persons including four unknown persons as the assailants, who committed offence under Section 376 of the IPC, on his sister.
19. Based on the above, Chopra P. S. registered FIR 187 of 2012 dated 28.04.2012 at about 5 to 7 p.m. under Sections 363, 366A, 376(2)(g), 279 and 120B of the IPC. The persons named as accused in the formal FIR were those mentioned in the complaint.
20. The body fluids of the victim and the appellants found on the victim were collected by PW 21 and 22 and given to the Police, who sent it for FSL. Investigation thereafter was completed and chargesheet was filed against 11 persons including the appellants.
21. There were two sets of charges framed by the Trial Judge. The first set of charges was under Section 363 read with Section 34, Section 366 read with Section 34, and 376(2)(g) were leveled against Jahidul Haque, Naimul, Tasirul Islam and Mumtaz Hossain. The second set of charges under Section 212 of the IPC read with Section 34 were against Jamaluddin, Kamaluddin, Ayubali and Jahida Khatoon. The trial commenced.

THE EVIDENCE ON RECORD

22. **PW 1 was the victim X.** She narrated the entire incident, described herein above. She specifically named Jahidul, Tasirul, Naimul, Mumtaz and Md. Batul and four other persons who were masked as her assailants. She also stated that during the commission of the crime, Jahidul threatened that he would kill her brother and the victim could not do anything as, his father was the Anchal President. PW 1 specifically stated that she was beaten so brutally that she was unable to walk, and thus crawled with difficulty over in drain to reach the shed where the tea leaves were being stored. The victim had given the mobile number of her brother by writing on the ground. She stated that she saw Jahidul come to the place of occurrence on a motor cycle after the incident and left after seeing the tea garden workers and tribal women, who had assembled at the spot. Her evidence could not be shaken in cross examination.
23. In cross examination, however, she was asked as to whether she can identify the rikshavan puller. She described him in detail. He was, however, never produced by the prosecution as a witness. The trial court noted the demeanor of PW 1. She was in fact cross examined at length by all the appellants.
24. **PW 2 was the brother of the victim.** She stated that she was informed of the incident by the other brother, PW 5. PW 2 only narrated the events after he took his sister from the tea garden shed to the Chopra PHC. He was cross examined by the appellants.
25. **PW 3 was Talamai Soren, a tea garden worker.** She stated that on the date and time of the incident, she was collecting "Jungli aloo", from the

fields of the tea garden. She noticed a white maruti car on the road, outside the tea garden where 5 to 6 persons were there. She also noticed the legs of women in the car. She thereafter stated that she noticed a muslim boy making round of the tea garden on a red motorcycle. She thereafter saw PW 9 Sadhan Pal coming through the tea garden road. She has identified the said muslim boy as Jahidul in court. Jahidul had left his motorcycle while fleeing away.

26. She further deposed that after she saw the victim without clothes, the other tribal woman came and took possession of the motor cycle of the Jahidul. She came close to the victim and handed over the keys to PW 9, Sadhan Pal, who is stated to have given the same to the police. The police, who have arrived at the scene by the said time had seized the shoes of Jahidul, his sun glasses, motor cycle and the clothes of the victim. She identifies the said items in court. She was cross examined by the appellants.

27. **PW 4 was Sonamoni Hembram, another tea garden worker,** who saw the victim girl coming out in the tea garden. PW 9 is stated to have asked for clothes for the victim. PW 4 gave a nighty and petticoat to the victim. She found the victim crying by which time the police and the brother of the victim have arrived. She also gave water to the victim.

28. **PW 5 was the Gautam Chakraborty, a Panchayat Member.**

29. **PW 6 was Shyamal Soren.** He saw the victim without clothes in the tea garden and returned to his house when he met PW 9 and asked for garments for the victim from PW 4. He confirmed the presence of PW 4 and PW 3 at the place of occurrence. He was cross examined by the defence.

30. **PW 7, Paziuddin, was a local cultivator. PW 8 was Azizul Haque, another local cultivator.**
31. **PW 9 was Sadhan Pal,** who had taken the said portion of Kusum Tea Garden on lease and was running it. He recollected that around 1.30 p.m. on the 28.04.2012, he heard some cries in the tea garden of a labourer, Sharmila Barman. The victim was found to have wrapped herself in a net. He confirmed that he saw PW 4 and requested her to give the victim some clothes. He found Jahidul near the motor cycle talking to an old lady. He found number of people having gathered at the tea shed.
32. **PW 10 was Gita Pal, mother of the Sikha Pal, a classmate of the victim.** She confirmed that the victim used to come to her house to keep her bicycle. She further confirmed on the date of incident the victim changed her clothes into a school uniform and left.
33. **PW 11 was Sikha Pal, the friend of the victim.** She confirmed that the victim was her classmate. She was in B.A. 1st year at the time of her deposition. She has deposed that perhaps the victim also went school on that fateful day to collect her mark sheet of Class 11. She found after coming from the school that the victim had left her bicycle in her house and heard about the incident.
34. **PW 12 was Sharmila Barman, who was the labourer of the tea garden.** She confirmed having seen the victim weeping in the tea garden shed, adjacent to the drain in the tea garden. She confirmed that she gave some water from her bottle and became scared looking at the victim without

clothes. She confirmed the presence of Sonamani Hembram, PW 4 , who gave clothes to the victim. She was cross-examined by the appellants.

35. **PW-13 was Binni Burman another Tea Garden Worker.**

36. **PW-14 was Mallika Saha Headmistress of Chopra Girls High School.**

She confirmed that she had issued the School Certificate in favour of the victim based on the school Records and registers. The victim's date of birth was recorded in the certificate, issued by PW-14.

37. **PW 15, Amit Kunar Bhagar, was the teacher in the school of the victim.** He has deposed that the PW 14 has issued the said school certificate to the police.

38. **PW-16 was Niren Singha witness to the seizure list of the School Leaving Certificate.**

39. **PW-17 was Kalyan Kanti Sarkar the scribe of the complaint.** He is stated to be a professional scribe, writing complaints for the people. He confirmed that he had written a complaint on being approached by the brother of the victim, PW-3 and seven other persons. He mentioned that the two motorcycles along with their registration numbers in his complaint.

40. **PW-18 was Md. Jalal a businessman.** He was a witness to the seizure list of Maruti Van from the House of Mamtaj.

41. **PW-19 was Sahid Hussain another witness to the seizure** of the Maruti Van, who named its colour as silver.

42. **PW-20 was another brother of the victim.** He has deposed that he received information over telephone from someone that his sister, the victim, was kidnapped. He informed his older brother, PW-2 of the same. He

reached the place of occurrence and was informed by the local tribal women workers in the Tea Garden of the incident. He saw his sister at the place of occurrence in a bleeding condition and was weeping. He has deposed that the tribal women had informed him that Jahidul had come to the place of occurrence to ascertain if the victim had died and had fled the scene later. He was caught by Adivasi women but fled anyway leaving his motorcycle thereat.

43. He has further deposed that he along with some other boys went to the house of Nasiruddin where he found Jahidul Rahaman, Jahida Khatun, Jamaluddin, Kamaluddin, Md. Ayub and Momtaj Hussain present there. He further deposed that the other persons, namely, Jamaluddin, Kamaluddin, Ayub Ali and his wife Jahida Khatun and other persons were present with arms and weapons. He was attacked when he tried to enter the house and fled away for fear of his life. He later found that the police had entered into the house of Nasiruddin. Police seized the motorcycle of Nasiruddin parked at the house. He was cross-examined extensively by the appellants.

44. After the arrest of Md. Batul, charges were framed against him similar to those against three appellants.

45. PW-1 to PW-4 and PW-20 were recalled to depose against Md. Batul and deposed afresh. There was naturally some minor variance in the depositions of PW-1 to PW-4 and PW-20 from their depositions earlier. The appellants and other, namely, Md. Batul were not present when the evidence against him was being recorded.

46. Prior thereto in the first round of trial, **PW-21, was the Doctor Nikhil Chandra Bhakta**. He has deposed that he examined the victim first at Islampur Sub-Divisional Hospital. He found the following injuries on the body of the victim:

“On examination, I found one scratch mark and abrasion on left illese crest and left scapula, on pressure abrasion on right scapular region, two cresentic nail mark on left side of the neck, 2 inches lateral to the mid line and one crescent nail mark on right side of the neck ½ inches lateral to the mid line, bite mark around the chain, abrasion with cresentic nail mark on the left breast, one on upper lateral quadrant 2 inches away from the nipple and one on lower medical part, other nail mark on the lateral side bellow areola and scratch mark on lateral part on the right upper thigh and right buttock.

I preserved swab from vagina, public hair, libiamajora. After careful examination, hymen was found ruptured. No foreign particle was found from the private parts. Vaginal swab was handed over to police personnel and was referred to radiological department for ascertainment of the age of the victim girl.”

47. The victim, however, did not indicate any history of assault or name any of the appellants to the PW 21. The victim was examined on 28th April, 2012 i.e. the date of the incident.

48. **PW-22 was Dr. Samiran Dey, who was posted as Senior Gynecology at the North Bengal Medical College and Hospital**. He examined the victim, who told him that she was assaulted by eight persons for which she could identify three. PW-22 found the following injuries on the body of the victim:

“The patient was conscious, alert and co-operative.

1. One scratch mark about 1/2" x 1/10" directed downward about 2 and 1/2 below the left angle of mandible and about 3 and 1/2 inch medial end of left clavical.
 2. One scratch mark about 1/3" x 1/10" situated 1/2 " medial to above injury mentioned.
 3. One scratch mark about 2 mm x 2mm situated 2" left lateral from mid line and 3" about medial end of the left clavical.
 4. One lacerated injury over the chin of about 1 1/2" x 2 1/2" with prominent depressed area with tenderness.
 5. One abrasion about 3" x 1/6th inch started from medial end of left clavical directed downwards laterally.
 6. One abrasion of about 1/3" x 1/8" in upper and outer quadrant of left breast directed downwards and laterally.
 7. Tender swelling of left knee joint.
 8. Bluish contasim of about 3 and 1/2" x 1" directed downwards and medially over the right chest wall (9 mm x 11 mm to intercoastal space). 2" lateral from mid right clavical line.
- Swelling + tenderness ++
9. One scratch mark over the left scapular, just literally from mid clevical line and 2nd and 3rd intercoastal space.
 10. One scratch mark about 1/2" x 1/10" inch just 3" below the right Ant. Suprior iliac spire.
 11. One scratch mark of about 2mm x 2mm 6" right lateral to mid line and 4" below the Ant. Sup. Illiac Spire.
 12. One scratch mark of about 4 mm x 1 mm convexity upward and downwards over gutial region – 6" right lateral from mid line at back & 4" below the right Ant. Sup. Illiac Spire.
 13. One abrasion about 2" x 2" – 3" above left lateral.

Genital Examination

1. Pubic Hair – Present.
2. Labia Majora and Minora – No injury found.
3. Hymn – No fresh injury found only hymnal tag found.
4. Vagina – Capious introducing 2 fingers.
5. No bleeding P/V and no foreign body found.
6. Perinium – intact.
7. Vaginal and perineal swab taken and handed over to police at Islampur S/D Hospital as per referal public hair and nail scrapping taken.

Case history was (as per patient statement) that she was assaulted by 8 (eight) persons on 28.04.12 at 11:30 am near Chopra Veterinary Hospital.

This is the report prepared by me with my handwriting and signature (Exhibit-7)."

57. In answer to the questions posed by the Court, he deposed that given the fact that the victim had a history of physical relations, it could not be conclusively opined as to whether the victim suffered the offence under Section 376 of the Indian Penal Code on herself.

49. **PW-23 was the first Investigating Officer of the case.** He narrated the entire steps taken by him during.

50. **PW-24 was Rajusilvster Chhetri.** He was the second Investigating Officer of the case.

51. The appellants were examined under Section 313 of the Code of Criminal Procedure. One of the appellants, namely, Tasirul has stated that he was being framed as an accused out of a political rivalry by the family of the victim. Admittedly, pre and post the incident there was rivalry both political and otherwise between the victim's family and that of the appellants.

52. Based on the evidence on record, the Forensic Science Laboratory report and more particularly the deposition of victim girl and that of the PW-3 and PW-4, the learned Trial Judge came to a conclusion that five appellants were guilty of the offence under Sections 363/366/376(2)(g) read with Section 34 of the Indian Penal Code. The other accused persons were acquitted.

ANALYSIS OF THIS COURT

53. This Court has heard the arguments at length advanced by the three learned Counsels appearing on behalf of the appellants.

54. The first argument advanced is that it transpired from the investigation that Jahidul Rahaman had taken pictures of the victim without clothes after the incident. The mobile phone, however, was not seized. Such

omission on the part of the Investigating Officer of the case, would throw up questions as regards the offence committed by the appellants.

55. This Court is of the view that the pictures on the mobile phone would at best indicate the condition of the victim after the incident. Her condition has been clearly described PW-4 and PW-5. The absence of the mobile phone would not seriously prejudice the case of the prosecution.

56. The main thrust of the arguments of the appellants, however, is twofold. Firstly, the victim had not stated or named any of the appellants having perpetrated the offence under Section 376 of the Indian Penal Code on her in her complaint and 161 statement.

57. PW-21, the first Medical Officer, who examined the victim, did not mention any history of sexual assault or even made any attempt to ascertain the same from her.

58. Even PW-22, who next examined the victim, only recorded that she was assaulted by eight persons, three of whom, she may have recognized. The names of such persons have not been recorded in the examination sheet of PW-22. In fact PW-22 has deposed that the victim has a history of physical relations.

Learned counsels for the appellants have argued that when the aforesaid is considered in light of the deposition of PW-22, that it cannot be conclusively said that as to whether the offense under Section 376 of the Indian Penal Code was committed on the appellants, the appellants should have been acquitted. argued that the medical evidence does not even contain an iota of proof against the appellants on the point of rape.

59. This Court notes that the victim had a history of physical relations prior to the incident. The examination of the victim was conducted by two Medical Officers immediately after the incident, reveals that there were bite marks on the chin and private parts of the victim. There were injuries inflicted by finger nails. The FSL indicates the presence of spermatozoa in the residual fluids in the victim that were collected by the medical doctors who examined the victims. The said evidence coupled with the evidence of the victim and that of PW 4 & 5 and the two medical officers PW21 and 22 clearly establish the prosecution case. The absence of the appellants having been named before the Medical Officer would not ipso facto negate the occurrence of the offence.

60. This Court is reminded of the decision of the Hon'ble Supreme Court of India in the case of ***The State of Punjab Vs. Gurmit Singh and Ors.*** reported in ***(1996) 2 SCC 384*** particularly paragraphs 8, 16, 21 thereof and the case of ***Deepak Kumar Sahu Vs. State of Chhattisgarh*** reported in ***2025 SCC OnLine SC 1610*** particularly paragraph 5.3.3 thereof and the decision of ***Phool Singh Vs. The State of Madhya Pradesh*** reported in ***(2022) 2 SCC 74*** particularly paragraphs 5, 10, 11 thereof.

61. The law on the subject is well settled that a conviction under Section 376 can be based on the sole evidence of the victim. In the instant case, not only is the evidence of the victim definite, specific and sound, but is duly corroborated by her statement under Section 161 before the police and under Section 164 of the Cr.P.C. before the Magistrate. The said evidence seen in

the light of the evidence of PW-4 & 5 and PWs-21 and 22 leave no room for doubt as regards the crime against the victim by the appellants.

62. The argument of learned counsel for the appellants that the statement under Section 161 of the Cr.P.C. is not conclusive evidence is not acceptable since the same is duly corroborated and is consistent with the statement of the victim under Section 164 of the Cr.P.C. before the Magistrate. Her clear and unequivocal deposition twice on two occasions before the Trial Court only fortifies the prosecution case. The second time that the victim was called to depose was on recall by the prosecution.

63. It is next argued by the learned counsel for the appellants that the statement of the victim under Section 164 of the Cr.P.C. ought to have been proved by the magistrate and not by the victim.

64. This Court does not find any basis of such an argument. While it is true that the matter of practice a statement under Section 164 of the Cr.P.C. given by a victim or a witness is generally proved by the judicial magistrate before whom the same is recorded, the contents of such statement and recording thereof can equally be proved by the person who gave such statement. The said argument even otherwise cannot be raised by the appellants since no objection was formally registered by the Trial Judge in this regard.

65. In so far as the argument that the statement under Section 164 was recorded two weeks after the incident, one cannot ignore the fact that the victim was in North Bench Medical College for a period of 12 days after the incident. It only a person in good health and state of mind, can be recorded

by a magistrate under Section 164 of the Cr.P.C. In the instant case, such statement was recorded before the learned magistrate after recovery of the victim.

66. Learned counsel for the appellants next argued that the FSL report, which has admitted the presence of the body fluids of a male and the medical report of the appellants demonstrating their capability to have physical relations with a girl, have not been proved in accordance with the usual practice. The person, who has signed the report, was not brought in evidence to prove the same.

67. The aforesaid ground was not urged before the Trial Court. The initial FSL report was exhibited with objection from the counsel for the appellants. However, when the appellants' counsel cross-examined the police officer in respect of the FSL report, who received the same from the laboratory, the FSL report must be deemed to have been admitted by the appellants. The said FSL report has, therefore, rightly marked as an exhibit by the Trial Court. Even otherwise, a mechanical objection against the admission of a document will not constitute an objection in law. The precise grounds for objection must be indicated before the Court. The Court can then only pronounce upon the admissibility of a document. The FSL report is not alleged to be fabricated or manufactured.

68. The receipt of the FSL report having been lawfully proved by the police officer and the attempted cross-examination based thereon by the counsel for the appellants in the Trial Court makes the same an admissible evidence that has been duly exhibited in the Trial Court. This Court can even otherwise

take judicial notice of such FSL report and the contents of the same. The decision in **Santosh v. State (NCT of Delhi), reported in (2023) 19 SCC 321** may be referred referred in this regard:-

69. In such a scenario, the net result would be that the FSL report, which was provided by a government scientific expert specified in Section 293 of the Code, was admissible **regardless of the fact that the expert was not examined as a witness. More so, when the defence filed no application to summon the expert for cross-examination.** Consequently, the finding of the High Court with regard to the FSL report being inadmissible is erroneous and is, accordingly, set aside.

Emphasis applied

69. Learned counsels for one of the appellants, Tasirul Islam, have made strenuous efforts to assail the findings of the Trial Court. They have firstly argued that the victim and her brothers had admitted before the investigating officer as well as in the Trial Court that they had known Tasirul either from childhood or as seen by the victim girl in school function at the village. The non-mention of Tasirul in the complaint or before the medical officer, throws up serious questions on his being named as accused in the offense.
70. This Court has considered the statement of the victim under Sections 161 and 164 of the Cr.P.C. where she has clearly named Tasirul Islam as one of the assailants. She has clearly named the other three appellants as also the name of Momtaj Hossain as the driver of the Maruti Van. She identified Momtaj Hussain in the TI parade.
71. Her statement in course of evidence against the accused Md. Batul appears to be more of a miss-recording that she did not name the four appellants to her brother. The next statement as a continuation of her evidence would clearly establish the same, where she stated the names of Tasirul Islam,

Jahidul, Naimul Hoque and Md. Batul as her assailants. The said argument of learned counsel for the Tasirul Islam, therefore, cannot be accepted.

72. The argument that there is some exaggeration in the complaint as argued by learned counsel for the appellants is duly countered by the learned counsel for the State as well as learned counsel for the de facto complainant. This court clearly sees that there is in fact no exaggeration whatsoever in the written complaint against the appellants.

73. It has transpired from the evidence of PW 20 that he wants on looking for Jahidul in the house of Nasiruddin and was attacked and fled the same fearing for his life.

74. The contents of the complaint, therefore, cannot be deemed as an exaggeration except for a narration of facts. The decision of the Supreme Court in **Prabhu Dayal v. State of Rajasthan, reported in (2018) 8 SCC 127** may be referred to in this regard:-

20. The Court can separate the truth from the false statements in the witnesses' testimony. In *Leela Ram v. State of Haryana* [*Leela Ram v. State of Haryana*, (1999) 9 SCC 525 : 2000 SCC (Cri) 222] , this Court held as follows : (SCC p. 534, para 12)

"12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

75. The last argument advanced by the learned counsel for the Tasirul Islam that this Court cannot ignore the rivalry between the families which also had a political colour. Hence, the possibility of the victim and her father

implicating Tasirul in particular and the other appellants in the instant case cannot be ruled out, is not acceptable. In **Khema v. State of U.P., reported in (2023) 10 SCC 451** it was held as follows:-

22..... It is further to be noted that even according to the prosecution, there is previous enmity between the accused and the deceased. As held by this Court in Ramashish Rai v. Jagdish Singh [Ramashish Rai v. Jagdish Singh, (2005) 10 SCC 498 : 2005 SCC (Cri) 1611] , **previous enmity is a double-edged sword. On one hand, it provides motive to the crime and on the other, there is a possibility of false implication.**

Emphasis applied

76. The aforesaid argument could cut either way. Merely because of political rivalry exist given the evidence of the victim corroborated by the evidence of the two medical officers and the FSL report and that of PW 3 and PW 4, this Court is of the clear and unequivocal view that the prosecution has been bring home the charges against the appellants. In **Sudha Renukaiah v. State of A.P., reported in (2017) 13 SCC 8**, it was held that :-

39. However, when there are eyewitnesses including injured witness who fully support the prosecution case and proved the roles of different accused, **prosecution case cannot be negated only on the ground that it was a case of group rivalry. Group rivalry is a double-edged sword.**

Emphasis Applied

77. Learned counsels for the appellants would lastly argue that this Court must take note of the age of the appellants in so far as the sentencing part is concerned. Admittedly the appellants were in the range of age between 24 to 27 at the time of commission of offence. They are in custody for more than 10 years. Md. Batul is in custody for more than 11.5 years. This Court should take a slightly lenient view and reduce the sentence of the appellants to the

extent that they have already served incarceration. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Raju alias Umakant Vs. State of Madhya Pradesh** reported in **2025 SCC OnLine SC 997**, **Thongam Tarun Singh vs. State of Manipur** reported in **(2019) 18 SCC Page 77** and a decision of coordinate Bench in the case of **Bablu Sarkar Vs. State of West Bengal** reported in **2018 Supreme (Cal) 831**.

78. This Court has carefully considered the facts of each of the said cases. In so far as the **Raju alias Umakant (supra)** decision is concerned, this Court notes that there were charges framed against the appellants therein, both under Section 376(2)(g) of the I.P.C. and under the provisions of the SCST Act, the charges under the SCST Act not having been proved, had waived heavily with the Hon'ble Supreme Court.

79. In so far as the decision of **Thongam Tarun Singh (supra)**, this Court notes that the conduct of the appellants therein, in course of incarceration, was considered and the punishment under Section 376(2)(g) of the I.P.C. prior to amendment, was also considered.

80. This Court notes that in the said cases including the case of **Bablu Sarkar (supra)** are distinguishable on facts. It is now well-settled that the ratio of each decision must be looked at in the peculiar facts and circumstances of the case. This is more so in the decision of criminal law.

81. At the time of sentencing, the Court takes note of the crime and the criminal. The abhorrent nature of the crime has already been noted above. How the crime was executed warrants a further reference to examine the

appropriateness of the punishment imposed. The following circumstances under which the crime has been committed are as follows -

- A. The appellants and other assailants made themselves aware of the route and routine of the victim X to reach school. The victim used to first go to her friend's house, park her cycle and change herself into her school uniform and then proceed to school. The appellants, therefore, chalked out a plan. They followed the victim from her friend's house;
- B. The appellants and other assailants came with two motorcycles and one Maruti van. The Maruti van had four masked persons. The appellants and assailants, therefore, had a clear intention to commit the offense, which they ultimately carried out. They intimidated the victim by sheer numbers. They thus organized themselves to commit the crime;
- C. The appellants, in collusion with each other, had initially desired to kill the victim. They changed their mind and committed offences under Section 376(2)(g) of the I.P.C. thereof. The appellants mercilessly beat the victim and committed rape upon her. The assault was with a view to overpowering her. As many as 8 people committed rape on her. The appellants therefore had a depraved mindset. They unleashed their lust upon the victim. The present case is of a gang rape, rendering the case extremely serious and a bane to society;
- D. After committing the offence of gang rape on the victim, one of the appellants suggested killing the victim by firing bullets. The others present suggested that the firing bullet would alert the people. The foot of one of the assailants was thus pressed on the neck of the victim to

strangulate her. The victim escaped with presence of mind and courage. The appellants therefore, were in control of their senses since they understood the consequences of firing a bullet. The appellants, however unleashed their senses of lust on the victim;

- E. One of the assailants of the victim said that the victim would not be able to do anything to him since he would kill the brother of the victim. He said that he will get away with the murder of the brother of the victim since his father is the Anchal President. The appellants thus were inebriated with power, might and numbers. The appellants did not have any fear or remorse of the consequences of their actions.
- F. The victim feigned death, and it was only after finding no heartbeat or breathe that the appellants left the scene. Had the victim shown any sign of life, she would have invariably killed on that day;
- G. The appellants did not show remorse or fear, as one of them came to back to the scene of the crime, immediately after the incident, to confirm whether the victim had died or not. He fled after seeing the number of tribal women workers in the tea shade, who had assembled at the place of occurrence.
- H. Had the victim not crawled out of the place of occurrence to the tea leaf shade where the other workers were present and come to her rescue, the appellants would not have spared the life of the victim. The appellants committed the horrific offence blatantly and with complete disdain. The actions proved against the appellants is obnoxiously heinous and gruesome.

93. Considering the circumstances in light of the principle of sentencing laid down in **State of M.P. v. Munna Choubey, reported in (2005) 2 SCC 710**, this Court is of the unequivocal view that justice in the present case can only be served if the punishment imposed is upheld. The present case calls for no mercy. Paragraph nos 9, 10, 13 and 15 of **Munna Choubey decision (supra)** are set out below:-

9..... Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. **The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.**

10. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.* [(1991) 3 SCC 471 : 1991 SCC (Cri) 724 : AIR 1991 SC 1463]

13. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle McGautha v. State of California* [402 US 183 : 28 L Ed 2d 711 (1971)] **that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime.** In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

15. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. **The social impact of the crime e.g. where it relates to offences against women,** dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral

delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

Emphasis Applied

82. This Court is, therefore, not inclined to reduce the sentence of the appellants.

83. For the reasons stated hereinabove, the aforesaid Criminal Appeals being C.R.A. 14 of 2016, CRA 15 of 2016, and CRA 52 of 2016 fail and are hereby dismissed.

84. In view of dismissal of the aforesaid appeals, all the connected applications shall stand dismissed.

85. If the appellants are on bail they shall forthwith surrender before the jurisdictional Court, or they shall be taken into custody forthwith to serve the balance of their sentence.

86. The trial court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

87. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)