HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2106 of 1986

Raghunath Pandey And Others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Amar Nath, Anil Kumar, Brajesh Kumar Dwivedi, Krishna Dev Mishra, P.N. Mishra, Pawan Kumar Tripathi, Pradeep Kumar Upadhyay
Counsel for Respondent(s)	:	A.G.A.

Judgment Reserved on 21.09.2026
Judgment Delivered on 23.10.2026

Court No. - 88

HON'BLE ABDUL SHAHID, J.

1. Heard Sri G.S. Chaturvedi, learned Senior Counsel, assisted by Sri Pradeep Kumar Upadhyay, learned counsel for the appellants, and Sri Mohd. Shoeb Khan, learned A.G.A. for the State.

2. This criminal appeal has been filed against the judgment and order dated 05.08.1986 passed by the learned VII Additional District and Sessions Judge, Azamgarh, in Sessions Trial No. 125 of 1984 (State of U.P. v. Raghunath Pandey and Others), whereby Appellant Nos. 1 to 3, namely, Raghunath Pandey, Mata Baksha Singh, and Keshav Pandey, were convicted under Sections 376, 366, and 368 IPC and sentenced to ten years' rigorous imprisonment, five years' rigorous imprisonment, and five years' rigorous imprisonment, respectively. Appellant No. 4, Smt. Betli alias Kutki, was convicted under Sections 366 and 368 IPC and sentenced to five years' rigorous imprisonment under each section. All the sentences imposed upon the appellants were directed to run concurrently.

3. The prosecution case, as unfolded, is that the complainant lodged an FIR alleging that on 26.09.1980, at around 9:30 p.m., his sister went behind the house to relieve herself but did not return home. He and his family searched for her throughout the night and the following day but could not trace her. On the evening of 27.09.1980, the complainant deployed people in all four directions of the village to search for her. At

around 8:00 p.m., while hiding behind a culvert (*puliya*) situated to the west of the village, the complainant, along with Mithai alias Darbari, Mohan, Rambali, and Bholi, spotted the accused persons. The accused, namely, Mata Baksha Singh, Keshav Pandey, Raghunath Pandey, and Betli alias Kutki, all residents of the complainant's village, were forcibly taking his sister towards Village Khajuri. When the complainant and the others switched on their torches and rushed forward, shouting for the accused to be apprehended, Mata Baksha Singh and Keshav Pandey managed to flee and could not be apprehended at the spot. However, the complainant and his companions managed to apprehend Kutki Bharin and Raghunath Pandey. Hearing the commotion, several villagers arrived at the spot and witnessed the incident. The complainant's sister was found with a piece of cloth stuffed into her mouth and her hands tied. Upon removing the cloth and untying her hands, she stated that when she had gone out to relieve herself the previous evening, Kutki approached her and engaged her in conversation before suddenly grabbing her by the hair. Simultaneously, Mata Baksha Singh, Keshav Pandey, and Raghunath Pandey emerged from behind the embankment (*medh*), overpowered her, stuffed a piece of cloth into her mouth, and forcibly took her to the upper floor (*kotha*) of Raghunath Pandey's house. She further stated that during the night, Mata Baksha Singh, Keshav Pandey, and Raghunath Pandey repeatedly raped her in turns. They kept her confined there throughout the day and, as night fell, attempted to take her towards Village Khajuri with the intention of making her disappear. The complainant took the apprehended accused, namely, Kutki and Raghunath Pandey, directly to the police station.

4. In the presence of witnesses Shri Rajnath Pandey, son of Shri Kuldeep, resident of Bhikhampur Khajura, Police Station Mehnagar, Azamgarh, and Shri Vanshraj Yadav, son of Sumer Yadav, resident of Karhenua, Police Station Mehnagar, Azamgarh, the girl, Jayamala Devi alias Bachiya, daughter of Ram Dayal Ram, resident of Bhikhampur Khajura, Police Station Mehnagar, Azamgarh, was handed over to her mother, Smt. Jadia, wife of Ram Dayal Ram, and her brother, Kamta Prasad, son of Shri Ram Dayal Ram, residents of Bhikhampur Khajura, Police Station Mehnagar, Azamgarh, in connection with Case No. 158 under Sections 368, 366, and 376 IPC. They were instructed to produce her whenever

summoned by the Court or the police.

5. In the presence of witnesses Shri Ramashray Singh, Village Pradhan, son of Magru Singh, and Shri Rajnath Pandey, son of Kuldeep, residents of Village Bhikhampur Khajura, Police Station Mehnagar, Varanasi, the complainant, Shri Kamta Prasad, son of Ram Dayal, resident of Bhikhampur Khajura, Police Station Mehnagar, Azamgarh, produced his three-cell torch in working condition.

6. The torch was handed over to the police for inspection and was subsequently returned to the complainant. A memo recording the transaction was prepared in the presence of the witnesses, and their statements were recorded for the purposes of the proceedings.

7. Learned Senior Counsel for the appellants submits that the FIR was registered against four accused persons, all of whom were convicted and sentenced by the learned trial court. All four accused persons preferred the present criminal appeal. However, Appellant Nos. 1, 2, and 4, namely, Raghunath Pandey, Mata Baksha Singh, and Smt. Betli alias Kutki, have died during the pendency of the appeal. Accordingly, the appeal, insofar as it relates to the aforesaid appellants, stands abated. Appellant No. 3, Keshav Pandey, is the sole surviving appellant.

8. Learned Senior Counsel submits that the incident occurred in 1980, approximately 46 years ago. The sessions trial commenced in 1984 and concluded in 1986. He contends that the trauma suffered by the surviving appellant throughout the prolonged period of litigation deserves consideration. He further submits that the surviving appellant, Keshav Pandey, was not arrested at the spot and is alleged to have fled from there. The incident allegedly occurred on 26.09.1980 at around 7:30 p.m., whereas the FIR was lodged on 28.09.1980 at 3:05 a.m. under Sections 376, 366, and 368 IPC. He next contends that the prosecution case rests primarily on the testimony of the prosecutrix, which is not corroborated by the medical evidence.

9. Learned Senior Counsel for the appellant has also submitted that P.W.-1 to P.W.-3 turned hostile and did not support the prosecution case. P.W.-4 is the prosecutrix herself. He contends that she did not sustain the

injuries alleged by her. Referring to her testimony, he submits that although she stated that her hands had been tied with a rope, no injury marks were found on her wrists.

10. Learned Senior Counsel for the appellant has next submitted that the injuries allegedly sustained by the prosecutrix are not corroborated by the medical evidence. Although she stated that her hands had remained tied, no abrasions were found on her hands. He also contends that there was a delay of more than 24 hours in lodging the FIR, which has not been satisfactorily explained. As per the check FIR, the incident allegedly occurred on 26.09.1980 at 7:30 p.m., whereas the FIR was registered on 28.09.1980 at 3:05 a.m., despite the police station being situated only six kilometres from the place of occurrence.

11. Learned Senior Counsel for the appellant, therefore, argues that the prosecution has failed to prove its case beyond reasonable doubt. He submits that the findings recorded by the learned trial court are perverse and liable to be set aside. Accordingly, the criminal appeal deserves to be allowed.

12. Per contra, Sri Mohd. Shoeb Khan, learned A.G.A. for the State, contends that the prosecutrix is the best witness and has fully supported the prosecution case. She has specifically deposed against all four accused persons, including the surviving appellant, Keshav Pandey. He further submits that the prosecutrix sustained injuries.

13. Learned A.G.A. also contends that the prosecutrix was married at the time of the alleged incident and her husband deserted her thereafter. Consequently, she suffered physical and mental trauma. He submits that the prosecution evidence is sufficient to sustain the conviction and the learned trial court passed a reasoned and well-considered judgment. The impugned judgment and order, therefore, warrants no interference, and the criminal appeal is liable to be dismissed.

14. Rambali, who deposed as P.W.-1, stated that about five years earlier, there had been a rumour in the village that some persons had abducted the prosecutrix. However, he could not ascertain who had taken her away. He further stated that he had not personally witnessed the accused persons

abducting or taking the prosecutrix with them. Consequently, he was declared a hostile witness.

15. Bhola, who deposed as P.W.-2, stated that about five years earlier, a commotion had arisen in the village regarding the alleged abduction of the prosecutrix by certain persons. However, he had not personally witnessed who had abducted her. He categorically stated that he had neither seen the incident himself nor witnessed any of the accused persons, who were present before the Court, abducting or accompanying the prosecutrix. Accordingly, he was declared a hostile witness.

16. Jagmohan, who deposed as P.W.-3, stated that a commotion had arisen in the village regarding the alleged abduction of the prosecutrix by certain persons. He clarified that he had not personally witnessed anyone abducting the prosecutrix or seen her accompanying anyone. Consequently, he was also declared a hostile witness.

17. In view of the above, it is evident that P.W.-1 to P.W.-3, who were alleged to be eyewitnesses to the incident, did not support the prosecution case and turned hostile during their examination-in-chief. However, their testimony indicates that a commotion had arisen in the village regarding the alleged abduction of the prosecutrix by certain persons. Their statements, therefore, do not establish the identity of the persons who allegedly took her away.

18. Consequently, the question of whether the prosecution has established the involvement of the surviving appellant, Keshav Pandey, in the alleged offences must be examined in the light of the testimony of the prosecutrix and the other evidence available on record.

19. The Hon'ble Supreme Court, in **Mohd. Imran Khan v. State (Govt. of NCT of Delhi), (2011) 10 SCC 192**, held in paragraph 22 that it is settled law that a woman who is the victim of sexual assault is not an accomplice to the crime but a victim of another person's lust. The victim stands on a higher pedestal than an injured witness because she suffers emotional injury.

20. It has been held in **State of Maharashtra v. Chandraprakash**

Kewal Chand Jain, AIR 1990 SC 658, and reiterated in **State of U.P. v. Pappu alias Yunus and Another, AIR 2005 SC 1248,** and **Vijay alias Chinee v. State of M.P., (2010) 8 SCC 191**, that courts must remain conscious of their responsibility and be sensitive while dealing with cases involving sexual molestation.

21. Rape is not merely a physical assault; rather, it often affects the entire personality of the victim. The perpetrator degrades the very soul of a helpless woman. Therefore, the testimony of the prosecutrix must be appreciated in the context of the entire case. In such cases, the non-examination of other witnesses may not constitute a serious infirmity in the prosecution case, particularly where those witnesses had not seen the commission of the offence.

22. The Hon'ble Supreme Court, in **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384**, held that while evaluating evidence, courts must remain conscious of the fact that in a case of rape, no self-respecting woman would ordinarily come forward to make a humiliating statement against her honour, such as one involving the commission of rape upon her.

23. Similarly, in **Wahid Khan v. State of M.P., (2010) 2 SCC 9**, the Hon'ble Supreme Court observed that a girl or woman in Indian society would not ordinarily make such allegations against a person without cause, being fully aware of the social repercussions. If the allegation is found to be false, she may face social stigma and ostracism. Therefore, unless an offence has actually been committed, a woman would generally be reluctant even to disclose an incident that may adversely affect her reputation and social standing.

24. Learned counsel for the appellants has placed considerable reliance on the judgment in **Javed Masood v. State of Rajasthan, (2010) 3 SCC 538** , wherein it was held that where a prosecution witness makes a statement and is not declared hostile, the statement is to be evaluated in accordance with the settled principles governing the appreciation of evidence.

25. The injury report of the victim is Exhibit Ka-4. Her medical examination was conducted at the District Hospital, Azamgarh, on

28.09.1980 at 3:00 p.m. The following injuries were recorded:

1. A contusion measuring 12 cm × 8 cm over the left elbow joint, with an abrasion mark over the same joint. An X-ray was advised.

2. An abrasion measuring 7 cm × 4 cm on the left leg, approximately 20 cm from the left knee joint, with scale formation.

3. An abrasion measuring 3 cm × 1 cm over the right elbow joint.

Opinion: All the injuries were simple in nature and were caused by friction against a hard object, except Injury No. 1, which was caused by a blunt object. Injury No. 1 was kept under observation, and an X-ray was advised. The duration of the injuries was estimated to be three days.

26. As per the report dated 28.09.1980 issued by the Medical Superintendent, District Women's Hospital, Azamgarh, the prosecutrix was examined on 28.09.1980 at 11:50 a.m. It was observed that she had sustained certain injuries during the struggle, including injuries to the elbow joint and left leg, for which an expert opinion was sought from the District Hospital.

27. During the examination of her private parts, fresh tears were observed in the hymen, the margins of which were red. Slight bleeding was also noted in the genital region. No injury was found on the perineum or vaginal wall. The uterus was described as being of normal size. A vaginal smear was sent for examination for the presence of spermatozoa. X-rays of the wrist and elbow joints were also taken for age determination.

28. The supplementary report dated 02.10.1980, issued by the Medical Superintendent of the District Women's Hospital, Azamgarh, concluded that rape had been committed upon the prosecutrix. The report recorded that she had sustained injuries to her private parts, friction injuries, and a simple injury caused by a blunt object. The estimated interval since the alleged rape was approximately 36–40 hours, and her age was assessed to be about 18 years.

29. The prosecutrix is the most competent witness to narrate the incident, and her testimony supports the prosecution case. The injuries sustained by

her, as reflected in the medical evidence, further corroborate her oral testimony.

30. Learned Senior Counsel appearing for the appellant has vehemently submitted that the testimony of the prosecutrix is not corroborated by the medical evidence. He points out that she stated that her hands had been tied in a position resembling *pranam* (folded hands), yet no injury marks were found on her wrists, where abrasions would ordinarily be expected.

31. The aforesaid submission, however, does not appear convincing. A perusal of the injury report (Exhibit Ka-4) reveals that the prosecutrix sustained a contusion measuring 12 cm × 8 cm, accompanied by an abrasion over the left elbow joint, an abrasion on the left leg, and another abrasion over the right elbow joint.

32. The presence of these injuries lends corroboration to the testimony of the prosecutrix regarding the alleged occurrence. Merely because no injury marks were found on her wrists, the prosecution case cannot be disbelieved on that ground alone, particularly when the medical evidence, to the extent indicated above, is consistent with her testimony.

33. The Hon'ble Supreme Court, in **Bhag Singh v. State of Punjab, 1997 SCC (Cri) 1163**, held that the testimony of a witness should be viewed from a broad perspective and should not be weighed on golden scales but assessed according to cogent standards.

34. Similarly, in **Leela Ram v. State of Haryana, 2000 SCC (Cri) 222**, it was held that mathematical precision in corroboration is not expected in a criminal case.

35. The examination-in-chief of the prosecutrix (P.W.-4) was recorded on 26.04.1986. She stated that she was 20 years old and resided at Village Bhikhampur Khajura, Mehnagar, District Azamgarh. The incident had occurred approximately five years earlier. She stated that it was evening and had become dark when she went behind her house to relieve herself. It must have been around 7:00 p.m. As soon as she sat down, the accused Kutki, who was present in Court, caught hold of her hair. The accused Raghunath, Mata Baksha, and Keshav Pandey also caught hold of her,

tied her hands, and stuffed a piece of cloth into her mouth. They took her to the *kotha* (room) of accused Raghunath Pandey and laid her on a cot. Keshav held her chest, bit her cheeks, removed her clothes, and forcibly raped her. Kutki sat nearby, holding a *gandasa* (a sharp-edged cutting weapon), and threatened to kill her if she raised an alarm. After Keshav had committed rape, she began to cry, whereupon he slapped her and beat her with a stick.

36. Thereafter, accused Mata Baksha forcibly raped her without her consent and raped her. Subsequently, accused Raghunath also forcibly raped her. Thereafter, Mata Baksha returned and raped her again in the same manner. Afterwards, all four accused left the place and fled after locking the door from outside. While the accused were inside the room, Kutki remained there with a *gandasa* and continued threatening to kill the prosecutrix if she raised an alarm. During the commission of the offences, the prosecutrix's hands remained tied, and a piece of cloth was stuffed into her mouth.

37. The following evening, when it became dark again, all four accused returned. During the intervening period, she had remained lying there in the same tied condition. Kutki was carrying a *gandasa*, Raghunath had a knife, Mata Baksha also had a knife, and Keshav Pandey had a *gandasa*. At that time, villagers were searching for her in all directions. The accused discussed among themselves that if she escaped, she would disclose everything to others; therefore, they should take her away, kill her, and dispose of her body. All four accused brought her down from the *kotha* and took her towards the river. From there, they took her towards Mithai's house. It was dark, and the time must have been around 7:00 p.m. From near Mithai's house, they took her west of the culvert. There, villagers and her brother Kamta, Mithai, Bhola, Balli, and Jagmohan were present. They surrounded the accused and apprehended Raghunath and Mata Baksha. The villagers took away the sack, sari, *gandasa*, and other articles from Kutki, while Keshav escaped through the crowd. Mata Baksha also managed to escape.

38. In this manner, the prosecutrix was rescued. Thereafter, the villagers and her brother took her, along with the apprehended accused, to

Mehnagar Police Station. Her brother lodged a report at the police station. She remained at the police station during the night, and the apprehended accused were detained by the police. On the following day, she was medically examined at the Women's Hospital, and an X-ray examination was also conducted. The Sub-Inspector seized her petticoat at the police station and recorded her statement. Thereafter, the police handed her over to her brother's custody. She stated that she could not remember her age at the time of the incident.

39. In her cross-examination, the prosecutrix stated that she had married Lal Bahadur at Rani Ki Sarai. It was her first marriage. Lal Bahadur's father's name was Kamta. She did not know whether Lal Bahadur was alive or had died. He had deserted her, although she did not know why he had left her. Her second marriage took place at Village Bodare, Varanasi. Her second husband's name was Ram Chander, son of Kishore. It was Ram Chander's second marriage. She did not know whether his first wife was alive. Ram Chander belonged to the Rajbhar community, and she also belonged to the same community. Their marriage took place at her house. Ram Chander worked as a driver in Bombay. She had no children from either Lal Bahadur or Ram Chander. She denied the suggestion that she had been married to anyone other than Lal Bahadur and Ram Chander.

40. She further stated that the house to which Raghunath had taken her had its entrance facing west. It had two rooms, and the room in question was not double-storeyed. There was a raised platform (*patni*) inside it. The room containing the platform had no window or similar opening, nor was there any window on the platform. The platform was attached to the northern wall and measured approximately five to six cubits in length from north to south and three to four cubits in width. The platform had been constructed using *rehattha*, a type of reed or wooden flooring, and a cot had been placed on it. The tiled roof above the platform was approximately one cubit high. Upon entering the room, the cot on the platform was visible. There was only one door in the room, which the accused closed before leaving. There was no separate door on the platform. She had neither shown the room nor platform to the Sub-Inspector. She did not take him there. She was not wearing bangles at the

time of the incident because Lal Bahadur had already deserted her.

41. To the north of the house where she was raped was Radhe's house. Rajnath's house was to the east, Rajendra's house was further to the north, and Jhuri's house was to the south. The house was surrounded by residential houses throughout the village. There was no bedding or sheet on the cot. Her hands remained tied in the same manner throughout that night and the entire following day and night, while the cloth remained stuffed in her mouth. Her hands were tied in front of her, bent in a position similar to that in which a person joins their hands in greeting or salutation.

42. The prosecutrix further stated that she had initially narrated the entire incident to the Sub-Inspector. Two or three days after the incident, the Sub-Inspector questioned her in the village. He questioned her about the incident at the place where she had allegedly been raped. She showed him the cot. At that time, no women or children were present in the house, as they had been sent outside while she showed him the place.

43. Her hands had been tightly tied with a rope made of *moonj* fibre. She had made every effort to break the rope, but it had not broken. She sustained injuries to her wrists, but the rope did not come loose. She stated that the Sub-Inspector had untied the rope at the police station and removed the cloth from her mouth. She also had injuries on her feet, including an injury to her right foot. She had sustained those injuries as a result of being beaten with a stick. The accused had inflicted those injuries while committing rape upon her. She had no other injuries. She stated that Babu Ram Asare Singh was an influential person in the village and was the Village Pradhan. She denied the suggestion that he had fabricated the case. A considerable amount of money had been spent in pursuing the case, although she did not know from whom her brother Kamta had borrowed the money. She did not know whether Ram Asare Singh had contributed towards the expenses.

44. An amount of Rs. 400–500 had also been spent on the doctor for her medical examination. There was no enmity between her brother Kamta and the accused. She did not know whether Ram Asare Singh had any enmity with the accused. She denied that Kamta was pressuring her to

give evidence or that she was deposing at his instance. She maintained that she had stated what had actually happened. Kamta had called her from Bombay, where she was then residing with her husband.

45. She further stated that her sari had been torn during the rape. The Sub-Inspector had not seized the sari; he had seized only her petticoat, which bore bloodstains. No other material was found on the petticoat apart from the bloodstains. She denied the suggestion that Kamta and Ram Asare Singh had falsely implicated the accused because of enmity.

46. The prosecutrix is the most competent witness to narrate the incident, and her testimony supports the prosecution case. The injuries sustained by her, as reflected in the medical evidence, further corroborate her oral testimony.

47. The statement of Shri Kamta Prasad, recorded as P.W.-5 on 16.05.1986, reveals that his father's name was Ram Dayal. He was 30 years old and worked as a shopkeeper. His house was situated at Village Bhikhampur, Mehnagar, District Azamgarh, and he resided at Khajura. The prosecutrix was his sister. The incident had occurred approximately five to six years earlier. At that time, his sister was about 15–16 years old. He stated that one evening, his sister left the house to relieve herself in the fields but did not return. They searched for her but could not find her. They then deployed people in all directions to search for her.

48. He further stated that two or three days after the incident, he was standing with Jagmohan, Rambali, and Bhola on the road near the culvert situated close to Bhagwati Singh's house, on the road leading from their village. The accused Raghunath Pandey, Keshav Pandey, Mata Baksha Singh, and the female accused Kutki, along with Mithai, were bringing his sister. Mata Baksha was taking her away with the intention of killing her. They directed the light of a torch towards the accused and identified them. They apprehended Raghunath and Kutki alias Betli, but Keshav and Mata Baksha escaped. They rescued the prosecutrix and took care of her. An alarm was raised, and Raghunath and Kutki were beaten. Other villagers also arrived at the spot.

49. Thereafter, along with the Village Pradhan, Ram Asare Singh, and

witnesses Jeet Bahadur Singh, Rajnath, Vanshraj Yadav, and Murli, the Village Chowkidar, they took the apprehended accused and the prosecutrix to the police station. His mother also accompanied them. The prosecutrix narrated the entire incident to the Sub-Inspector. He had the written report prepared through Ravindra Singh, a teacher, according to what the prosecutrix had told him. The report prepared at his instance was on the case record. He identified and verified it, stating that it bore his signatures and had been read over to him before he signed it. The report was marked as Exhibit Ka-1.

50. The prosecutrix was medically examined and, after the necessary document was prepared, was handed over into his custody. His signatures appeared on the custody memo, which he identified and verified. The document was marked as Exhibit Ka-2. He had shown the torch to the Sub-Inspector. A memo was prepared, and the torch was returned to him. He identified and verified the document relating to the torch, which was marked as Exhibit Ka-3. He had also brought the torch to Court. The Sub-Inspector recorded his statement. His sister had been married before the incident, but her *gauna* (the ceremonial departure to her matrimonial home) had not taken place. She was living with them at that time. When the accused and the prosecutrix were apprehended, Mata Baksha and Keshav Pandey had sacks and grass-cutting *gandasa* weapons with them. Each was carrying one *gandasa*. Kutki and Raghunath had nothing with them and were holding the prosecutrix.

51. In his cross-examination, P.W.-5 stated that he ran a betel shop. He arrived at the shop at approximately 7:00–8:00 a.m. and remained there until around 5:00–6:00 p.m. He had not personally seen the prosecutrix going out to relieve herself. He was at the betel shop when she left. When he arrived at the shop in the morning, he had seen her at home, but he did not see her again that day. When he returned home from the shop at around 7:00 p.m., he came to know that his sister had gone out to relieve herself and had not returned. They began searching for her thereafter. He searched throughout the night and continued searching during the day, but no information could be obtained. The villagers, the Village Pradhan Ram Asare Singh, and he collectively organised a cordon around the village and assigned duties to the villagers. At around 8:00–9:00 p.m., the

villagers assembled at his house, and duties were allocated to everyone to maintain the cordon.

52. The prosecutrix and the accused were apprehended at approximately 3:00 a.m. Kutki was caught by Mithai, and he also caught hold of her. He struck Kutki with a stick, causing her to fall. Raghunath was also running away; he struck him with a stick and apprehended him. He did not know who had caught hold of the prosecutrix. Bhola, Mithai, Jagmohan, and he jointly apprehended Betli and Raghunath. They struck Raghunath and Betli with sticks and subdued them. He had not told the Sub-Inspector that at 8:00 p.m., they had switched on a torch, seen the accused, and apprehended them along with the prosecutrix at the culvert. If the Sub-Inspector had recorded the time of the prosecutrix's apprehension as 8:00 p.m., he could not explain the reason. He had seen *gandasa* weapons in the hands of Keshav and Mata Baksha. If the fact that Mata Baksha was carrying a *gandasa* had not been recorded in his statement, he could not explain why. Kutki was carrying a sack, clothes, and other articles. The sack, *gandasa*, clothes, and other articles were taken away by those who escaped. None of those articles was recovered at the spot. They did not take the prosecutrix home from the place where she was apprehended. Instead, they all went to the police station. They reached the police station at approximately 3:00 a.m. and travelled on foot. The police station was six kilometres from the place of apprehension, and the journey took twelve hours. They left for the police station one or two hours after the apprehension. During that interval, villagers continued to assemble at the place.

53. The Village Chowkidar, Murli, arrived at the spot and tied the accused with a rope. The Village Pradhan, Ram Asare Singh, also went to the police station. Outside the police station, he had the report written by Ravindra. He could not say whether the report was written within one hour or how long it took. After the contents of the report were read over to him, he did not answer whether he knew what had been written in it. The Chowkidar tied the accused Raghunath and Betli with his red turban, and they were taken to the police station in that condition. At the police station, the Chowkidar removed his turban and released them from it, after which the police took them into custody. He then submitted the

report at the police station. When Ravindra began writing the report, it was already 4:00 a.m., and dawn was approaching. He stated that he himself had untied the rope from the prosecutrix's hands and removed the cloth from her mouth at the place where she had been apprehended. It is belied to state that the Sub-Inspector had untied her at the police station and personally removed the cloth from her mouth. He stated that if the prosecutrix had given such a statement, it would be incorrect, and maintained that his own testimony was correct.

54. The prosecutrix had sustained an injury to her arm, although he could not say which arm was injured. He had not noticed any other injury on her. The prosecutrix had been married twice. Her first husband deserted her after this incident, and she subsequently married for the second time.

55. The Sub-Inspector visited the village on the third day after the prosecutrix was apprehended. He arrived in the morning. The prosecutrix took the Sub-Inspector to the house where she had allegedly been kept, and he accompanied them. The boundaries of that house were as follows: to the north was Radhe Pandey's house; to the east was Raghunath Pandey's cattle trough, followed by open ground; and to the west was open ground. He had not borrowed money from anyone to pursue the case. However, everyone helped them after seeing their circumstances. Ram Asare Singh, the Village Pradhan, had also contributed money.

56. Before the incident, no assault-related case had been filed between the accused and them, nor had any physical altercation taken place. He denied the suggestion to the contrary.

57. Learned Senior Counsel appearing for the appellant submits that there are material contradictions between the testimony of the prosecutrix and that of her brother, which, according to him, cast doubt on the veracity of the prosecution case.

58. The Hon'ble Supreme Court, in **Yogesh Singh v. Mahabeer Singh and Others, AIR 2016 SC 5160,** and **Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127**, held that minor discrepancies that do not go to the root of the matter should not be given undue importance.

59. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond reasonable doubt. However, the prosecution is required to establish its case beyond reasonable doubt and not to eliminate every conceivable doubt.

60. Accordingly, any minor contradictions that do not go to the root of the matter cannot be accorded undue significance.

61.The Hon'ble Supreme Court, in **State of A.P. v. S. Rayappa and Others, (2006) 2 SCC (Cri) 353**, held that in a criminal trial, a witness cannot be termed an interested witness merely because he or she is related to the deceased. The testimony of such a witness cannot be rejected on that ground alone.

62. In view of the general reluctance of members of the public to come forward as witnesses, close relatives may be the most natural witnesses to an occurrence. Nevertheless, their testimony must be carefully scrutinised by the Court.

63. In the present case, the testimony of the prosecutrix, who is the victim of the alleged offence, inspires confidence and is supported by the medical evidence. It is well settled that a conviction can be based solely on the testimony of the prosecutrix, provided that her testimony is trustworthy and reliable.

64. The fact that P.W.-1 to P.W.-3, who were independent witnesses, turned hostile does not, by itself, discredit the prosecution case. The testimony of the prosecutrix is further supported by the statement of P.W.-5, her brother.

65. Thus, upon an overall assessment of the oral and medical evidence on record, the testimony of the prosecutrix finds sufficient corroboration and lends support to the prosecution case.

66. Dr. S.D.P. Gupta, P.W.-6, who was posted as a Radiologist at Sadar Hospital, Azamgarh, on 29.09.1980, stated that he had referred the prosecutrix to Dr. A.K. Kaur, the then Medical Superintendent of the Women's Hospital, Azamgarh, and had also conducted her X-ray examination. He further stated that he had prepared the report on the basis

of his observations of the X-ray plates. Upon examining the plates, he found that the bones of the elbow and wrist joints had fused. The epiphyses were found to be fused, whereas the radius and ulna had not completely fused. He proved the X-ray plates as Exhibits 1 and 2 and also proved the medical report of the prosecutrix dated 29.09.1980, which was marked as Exhibit Ka-4.

67. Despite being afforded an opportunity, the accused persons did not cross-examine P.W.-6. Consequently, his testimony remained unchallenged in cross-examination.The testimony of P.W.-6, together with the X-ray plates and the medical report, constitutes relevant medical evidence and must be considered alongside the oral testimony of the prosecutrix and the other evidence on record while determining her age and assessing the prosecution case.

68. Dr. A.K. Kaur, P.W.-7, who was posted as the Medical Superintendent at the Women's Hospital, District Azamgarh, on 28.09.1980, examined the prosecutrix. She confirmed that the prosecutrix had sustained injuries to her left elbow and left leg and had been referred for specialist medical examination.

69. During the internal examination of the prosecutrix, she found fresh tears in the hymen. The margins of the hymen were red, and bloodstains were also present. She specifically stated that according to the X-ray report, the bones of the elbow joint had fused, whereas fusion of the long bones was incomplete.

70. She opined that rape had been committed upon the prosecutrix and that she had sustained certain injuries during the struggle. She assessed the interval since the alleged rape to be approximately 36–40 hours and estimated the prosecutrix's age to be about 18 years. She confirmed the injuries and her opinion regarding the commission of rape. She also verified that the estimated interval of 36–40 hours was recorded in Exhibits Ka-5 and Ka-6. The injuries mentioned in Exhibit Ka-4 were consistent with those recorded in Exhibit Ka-5.

71. In her cross-examination, P.W.-7 stated that the prosecutrix was not present in Court on that day and that she had neither known nor

recognised her before the medical examination. She stated that she had not independently examined the external injuries on the prosecutrix's body, although she had mentioned the injuries in her report. She further stated that the prosecutrix had no injuries on her foot or toes, but she had recorded an injury to her leg. The estimate of 36–40 hours since the rape, mentioned in her report, was based on her assessment of the injuries. She could not specify any fixed principle or scientific data supporting that estimate. She stated that a tear in the hymen could remain fresh for up to 24 hours. She had estimated the interval on that basis. There was a tear in the hymen, and blood was present on it. Therefore, she had opined that rape had occurred. The blood was fresh. She also acknowledged that a tear in the hymen could occur for several reasons.

72. She denied the suggestion that she had been paid Rs. 500 for examining the prosecutrix. She also denied that she had conducted a false medical examination under pressure or at the instance of the accused.

73. The examination-in-chief of Jamuna Singh Yadav, Sub-Inspector, Police Station Mubarakpur, was recorded on 28.06.1986. He stated that on 28.09.1980, he was posted as a Sub-Inspector at Police Station Mehnagar. The present case was registered at the police station in his presence, and he commenced its investigation. On the same day, he visited the spot and recorded the statements of the informant and witnesses Mithai, Mohan, and Ram Asare Singh.

74. After inspecting the torches belonging to the informant, Mithai, and Mohan, he returned them to their respective custodians and prepared three separate memos in his own handwriting and under his signature in the presence of the witnesses. The witnesses verified the memos. Exhibits Ka-7 and Ka-8 were marked on the respective memos. Exhibit Ka-3 had already been marked on the memo relating to the informant's torch. He searched for the accused but could not find them. He then went to the police station along with the informant, the prosecutrix, and the arrested accused Raghunath Pandey and Smt. Betli alias Kutki, carrying the written report. On the same day, the prosecutrix was sent for medical examination. On 30.09.1980, he visited the spot and recorded the statements of the prosecutrix and witnesses Rambali and Bhola.

75. After inspecting the torches belonging to Rambali and Bhola, he returned them to their respective custodians and prepared two separate memos in his handwriting and under his signature in the presence of the witnesses. The witnesses verified the memos, which were marked as Exhibits Ka-9 and Ka-10, respectively. On the same day, he inspected the place of occurrence and prepared a site plan in his handwriting and under his signature. The site plan correctly depicted the place of occurrence and contained the relevant plot details. He verified the site plan, which was marked as Exhibit Ka-11.

76. Thereafter, he examined and made inquiries into an application submitted by Shri Narendra Singh of Khajura and recorded the statements of Bhagwati Singh, Jairam Singh, Sobaran Singh, Ram Lautan Singh, Bhikha Singh, and others. He concluded that the application appeared to be false and had been submitted as a counterblast. On 14.10.1980, Shri J.S. Ghosi recorded the statement of the prosecutrix under Section 164 Cr.P.C. On 17.10.1980, he recorded the statements of the accused Smt. Betli alias Kutki, Raghunath Pandey, Keshav Pandey, and Mata Baksha Singh. On the same day, he completed the investigation and submitted the charge-sheet to the Court.

77. The charge-sheet was in his handwriting and bore his signature, which he verified. It was marked as Exhibit Ka-12. He also stated that Constable Moharrir Ram Avtar Ram was posted with him at the police station. He had seen Ram Avtar Ram writing and reading and was familiar with his handwriting and signature. The check report in the present case and the entry regarding registration of the case in the General Diary were in the handwriting of Ram Avtar Ram and bore his signature. The witness verified both documents. The check report was marked as Exhibit Ka-13, while a copy of the General Diary entry was marked as Exhibit Ka-14. The seizure memo concerning the petticoat worn by the prosecutrix at the time of the incident had been prepared by Constable Moharrir Ram Avtar Ram when the petticoat was taken into possession at the time of registration of the case. The memo bore the signatures of Ram Avtar Ram and the witnesses, which the witness verified. It was marked as Exhibit Ka-15.

78. The Investigating Officer stated that he was present at the police station when the case was registered. The prosecutrix had been brought to the police station, but he did not record her statement that night because he had not commenced the investigation by that time. He recorded her statement thereafter. When the prosecutrix was brought to the police station, no cloth had been stuffed into her mouth, and her hands were not tied. He denied the suggestion that he or any other Sub-Inspector had removed the cloth from her mouth or untied her hands. The prosecutrix took him to the place where she had allegedly been detained and raped. He stated that the door of the house did not face west. He did not find any loft or *patni* in any room of the house. Rather, the room had been made double-storeyed by placing *kandi* and bamboo poles across it.

79. At that time, he did not find any cot or bedding there, nor did he find any sign of rape. No bedding made by spreading *rahta* and *palli* was present in the house. To the east, west, and south of the house where the rape was alleged to have taken place, there were fields and open land; on one side was a courtyard. Beyond the courtyard was Raghunath's house, followed by a pond and open land.

80. He denied the suggestion that the house shown to him was surrounded on all sides by inhabited areas and residential houses. Apart from the boundaries described above, the prosecutrix did not show him any other house with different boundaries. He stated that he had recorded the prosecutrix's statement on 30.09.1980 at her house, not at the place of occurrence. She did not show him any bed, nor was any rope allegedly used to tie her shown to him. He knew Ram Asare Singh, the Village Pradhan, but stated that he had not seen him in Court that day. Ram Asare Singh occasionally visited the police station. The prosecutrix's petticoat was taken into possession at the time of registration of the case. No expert report concerning the petticoat was obtained.

81. The Investigating Officer further stated that Kamta had testified that the prosecutrix and the accused were apprehended at the culvert at 8:00 p.m. after they had been identified with the help of a torch. Kamta had not stated in his statement that Mata Baksha was carrying a *gandasa*. The Village Chowkidar had accompanied the prosecutrix to the police station,

and his statement was also recorded.

82. The Hon'ble Supreme Court, in **State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715**, held that even if an investigation is illegal or suspicious, the remaining evidence must be scrutinised independently of its effect on the investigation.

83. Otherwise, the criminal trial would descend to a level where the Investigating Officer would dominate the proceedings. The Court must retain predominance and pre-eminence in criminal trials, and the administration of criminal justice should not be made a casualty of the wrongs committed by investigating officers. In other words, if the Court is convinced that the testimony of a witness to the occurrence is truthful, it may act upon that testimony notwithstanding the suspicious role of the Investigating Officer.

84. Similarly, in Jamuna Chaudhari & Ors vs State Of Bihar **,** 1974 AIR 1822, as followed in **State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222,** and **Babubhai v. State of Gujarat, (2010) 9 SCC 639**, the Hon'ble Supreme Court held that the duty of an Investigating Officer is not merely to bolster the prosecution case with evidence sufficient to secure a conviction, but to bring out the real and unvarnished truth.

85. The statements of the accused persons were recorded under Section 313 Cr.P.C. Three of the accused persons have already died, whereas the appellant, Keshav Pandey, is alive.

86. The surviving appellant denied the prosecution evidence and stated that the witnesses had deposed falsely against him. He further stated that owing to a previous altercation and the resulting enmity, he had been falsely implicated in the present case.

87. It is settled law that a statement recorded under Section 313 Cr.P.C. does not constitute substantive evidence and must be considered in the context of the entire evidence on record.

88. In the present case, the learned trial court discussed the evidence in detail and recorded a finding that the prosecution had proved its case against the accused persons beyond reasonable doubt.

89. The findings recorded by the learned trial court are neither perverse nor illegal. The prosecution has proved beyond reasonable doubt that the accused persons committed the offences in question.

90. It is true that the incident took place in 1980 and that the Sessions Trial was decided in 1986. The present criminal appeal has remained pending for approximately 40 years. This Court finds no perversity or illegality in the impugned judgment and order passed by the learned trial court. Accordingly, the conviction of the surviving appellant, Keshav Pandey, is affirmed.

91. However, while considering the question of sentence, this Court has taken into account the submissions advanced by learned Senior Counsel for the appellant, particularly with regard to the prolonged pendency of the litigation and the advanced age of the appellant. The occurrence took place in 1980. At the relevant time, Section 376 IPC prescribed imprisonment for life or imprisonment of either description for a term which could extend to ten years.

92. It was held by the Hon'ble Supreme Court in **Krishna Kumar Kedia v. Union of India through Director, CBI; 2025 INSC 608**, in paragraphs 29 and 30, as follows:

"*29. The records produced before this Court indicate that the appellant is a 71-year-old individual who is afflicted with various age-related ailments. The medical documentation further reveals that the appellant is a diabetic person and has a history of having suffered three heart attacks. That apart, the incident is of the year 1994, i.e., more than 30 years old, causing mental trauma and agony to the appellant. All these factors, in the facts and circumstances of this case, persuade this Court to take a lenient view.*

30. Therefore, this Court is of the view that the sentences imposed under Sections 407 and 420 IPC be reduced from five years to two years and six months of rigorous imprisonment, with the fine and default punishment remaining unchanged, as imposed on each count, and the sentences to run concurrently with the other sentences. This reduced sentence would meet the ends of justice."

93. The Hon'ble Supreme Court in **State of Himachal Pradesh v. Raghubir Singh & Others, 2024 INSC 421**, it has been held that while dealing with an occurrence dating back several decades, considered the extraordinary lapse of time in the context of the sentence imposed. However, the question of reduction of sentence must be examined in the light of the statutory provisions applicable on the date of the occurrence and the particular facts and circumstances of the case. In the present case, the incident took place in the year 1980, the sessions trial was decided in 1986, and the present appeal has remained pending for approximately four decades. The advanced age of the surviving appellant and the prolonged pendency of the proceedings have also been considered while examining the question of sentence. These circumstances shall be assessed cumulatively in determining whether adequate and special reasons exist for reducing the sentence under the applicable proviso to Section 376 IPC.

94. Accordingly, while affirming the conviction of the surviving appellant, Keshav Pandey, the sentence awarded to him under Section 376 IPC is reduced to five years' rigorous imprisonment and a fine of Rs. 10,000/-. The sentence awarded under Sections 366 and 368 IPC is maintained at five years' rigorous imprisonment under each section, along with a fine of Rs. 10,000/- under each section. All the sentences of imprisonment shall run concurrently.

95. The period of incarceration already undergone by the appellant in connection with the present case shall be set off against the substantive sentences in accordance with law.

96. Appellant, Keshav Pandey, is presently on bail. His bail bonds shall stand cancelled, and the sureties shall stand discharged. He is directed to surrender before the learned trial court within 15 days from today to serve out the remaining sentence. No further extension of time shall be granted. In the event of his failure to surrender within the stipulated period, the learned trial court shall take appropriate steps to secure his custody and execute the sentence in accordance with law.

97. Accordingly, the present criminal appeal is partly allowed. The conviction of the surviving appellant, Keshav Pandey, under Sections

376, 366 and 368 IPC is affirmed. However, the sentence awarded to him under Section 376 IPC is modified to the extent indicated above. The sentences awarded under Sections 366 and 368 IPC are maintained. All the sentences of imprisonment shall run concurrently.

98. A copy of this judgment shall be transmitted forthwith through e-mail to the learned District and Sessions Judge, Azamgarh, for information and necessary compliance. The office shall also transmit a copy of this judgment, along with the trial court record, to the learned trial court forthwith for necessary compliance.

99. Let compliance with Section 437-A Cr.P.C., as applicable, be ensured.

(Abdul Shahid,J.)

October 23, 2026
M. Tarik

Digitally signed by :-
MOHD TARIK
High Court of Judicature at Allahabad