**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL APPEAL No. - 202 of 1985**

Saddique And Another

.....Appellant(s)

Versus

State

.....Respondent(s)

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| Counsel for Appellant(s) | : | B.N.Srivastava, Mewa Lal Shukla, Varinder Singh |
| Counsel for Respondent(s) | : | A.G.A., Uday Singh Patel |

**Judgment reserved on 29.9.2026.**
**Judgment delivered on 23.10.2026.**

**Court No. - 88**

**HON'BLE ABDUL SHAHID, J.**

1. Heard learned counsel for the appellant and the learned AGA for the State.

2. The present criminal appeal has been preferred against the judgment and order dated 31.1.1985, passed by learned IInd Additional Sessions Judge, Rampur, in Sessions Trial No. 157 of 1984, convicting and sentencing the appellant under Sections 452 and 376 read with Section 34 IPC for one year and four years RI respectively.

3. The present appeal had been preferred by appellant no.1, Saddique and appellant no.2, Zulfequar. During the pendency of the present appeal, appellant no.1, Saddique had died. Hence, proceedings against him is already abated on 6.5.2026. Now, there is only sole living appellant, Zulfequar.

4. The genesis of the present case has been initiated on the basis of Ext. Ka-1/written complaint which is submitted by husband of the victim on 4.5.1983 before the police station. The scribe of the FIR is Shafik Ahmad. It is submitted by the complainant that the incident took place on the night

of 3/4.5.1983, at around 12 o'clock in the night. Saddique son of Mohd. Nabi and Zulfeqar son of Mehndi Hasan, residents of Qasba Kemri , entered my house. Reaching my wife's bed, Zulfeqar covered her face with a cloth while she was sleeping. Saddique took out a knife and placed it on my wife's abdomen. Zulfeqar threatened her with a pistol, saying that if she made any alarm, he would kill her. Saddique, then opened her 'salwar' and committed bad act. After that, Saddique kept threatening and Zulfikar tried to commit bad act with her. My wife screamed. On hearing the scream, my father Abdul Gaffar, my brother Shafik and my mother Batulan, who were sleeping nearby, they woke up and shouted 'thief, thief'. Both the accused ran away from my verandah. My family members recognized them clearly in the light of the lantern burning in the verandah. They could not chase them due to fear. I had gone to my relatives for work. My father reached me and brought me back. I have been told all these things from my wife. I have come with my wife at the police station for registration of the report.

5. On this complaint, the FIR was registered at the police station Kemri, district Rampur at Case Crime No. 94 of 1984, under Section 376 IPC. The incidents is of 3/4.5.1983 at 12.00 in the night, whereas the FIR had been lodged on 4.5.1983 at 21:05 hours. It is specifically stated by the complainant that he got all the information from his wife, who is victim. He is not an eye witness of the incident.

6. The medical examination of the victim took place on 5.5.1983, which is Ext. Ka-7. The victim is a married lady. In the medical examination, no mark of injury on the body surfaced. Teeth 6X7-7X7. Breast well developed. Pubic hair and axillary hair well developed. Wt. 47 Kg and Ht.

5 feet 3 inches. There is no marks of injury or seminal fluid or hair on the private parts. On genital examination: old healed tag of torn hymen present. Vagina admitting two fingers easily. Vaginal smear taken. Uterus size feels normal. Advised X-ray of wrist and elbow joints. Patient is used to sexual intercourse. No opinion can be given about rape. For age, X-ray is advised. Vaginal smear is sent for presence of sperms.

7. The supplementary report of the victim Ext. Ka-8 has been received. No opinion about rape can be given. The age of the patient is above 18 years. The lady is used to sexual intercourse.

8. PW-1/complainant, who is husband of the victim, has recorded his statement before the learned trial court. In his examination-in-chief, he has stated that the incident is of 4.5.1983. The victim is my wife. I had went to Kalyanpur prior to two days of the incident. My wife, father, brother and mother were at my house. My father reached to me on 4.5.1983 and he told me that in the night of 3/4.5.1983, Saddique and Zulfequar entered into the house and both had sat on the cot of the victim. Saddique had caught hand of the victim and Zulfequar has pressed her mouth. Saddique had threatened her with knife and after opening her Salwar, he committed rape with her. Thereafter, Saddique threatened and Zulfequar has committed rape with his wife. Thereafter, his wife raised alarm, then my father, brother awaken and both have identified the accused in the light of lantern which were lightening. I had came to the house alongwith my father. I had talk to my wife, then she has narrated the entire incident. Then I had scribed the FIR by Shafik Ahmad. He had written what I had dictated to him. After reading and hearing said written complaint, I had signed it, which is Ext. Ka-1.

9. There is material improvement in the statement of this witness. He had stated that he has got information by his father and prepared the written complaint. Naturally, the victim is his wife and she is the best person, who knows about entire incident. It is true and correct that the FIR is not an encyclopedia of the case, but it is true and correct that any improvement and contradiction which goes to the root of the matter, that has to be considered. It is an offence of rape and the victim is lady and very well know the entire incident. It is not expected that she does not know basic version of the incident, which goes to the root of the matter. In the written complaint, she has specifically stated to her husband that only Saddique has committed rape with her and Zulfequar has attempted to commit rape with her. When she screamed, then all the members of family came there.

10. He has further stated that he went to the police station alongwith his wife and submitted report. He stated that 'Jampar' and 'Salwar' of his wife were taken into possession at the police station and they were sealed and its memo was prepared which is Ext. Ka-2.

11. The learned trial Judge has convicted and sentenced both the accused persons, under Section 376 IPC read with Section 34 IPC. The learned trial court has not taken into consideration of this improvement, variation and contradiction in the basic complaint and the statement of the complainant. The source of information to the complainant is his wife.

12. PW-2 is the victim. She has recorded her statement before the learned trial court on 21.11.1984. She has stated her age 20 years. She stated that the incident is of 3/4.5.1983, hence by the statement of the victim as well as about her age, she is major at the time of incident. She is neither any

minor nor unmarried lady, who knows the exact nature of this offence. She has stated in her examination-in-chief that one and half years ago, it was around 12 in the night, I was sleeping in the room in front of my door. There were two sons of myself were also sleeping on different cot in the said room. One boy was 8 years and another was of two years. The lantern was lightening on the door of the room. My father-in-law, Abdul Gaffar, brother-in-law,Shafik and my mother-in-law, Batulan were also present in the house and sleeping. My husband had went to Kalyanpur prior to two days of the incident. The accused persons, Saddique and Zulfequar present in court, came nearby my cot and kept clothes on my mouth. I was awaken. The accused Zulfeqar was having revolver, whereas accused Saddique was having knife. Whereas, in the written complaint, it is country made pistol not the revolver. Thereafter, she has stated that Zulfequar has told that if you start screaming, then I will kill you. Saddique has opened my 'salwar' and committed rape. She defined the ingredients of rape, which is not written in toto to safeguard the modesty of the victim. She further stated that thereafter, Zulfequar has also committed rape by same way.

13. It is purely improvement, which hit the basic case. She is a married lady, It could not be accepted from her that she could not know exact meaning of rape. The FIR has been lodged on the basis of her saying to her husband and she also went to the police station alongwith her husband. Hence, in the complaint, she has only stated that the accused Saddique has committed rape with her. The role of Zulfequar has been assigned by her only of attempt to commit rape.

14. Thereafter, she stated that in the meantime, she has got opportunity,

she has removed the clothes from her mouth and raised alarm. On raising of her alarm, her father-in-law, brother-in-law were awaken. Both these persons run and reached to her, then both the accused persons had left her and fled away. In the morning, her father-in-law went to Kalyanpur to call her husband. In the evening, her husband came then she had narrated the entire incident to him. He has got prepared written complaint after her dictation and FIR was prepared by Shafik. Thereafter, he took myself and went to the police station alongwith written complaint. The police personnel had taken possession of 'jampal' and 'salwar' and sealed it.

15. It is clear by this statement that the written complaint has been provided on the basis of her information to her husband.

16. In the cross-examination, she stated that the clothes was inserted into her mouth, but it was on upper portion of her mouth. It was kept by the accused. I do not told about insertion of clothes in my mouth to my husband. My meaning about insertion of clothes is keeping the clothes on my mouth. The clothes was on my lips, it was not into my mouth. There is great different between clothes on the mouth and inserted in the mouth. It is not expected from the victim, who is a married lady that she does not know difference between both of them. As per site plan, Ext. Ka-5, the husband of complainant has shown two cots. Cot (a), where it is shown that rape was committed on that cot and in place (b), the witnesses were sleeping and in between both places, a varandah of 17 paces was there. It is highly unexpected that in the night at 12.00 pm, the entire door was opened when the entire family were sleeping. The distance between victim and other members of her family, were 17 paces and none of them had awaken and know about said incident and the accused had ran away

after committing the incident and none had tried to catch them. The entire genesis and acts are appeared to be highly improbable.

17. She has further stated in her cross-examination that I had not told that clothes were inserted into my mouth. I do not know why Inspector has recorded that clothes were inserted in my mouth. I do not get opportunity of screaming till Saddique had committed rape. Saddique has discharged inside and outside to my private parts. Zulfequar has also committed rape with myself. This, I had informed to my husband. She further stated that till Saddique has committed rape with her, Zulfequar had kept clothes on her mouth and pressing it. After completion of rape by Saddique, then he has pushed my mouth and Zulfequar has committed rape. It is highly unbelievable and unnatural that incident is of 12.00 in the night, the entire family members were sleeping at a distance of only 17 paces, the door of the room was opened in the night and both the accused had committed rape one by one, with a married lady and she does not get any opportunity of screaming or raising alarm when they entered into her house. It is not possible that both of them had suddenly entered into the house and suddenly started commission of said offence of rape. Thereafter, consecutively committed offence by both the accused persons. There was no any kind of resistance or injury has been found on the body of the victim during such course. She has further stated that Saddique had kept knife on my breast. There was no injury has been found on the victim.

18. She further stated that as soon as she started screaming, both accused fled away. She has stated hat she does not remember what was the clothes worn by the accused persons at the time of incident. She stated that Hamid was a 8 years son by his first wife. He was not wise due to his age.

He was not having appropriate wisdom being the age of 8 years. When I had screamed, then boy woken up. It could not be completely ruled out that as soon as boy was awaken and then she screamed. She is a married lady and about having her nature of act and her consent could not be completely ruled out in the facts and circumstances of the present case. She further stated that neither she took any talk with the boy nor he had asked anything with me. There was 'dari' laid on the cot, but no semen was fallen on it. After raising alarm, I stand on the door of my room. When I was standing on the door of my room, I do not wear my 'salwar'. When my father-in-law, mother-in-law and Dewar came, then I sat down on the cot. Thereafter, I had worn my 'Salwar' in that place. At that time, my mother-in-law had reached to my cot.

19. It is highly unnatural and improbable for a lady that after said incident, she had screamed and thereafter she stand on the door of the room in naked position and she did not wear her 'salwar'. Even her father-in-law, mother-in-law and Dewar came, even then she did not wear it. Thereafter, she sat on the side of door and then worn the Salwar. It is very natural that firstly any lady would safe her modesty on priority basis.

20. She has further stated that in which room she was sleeping, there was chaukhat and kiwad and lantern in between chaukhat were lightening and hanging by wire. The door was not locked, even her husband was not present in the house and it was opened. It is not appeared to be normal circumstance. She stated that the inspector visited to my house after lodging of the FIR. At that time, I had moved that cot from the place. The inspector came in the day. When inspector came, at that time, lantern was not hanging. We had removed it from that place. I had shown the place of

hanging of lantern as well as place of cot. I do not know why inspector has not shown both the aforesaid items at the place, where I had shown to him. She has specifically stated that on the day of incident, she was fully fit, she was not sick. Her children was also fit. There was only one door in the room where I was sleeping. There was no other door and window. There was summer season at the time of incident. I used to sleep in the room for all the twelve months.

21. She has specifically stated in her cross-examination on 4.1.1985 that at the time of incident, my father-in-law, mother-in-law and Dewar were sleeping in open of Aangan, which is towards west side of my house. She has specifically stated that my father-in-law, mother-in-law and Dewar were sleeping only 6-7 paces away from my room.

22. It is highly unbelievable that two accused persons entered into the house of the victim, where her family members were also sleeping at a distance of 6-7 paces, neither she made any noise nor all these persons woken up. She has further stated that her house is situated in a populated area. Even on the screaming, none of neighbour came there. I had identified the accused persons. I had made noise that they were fleeing, catch them. I had not said thief-thief.

23. It is another contradiction with the written complaint and check FIR. She had not took the names of accused persons at the time of making noise. If the accused persons had committed such type of heinous offence and they fleeing, members of family alongwith victim raises voices and did not took name of accused. It is neither natural nor believable.

24. Thereafter, she has further stated that I had narrated to my husband

that Zulfequar has also attempted to commit rape with her. She has specifically stated that I had not told that Zulfequar has committed rape. Hence, there is material contradiction about the offence committed by Zulfequar in the examination-in-chief of the victim and thereafter, in the cross-examination and statement of PW-1/complainant/husband of the victim. She has specifically narrated to her husband at the time of lodging of the FIR which is also mentioned in the written complaint that Zulfequar has only attempted to commit rape. She has further confirmed it in her own statement on 4.1.1985 that she told to her husband that Zulfequar has attempted to commit rape with her. She did not tell that Zulfequar has committed rape with her. It is purely clear that Zulfequar has not committed rape with the victim. She stated that she was residing in that room prior to three and half years. She further stated that when Saddique has committed rape with her, then she had snatched his mouth and he by holding my hairs, jerk to me. I was consistently trying to remove myself from the clutches, but they had consistently holded myself. At the time of commission of rape, the accused persons had not pressed my breast. During all these acts, I had not suffered any kind of abrasion or injury either on my mouth or head. It is belied to state that my character was not good and no such type of incident took place. It is belied to state that due to influence of my husband, I am giving false statement.

25. It is not possible that if two persons, who has committed this type offence with a lady and she has resisted with both of them, no injury would be caused either to the victim or to the assailants.

26. PW-3, Abdul Gaffar is the father-in-law of the victim. He recorded his

statement on 4.1.1985 before the learned trial court. He stated that Zulfequar and Saddique, present in the court, were fleeing from nearby the victim from the house. Zulfequar was having revolver and Saddique was having knife. I had not chased them due to fear. The victim had told entire things that both the accused persons had committed rape with her. I had slept in the night and in the morning, I had went to Kalyanpur to call my son. My son came with me in the evening at 7.00 pm.

27. It is highly unbelievable that after such heinous act, neither he chased the accused nor attempted to catch the accused persons. He did not try to call any neighbour or to inform the police or to provide any medical aid to the victim. He simply slept in the night after knowing about the incident. It is not possible for any head of the family to sleep after commission of such kind of incident.

28. He has stated in his cross-examination that two lantern were burning, one nearby to him and another nearby to the victim. The Inspector has recorded my statement. I had told him about both the lantern which were lightening at the time of incident. I had saw the accused in the light of it. I could not say why the inspector has not recorded about lantern which was nearby to my place.

29. All these persons were of the same house, but did not woke up at the time of commission of offence of rape. He stated that my wife and son reached at the place and after that he came, whereas, the victim has stated that her father-in-law, mother-in-law and brother-in-law came at the same time. He has stated that thereafter my wife and son had already talked with the victim, because I had returned to my cot. After one hours, I had slept and during this one hours, we talked to each other that very bad

incident has happened.

30. All the members of the family had slept after commission of such heinous incident and they did not try to even provide medical aid to the victim or to lodge report and to inform any of their neighbour. He has further stated that because husband of the victim was residing separately, hence he had not considered it appropriate to lodge the report. The kitchen of the victim and her husband is separate. By this conduct of these three persons that they have talk for one hours that very bad incident has happened, but they did not take any other steps. Simply they talked that it is very bad things had happened.

31. PW-4, Shafik Ahmad has recorded his statement on 4.1.1985 itself before the learned trial court. He deposed that it is around one year and seven months ago. I, alongwith my parents were sleeping in the Aangan/court-yard. My bhabhi/victim was sleeping in her room. There was lantern was lightening on the door of the room. After hearing screaming of victim, my eyes was opened. My parent were woke up 1-2 minutes prior to my awakening. I had saw that Zulfequar and Saddique exiting from the room of the victim. Saddique was having knife and Zulfequar was having revolver. I had not chased them due to fear. I had not went near to the victim. My mother had asked to the victim and informed all details to me. My bhabhi was weeping. Whereas, the victim has stated that all the three members were went to the place of victim, where there is contradiction in the statement of the victim, where this witness has stated that he did not went nearby to the victim, all are contradictory to each other. There is no corroboration with the statement of the family members.

32. PW-5, Batulan, who is mother-in-law of the victim, has deposed her statement on 4.1.1985. She has stated that incident is approximately one and half years ago. My son, husband and myself were sleeping in the court-yard and the victim was sleeping in her room. After hearing alarm of the victim, I woke up. I had saw that Zulfequar and Saddique, accused present in court, were exiting from the room of the victim and fleeing away. Zulfequar was having revolver and Saddique was having knife. The accused persons were fleeing outside in the Gali. I had went nearby to the victim. I had asked why you have screamed, then she told that accused have committed forceful act with her.

33. In her cross-examination, she stated that the inspector had recorded my statement. The inspector has neither asked nor I remember that lantern was lightening in the courtyard. When I had went, my husband was already went prior to myself and he was going by saying 'what happened' 'what happened' and 'who is', 'who is'. She stated that when her eyes was opened, then her husband reached to the door of the room of the victim. I had also reached nearby to the victim. My daughter-in-law did not tell anything to my husband due to shame. She has confirmed that her 'Salwar' was lying on her legs in open condition and just after, my son Shafik was also came near to the victim and she has narrated all the story infront of him also. She has stated that she had helped in wearing of Salwar to the victim, whereas the victim has stated that she worn the salwar by her own. Whereas, Shafik had stated that he did not came nearby to the victim, whereas the victim had told that she had narrated entire story to all of them.

34. There is consistent contradiction in the story of the prosecution. There

is no corroboration in the statements of witnesses, who are none other than the family members and alleged to be present at the time of incident. The credibility of witnesses is become highly doubtful.

35. She has further stated that after knowing all these incident, then all three came to the cot and laid down on it and slept, whereas, father-in-law of the victim who is husband of this witness stated that there were talk for one hours that very bad incident was occurred and thereafter they slept. It is highly unbelievable and unnatural that after this kind of incident, how all the family members will go to sleep.

36. PW-6, Head Constable, Prahlad Singh has deposed before the learned trial court that he prepared the check FIR and GD entry. He has stated in his cross-examination that it is belied to state that report has been lodged on the advice of police at the police station. When I had taken clothes of the victim, then there were stain of semen on said clothes. I did not know whether the clothes were sent for examination or not.

37. PW-7, Sub-Inspector, Hukum Singh is the Investigating Officer. He had stated that he recorded the statements of witnesses. He had inspected the place of incident and prepared site plan and verified it as Ext. Ka-5. He had obtained medical examination of the victim on 6.5.1983 and thereafter, he had recorded statement of the victim under Section 164 Cr.P.C before the court. He had got supplementary report of the victim on 17.5.1983. He had recorded the statement of accused in the lockup and after completion of investigation, had submitted charge sheet against the accused persons, which is verified as Ext. Ka-6. He has specifically stated that the witnesses, viz, victim, her mother-in-law, father-in-law and Dewar did not said about any lantern in the courtyard or Gali.

38. PW-8, Dr. Mrs. Shaila Khanna has recorded her statement before the learned trial court. She has conducted the medical examination of the victim. She stated that on external examination, no marks of injury on the body surfaced. No marks of injury or seminal fluids or hair on the private parts were found. On general examination: old healed tears of torn hymen present. Vagina admitting two fingers easily. Vaginal smear taken. Patient was sent for X-ray of wrist and elbow joint. Opinion: The patient is used to sexual intercourse. No opinion about rape can be given. Vaginal smear sent for pathological examination. She further stated that on receipt of X-ray report and pathologist report, she had prepared its supplementary report, which is verified as Ext. Ka-8. As per supplementary report, the age of the victim was above 18 years. No opinion about rape can be given. The victim was habitual of sexual intercourse. She stated that if woman is married, then it is not possible to give any opinion about rape.

39. The statement of accused-Saddique has been recorded under Section 313 Cr.P.C. He stated that due to enmity, he has been falsely implicated in the case. The character of the victim was not good and several persons used to visit to her.

40. The accused-Zulfeqar has stated that there were enmity of his maternal uncle, Shafik Seth with the police of Kemri police and a panchayat was taken place about it, where I told to Abdul Hamid that your wife is of bad character. There were several persons present in the said panchayat. There were hot-talk took place, hence I had been implicated in the said case.

41. There is basic contradiction in the story of prosecution, which is genesis of the offence and thereafter in the statement of the victim. The

victim had specifically denied. She stated that Zulfequar has not committed rape with her. He has only attempted to commit rape. The incident is of night at 12.00 pm, whereas, no source of light has been clearly proved. The lantern, which are said to be there at the time of incident that has not been produced before the learned trial court in the offence.

42. Learned trial court has held that the victim is major, whereas, learned trial court has failed to appreciate the contradiction in the statement and genesis of prosecution case. The victim is neither minor nor is of any tender age. She is admittedly a married lady and all the conduct of the victim and family members are highly unnatural. All were slept after commission of said incident in the night. The credibility of the statement of the victim as well as other family members, are not in the category of sterling witness. There has been consistent contradiction in the statement of the prosecutrix.

43. It is held by the Hon'ble Supreme Court in **Kuldeep Yadav Vs. State of Bihar; 2011 (2) SCC (Cri) 632** that credibility of witnesses is must for conviction. If the evidence is contrary to each other, conviction on the basis of their testimonies is unsustainable. It is also held by the Hon'ble Supreme Court in **Sharda Birdhi Chand Sarda Vs. State of Maharashtra; 1984(4) 116** that prosecution must stand or fall on its own legs and it can not derive any strength from the weakness of the defence.

44. It is held by the Hon'ble Supreme Court in **Yogesh Singh Vs. Mahabeer Singh and others; 2017 (11) SCC 195; 2018 (8) SCC 127**, that minor discrepancy are not to be given undue emphasis, that do not goes to the root of the matter. Whereas, the contradiction goes to the root

of the matter, that has to be considered.

45. In the present case, the genesis of such offence as mentioned in the written complaint and check FIR which had been recorded by the husband of the victim in presence of the victim herself, the complainant has got the entire narration of the incident only on the dictation and narration of the victim, whereas, the offence of rape has not been committed by accused Zulfequar in the written complaint as well as thereafter contradicted in the cross-examination by the victim where she has specifically stated that Zulfequar has not committed rape with her.

46. The basic contradiction, age of the victim, in view of facts and circumstances of the case, timing of incident, contradiction in the statement of family members and witnesses and their conduct after commission of said incident, has not been properly considered and appreciated by the learned trial court. The story and genesis of prosecution inspires no confidence which reflects that the prosecution has failed to prove its case beyond reasonable doubt. The finding recorded by the learned trial court is not appeared to be legal and it is perverse.

47. Consequently, the appeal is allowed. The judgment and order dated 31.1.1985, passed by learned IInd Additional Sessions Judge, Rampur, in Sessions Trial No. 157 of 1984, is liable to be set aside and it is **set aside.** The appellant- Zulfequar is acquitted of all the charges levelled against him. He is on bail. His bail bonds stand cancelled and sureties are discharged, subject to compliance with Section 437A of Cr.P.C as applicable.

48. Let the trial court record be transmitted to the court concerned

alongwith a copy of this judgment for necessary compliance.

49. The criminal appeal stands **allowed.**

**(Abdul Shahid,J.)**

**October 23, 2026**
sfa/

Digitally signed by :-
SYED FAHEEM AHMAD
High Court of Judicature at Allahabad