

2. *St. of Punjab vs. Ram Dev Singh*, (2004) 1 SCC 421
3. *Prithichand vs. St. of H.P.*, (1989) 1 SCC 432
4. *Narayanamma vs. St. of Karnataka*, (1994) 5 SCC 728
5. *St. of U.P. vs. Manoj Kumar Pandey*, (2009) 1 SCC 72
6. *Satpal Singh vs. St. of Haryana*, (2010) 8 SCC 714
7. *Dinesh @ Buddha vs. St. of Rajasthan*, (2006) 3 SCC 771
8. *Masumsha Hasanasha Musalman vs. St. of Maharashtra*, (2000) 3 SCC 557
9. *Ramdas and Others vs. St. of Maharashtra*, (2007) 2 SCC 170
10. *Narain Trivedi and Others vs. St. of U.P.*, 2009 (2) ALJ 550

(Delivered by Hon'ble Sandeep Jain, J.)

1. Heard Sri Dharmendr Kumar Singh, learned counsel for the appellant, Shri Virendra Kumar Pal, learned A.G.A for the State and perused the material available on record.

2. This instant criminal appeal has been filed by the convicted appellant-Sanjay Singh against the judgment and order dated 20.12.2002 passed by the Court of Special Judge, (S.C/S.T Act), Kanpur Dehat, in Special Sessions Trial No. 98 of 1998 (*State v. Sanjay Singh*), Case Crime No. 315 of 1997 under Section 376 I.P.C and 3 (2)(5) S.C/S.T Act, Police Station Mangalpur, District Kanpur Dehat, whereby the appellant has been convicted for offences under Section 376 I.P.C and sentenced to undergo ten years rigorous imprisonment alongwith a fine of Rs. 5,000/- and under Section 3(2)(5) of

S.C/S.C Act for live imprisonment alongwith a fine of Rs. 5,000/-. In default, he has been sentenced to undergo further imprisonment of one year under each conviction. All the sentences have been ordered to run concurrently.

3. The factual matrix is that the first informant –'R' P.W.-1 had given an application dated 11.12.1997 (Ex.Ka-1) in Police Station Mangalpur, Kanpur Dehat, with the averments, that today at about 12:00 noon her daughter 'K' aged about 14 years, had gone to defecate with a mug (Lota) from his house in the field of Ganga Ram @ Ganddhu and after defecating, when she was returning, then one Sanjay Singh forcibly grabbed the hand of victim 'K' and dragged her in the Arhar field of Ganga Ram @ Ganddhu, slammed her down, her mouth was gagged, her underwear was pulled off, thereafter wrong act was committed on her. Her daughter was shouting. On hearing her, he and Ram Pal and his brother Raj Kumar, who was working with him in Abadi land and sowing coriander(Dhania), rushed to that place and saw that Sanjay Singh was lying on her daughter with his pant down, doing wrong act. On seeing them, Sanjay Singh fled towards north, who was chased, but could not be apprehended.

4. On the basis of above *Tehrir*, Ex.Ka-1 by the first informant 'R' (examined as P.W-1 in trial), Case Crime No. 315 of 1997, under Section 376 I.P.C and Section 3 (2) (12) of S.C/S.T Act was registered on 11.12.1997 at 14:00 hours against the accused Sanjay Singh at Police Station Mangalpur, District Kanpur Dehat and corresponding G.D Entry No. 25 was made at 14:00 hours on 11.12.1997. The check F.I.R and G.D Entry have been proved as Ex. Ka-11 and Ex. Ka-12 by Sri

Om Prakash Sharma, retired Deputy S.P. (examined as P.W 5 in trial).

5. The investigation of the case was handed over to Sri Om Prakash Sharma P.W. 5, who recovered the underwear of the victim 'K', on which blood and semen stains were found. The Recovery Memo of the underwear is *Ex.Ka-2*. The shorts (*Nekar*) which the accused was wearing at the time of incident was also seized and the Recovery Memo *Ex.Ka-10* was prepared.

6. The victim 'K' P.W.-2 was examined by Dr. Draupadi Jatariya P.W.-3 on 12.12.1997 at 05:00 p.m. The victim's medical examination report is *Ex. K-5*, according to which, no injury marks were found on her body and private parts. Hymen was old torn and the vagina admitted two fingers easily. Swab was taken from vagina to determine the presence of dead or alive spermatozoa and for age determination the x-ray of right elbow, left wrist and right knee joint of the victim was advised.

7. The victim was again examined on 13.01.1998 at 01:15 p.m. jointly by Dr. Shubha Mishra, and another doctor. In this examination, no injury was found on private parts and internal aspect of thighs. Hymen was found torn and replaced by old healed granular tags. Vagina was admitting two fingers easily, uterus was of normal size. The victim was menstruating and blood was coming out from O.S. The doctors opined that 'K' was used to sexual intercourse.

8. Supplementary report *Ex.Ka-6* of victim 'K' was prepared by Dr. Draupadi Jatariya on 30.12.1997, in which, she could not give any definite opinion regarding rape as she was used to sexual

intercourse. As per the x-ray report, the victim's age was assessed to be about 17 years.

9. The underwear of the victim and the shorts (*Nekar*) of the accused were sent to the Forensic Science Laboratory, Lucknow for examination, whose report dated 03.02.1998 is *Ex. Ka-8*. According to which, human blood was found on the under-wear of the victim but no semen and spermatozoa were found on the shorts (*Nekar*) of the accused and underwear of the victim.

10. After investigation charge-sheet *Ex.Ka-13* against the accused/appellant Sanjay Singh under Section 376 I.P.C and Section 3(2)(12) S.C/S.T Act, was submitted, on which cognizance was taken and subsequently, charge against the accused was framed on 10.07.2000 under Section 376 read with Section 3(2)(5) S.C/S.T Act, to which the accused denied, had pleaded not guilty and claimed trial.

11. The prosecution has examined the following witnesses, who have proved the following documents:-

Sl. NO.	Witnesses	Document proved.
1.	Informant 'R' P.W.1	Tehrir as <i>Ex. Ka-1</i> , Recovery Memo of victim's underwear as <i>Ex.Ka-2</i> , underwear of victim as Material <i>Ex-1</i> , Certified copy of High School

		Certificate of victim as Ex.Ka-3 and Certified copy of High School marksheet of victim as Ex. Ka-4
2.	Victim 'K' P.W.2	No document proved.
3.	Dr. Draupadi Jatariya, PW. 3	Medical examination report of victim as Ex.Ka-5. and supplementary medical report of victim as Ex. Ka-6.
4.	Dr. R.N. Tripathi, Radiologist. P.W.4	X-ray report of victim as Ex. Ka-7 and X-ray Plate as material Ex.-2.
5.	Sri Om Prakash Sharma, retired Dy. S.P. (Investigating Officer) P.W.5	F.S.L report as Ex. Ka-8, Site plan as Ex.Ka-9, Recovery Memo of shorts (<i>nekar</i>) of accused as Ex. Ka-10, Check F.I.R, as Ex. Ka-11, G.D. Entry of Registration of F.I.R as Ex. Ka-12, Charge-sheet as Ex. Ka-13.

12. The accused Sanjay Singh in his statement recorded under Section 313

Cr.P.C has accepted that he belongs to Thakur community and the victim belongs to Scheduled Caste (Chamar) community, who was known to him. The accused has denied the prosecution story and has said that he has been falsely implicated due to enmity.

13. The first informant 'R' P.W. 1 has mentioned in his examination-in-chief that he belongs to Chamar caste. The accused belongs to Thakur caste, who belongs to his village. At the time of incident, his daughter 'K' was aged about 14 years, who was studying in Class 'X'. The accused knew that 'K' belongs to Chamar caste. On 11.12.1997 at 12:00 noon 'K' had gone to defecate in Ganga Ram @ Ganddhu's Lahi field. On hearing the noise of 'K' he, his brother 'R' and one Ram Pal had rushed towards the field, then they had seen in the arhar field of Ganddhu, that accused Sanjay Singh was committing wrong act on 'K', who had fled towards north, on seeing them, who was chased but he managed to flee. The accused had forcibly committed wrong act with 'K'. He had written the Tehrir himself and had gone alongwith 'X' to Police Station Mangalpur. The informant has proved the Tehrir as Ex.Ka-1. The victim was examined on 12.12.1997 and her x-ray examination was conducted on 13.12.1997. The I.O. had seized the underwear of the victim 'K' and had prepared the Recovery Memo which bears his signature, which has been proved as Ex.Ka-2. The informant has proved the dark-green under-wear of the victim in the Court, as material Ex.-1.

14. The informant 'R' has further proved the date of birth of the victim on the basis of her High School Certificate and Mark Sheet, and has proved the attested copy of High School Certificate as Ex. Ka-

3 and the Mark-sheet of High School Examination as Ex. Ka-4. The informant has further mentioned that he had correctly got recorded the date of birth of victim as 01.06.1983.

15. The informant 'R' P.W.-1 in his cross-examination has mentioned that the victim was his eldest child and has denied the suggestion that his daughter was aged about 19 –20 years at the time of his cross-examination in the Court. The informant has further mentioned in his cross-examination that the *Arhar* field of Ganga Ram @ Ganddhu is adjoining the Chak road, which goes towards the north-south. The Chak road is not the main road of his village. Adjoining the Chak road towards west is the field of Ganga Ram @ Ganddhu. Towards south of Ganga Ram's field, houses of Brij Mohan, Babu Lal, Mahipal and Nanku were situated at the time of incident. This witness has denied the suggestion that the victim had illicit relations with Ajay Pal. The informant has mentioned that in the Ganga Ram's field *Arhar* crop was standing and his second crop had been cut. The victim had gone with a mug (*Lota*), who was wearing skirt and blouse in two piece, the underwear was separate. At the time of incident, he alongwith his brother Rajkumar were about 100 yards away from Ganga Ram's field. He had neither seen 'K' being caught by hand and dragged nor being slammed down by the accused, from the Chak road. He had taken about 2 –3 minutes to reach the field from the Chak road. He had heard her daughter's voice from a distance of 100 yards and at that time his brother and Ram Pal were present. On hearing K's voice, they had not rushed to the spot, but had reached easily. He had not seen the accused removing the underwear of the victim. From the place he had heard the victim's

voice, he had taken about one-two minutes to reach the spot of occurrence. He had not seen whether the accused had removed his pant or not, he had seen the accused lying over the victim. He had not seen whether the accused had gagged victim's mouth or not, but when they reached, he had fled. He had seen from a distance of 4-6 yards that accused was committing wrong act with her daughter. He could not apprehend the accused because his Slipper (*Chappal*), broke down and he could not run. The accused without buttoning his pant etc., holding his pant with one hand fled towards north. He had chased the accused for 4-6-10 yards. He had not gone to the accused's father to make a complaint. After chasing the accused for 4-6-10 yards, he had returned to spot, where his daughter was present, who had injuries on her hands, face and a very minor injury on her back. He does not know whether the injuries were caused by friction or not. He is of the firm belief that for the first time wrong act was committed on her daughter. The informant has denied the suggestion that his daughter was accustomed to sexual intercourse and his daughter had relations with Ajay Pal since long. The informant has also denied the suggestion that Ajay Pal had committed wrong act with his daughter in his house and this was witnessed by informant's mother. The informant has also denied the suggestion that he wanted to get the case registered against Ajay Pal, but his daughter objected to this and had threatened that she will commit suicide, if report is lodged against Ajay Pal. The informant has also denied the suggestion that his relatives had become aware of the relationship of the victim and Ajay Pal. The informant has also denied the suggestion that Sanjay Singh's father had got his goats and other cattle locked in the cattle shed. The informant has accepted that he

has received Rs.25,000/- regarding this incident from the *Harijan Welfare Office*. The informant has also denied the suggestion that his daughter had pressed him to suppress the matter but due to greed, he had registered the report.

16. The prosecution has examined the victim 'K' as P.W-2 in trial court, who has mentioned in her examination-in-chief that she belongs to Chamar caste, accused Sanjay Singh belongs to *Thakur* caste, who belongs to her village. About four years ago, at about 12:00 noon, she had gone from her house to defecate and when she was returning to her house then accused met her near Ganga Ram's *Arhar* field, who forcibly took her in the *Arhar* field and slammed her, gagged her mouth and forcibly committed rape upon her. She raised hue and cry, then her father and uncle came, then accused fled. Her father took her to his house and then took her to the police station, where report was lodged. She remained in the police station, in the night and on the next day, she was medically examined in Ursala Hospital, Kanpur, where her X-ray was also conducted, she was wearing skirt and underwear at the time of incident. The police had seized her underwear. At the time of incident she was 14 years old, her date of birth is 01.06.1983, at present she is studying in B.A Part-I. The victim has identified her underwear, which she was wearing at the time of incident, which was seized by the Police, which is material Ex-1.

17. The victim 'K', P.W-2, has mentioned in her cross-examination that she had passed High School Examination privately in the year 1999. She had filled the private form of examination in September, 1998. The incident took place

about one year prior to filling-up the form. It is true that her father has mentioned her age to be 14 and half years in the report and due to this, in High School Examination form, she had also mentioned her age to be 14 years. The victim has denied the suggestion that at the time of incident she was aged about 18 years and her father had wrongly stated her age. She had gone in Ganga Ram's field to defecate, which is adjoining the Chak Road. She had reached the Chak Road, when Sanjay had approached her. She has not seen from which direction accused Sanjay came. Accused Sanjay had said nothing to her, he had grabbed her hand and started dragging her. At that time she had raised hue and cry and also tried to rescue her. She had gone to defecate with a mug (*Lota*), she had not hit the *Lota* on Sanjay's head. She was continuously shouting and trying to escape but he dragged her inside the field and slammed her. At that time *Arhar* crop was standing in the field, sorghum (*Jwaar*) crop was not there. When she was slammed (*Patka*) down, she had shouted, tried to free herself, also moved her legs and had also bitten Sanjay's hand. She tried to free herself for two –four minutes, but he did not let her go. Till her mouth was gagged, she was continuously shouting. Her mouth was gagged with one hand and with another hand, he had removed her underwear, she had thrown her legs, then accused had removed his pant. Her underwear was kept there, his pant was also kept on the ground. In between, his hand would move away from her mouth, then she used to shout again. In the process of removing her underwear, his pant and in this scuffle, about five minutes had elapsed and he had committed rape with her for about two – three seconds. From Ganga Ram's field, houses of villagers are about 40 – 50 yards away and from the spot they are about 100

yards away, in two houses people live with their family. At the time of incident, it was month of December, it was winter season. At that time people were also working outside in the field and were also moving on the Chak road, but on her hue and cry, none came. Only her father and uncle came and at that time, the accused was committing rape on her and on seeing them, had fled after wearing his pant. The accused was chased upto two fields but could not be apprehended. There was no hole in her underwear. She had suffered a minor scratch on her back. No serious injury was there. She had shown her injuries in the police station. There was some injury in her mouth. She knows Ajay Pal, who belongs to her community, who does not visit her house. But sometimes his parents do visit her house. The victim has denied the suggestion that since prior to this incident, she had illicit relations with Ajay Pal and she had sexual intercourse with him. The victim has specifically mentioned that the accused had committed sexual intercourse with her for the first time and prior to that, she had not committed sexual intercourse with anyone. The victim has denied the suggestion that she was seen having wrong act with Ajay Pal and this had spread in her community and neighbourhood and she had resisted getting a report lodged against Ajay Pal. The victim has accepted that her father had received Rs.25,000/- after registration of report in this case. The victim has denied the suggestion that four-five days prior to the incident, the accused had got the goats of her father incarcerated in Kanji House and because of this, her father had got registered a report against the accused.

18. Dr. Draupadi Jatariya, P.W.-3 has mentioned in her examination-in-chief that no sign of injury was present on the

body and private part of the victim. The hymen was old torn and the vagina was admitting two fingers easily. She had prepared two slides from the vaginal swab for detection of spermatozoa and had advised the victim's x-ray for determining her age. This witness has proved the victim's medical examination report as Ex.Ka-5 and on the basis of victim's radiological and pathological reports, has prepared and proved the supplementary report of victim as Ex. Ka-6. The witness has mentioned that no live or dead spermatozoa was found in the vaginal smear and according to the radio-logical report of the victim, she was about 17 years old. This witness could not give any conclusive opinion regarding rape upon the victim, because the victim was used to sexual intercourse.

19. The prosecution has examined Dr. R.N. Tripathi, as P.W. 4, who had supervised the x-ray examination of the victim on 13.12.1997 in U.H.M, Hospital, Kanpur. This witness has proved the x-ray report of the victim as Ex. Ka-7 and X-ray Plate as material Ex.-2 and has stated that on the basis of fusion of bones, he was of the opinion that the victim was about 16 – 17 years old at the time of incident, in which there is a possibility of variation of six months, on both sides.

20. The prosecution has examined Sri Om Prakash Sharma, Investigating Officer as P.W. 5 in the trial Court, who had prepared the site plan of the place of occurrence and proved it, as Ex. Ka-9, has recorded the statement of witnesses, arrested the accused Sanjay Singh on 12.12.1997, got the victim and accused medically examined, seized the Shorts (*Nekar*) of the accused and proved the Recovery Memo as Ex. Ka-10, sent the

under wear of victim and shorts (*Nekar*) of accused for forensic examination and has proved the report of forensic laboratory as Ex. Ka-8, proved the *Check* F.I.R as Ex. Ka-11, G.D No. 25 time 14:00 hours dated 11.12.1997 as Ex. Ka-12 and has submitted the charge sheet after investigation against the accused, which has been proved as Ex. Ka-13.

21. Investigating Officer P.W.5 has mentioned in his cross-examination that the spot of occurrence is visible from the *Chak* road and is at a distance of five yards from the *Chak* road. The *Chak* road is not a common passage. About 60–70 yards away from the spot of occurrence, 10–12 houses are there, in which people are residing. The field in which the incident took place, Arhar crop was standing. There were no bricks and stone on the spot of occurrence. The witness has accepted that the informant had told him in his statement under Section 161 Cr.P.C that they had rushed to the victim after hearing her hue and cry.

22. Learned counsel of the appellant has submitted that the prosecution story is unreliable and also untrustworthy. The trial court has not considered the age of the victim. The victim was major, who was habitual to sexual intercourse, which is corroborated from her medical report. No injury was found on the body or private part of the victim. The incident took place due to the consent of the victim. The informant is not an eye witness of the incident. The doctor P.W.-3 has not stated in her testimony that the victim was raped. There is no evidence on record to prove that the incident took place only because the victim belongs to Scheduled Caste community, as such the conviction of the appellant under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989, is illegal and liable to be set aside. With these submissions, it has been prayed, that the appeal be allowed and the judgment and order of conviction of the appellant passed by the learned trial court, be set aside.

23. Learned A.G.A. for the respondent State has submitted that the learned trial court has rightly believed the prosecution story. The testimony of the victim is trustworthy. The victim is a minor girl, who had been forcibly dragged in the '*Arhar*' field and then raped by the appellant. Learned A.G.A. has further submitted that, it is true that no injury has been found on the body and private part of the victim but even then the testimony of victim cannot be disbelieved. The victim belongs to '*Chamar*' caste and the appellant belongs to '*Thakur*' caste, who has raped the victim, knowing that she belonged to the Schedule Caste community. No evidence of consent of victim is on record. Learned trial court has not committed any illegality or irregularity in convicting the appellant.

24. Having heard Learned counsel for the parties and having perused the records, from the evidence of informant P.W.-1, it is evident that on 11.12.1997 at about 12.00 noon her minor daughter '*K*' P.W.-2, who was aged about 14 years, had gone to defecate in Gangaram @ Ganddhu's '*Arhar*' field and then, on hearing the hue and cry of his daughter, he along with his brother Rajkumar and Rampal had rushed towards the field and had seen that the accused was committing rape on '*K*', who had fled towards north on seeing them, who was chased, but could not be apprehended. After the incident, the informant had written the '*tehreer*' and along with victim, had gone to the police

station, to lodge the FIR. The informant has proved the 'tehreer', as Ex.Ka-1 and the Recovery Memo of the underwear of the victim as Ex.Ka-2, and the dark green underwear of the victim as material Ex-1. The informant has further proved the attested copies of the High School certificate and mark-sheet of the victim, as Ex.Ka-3 and Ex.Ka-4, in which the date of birth of the victim is mentioned as 01.06.1983. In the cross-examination, the informant has mentioned that the victim had gone with a 'Lota' to defecate and at that time she was wearing skirt and blouse in two pieces and the underwear was separate. The informant has mentioned that he had not seen the victim being caught and dragged to the field and had also not seen the appellant slamming the victim on the ground. Further, he has also mentioned that he had not seen the appellant removing the underwear of the victim. The informant has also not seen the appellant removing his pants, but has seen the appellant lying on the victim. The informant has mentioned that he had seen simple injuries on the hands, face and back of the victim, but no such injury has been found in the medical examination of the victim, which has been proved as Ex.Ka-5 by the doctor P.W.-3, but the prosecution case cannot be doubted only due to this reason. 'K' P.W.2 in her cross-examination has mentioned that she had only suffered a minor scratch on her back. In view of this, it is possible that since the injuries of 'K' were of very minor nature, they could have gone unnoticed by the doctor. From the evidence of informant P.W.-1, it is proved that on hearing the hue and cry of the victim 'K' P.W.-2, he had rushed to the place of occurrence and on seeing him, the accused had fled. The informant had chased the accused but could not apprehend him. The evidence of informant P.W.-1 proves the presence of

accused on the spot of occurrence. As per the informant, the incident took place on 11.12.1997 at about 12.00 noon and the first information report of the incident has been got registered on 11.12.1997 at 14.00 hours, which shows that the FIR has been registered promptly.

25. From the evidence of victim 'K' P.W.-2, it is evident that on the date of incident at about 12.00 noon, she had gone to defecate and when she was returning, the accused had grabbed her hand and dragged her in the 'arhar' field and had slammed her on the ground, gagged her mouth and then committed rape upon her. The victim has specifically stated that, on hearing her hue and cry her father and uncle had come and on seeing them the accused had fled, who was chased but could not be apprehended. Her father had taken her back and thereafter had taken her to the police station, thereafter FIR was registered. The victim has mentioned that at the time of incident she was wearing skirt and underwear and the police had seized her underwear. The victim has also proved her date of birth as 01.06.1983 and has also identified her underwear, which she was wearing at the time of incident. The victim has been extensively cross-examined by the accused but nothing incriminating has been elicited from her, so as to discredit her testimony. The victim has mentioned in her cross-examination that she was forcibly dragged and taken inside the 'Arhar' field. She had raised hue and cry and had tried to escape from the clutches of the accused but she could not free herself. The accused had slammed her down on the ground and had committed rape upon her. The victim has mentioned that she had suffered a very minor scratch on her back, which was not of serious nature. The victim has been suggested in the cross-examination that she

had illicit relations with Ajay Pal and had sexual intercourse with him, to which she has denied.

26. The Hon'ble Apex Court in the case of *State of Rajasthan Vs. Noore Khan (2000) 3 SLT 389 and in State of Punjab Vs. Ram Dev Singh (2004) 1 SCC 421* has held that if victim was accustomed to sexual intercourse, did not and cannot in law give licence to any person to rape her. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the victim. Similarly, in *Prithichand Vs. State of H.P. (1989) 1 SCC 432 and Narayanamma Vs. State of Karnataka (1994) 5 SCC 728*, it has been held by the Hon'ble Apex Court, that mere absence of spermatozoa in vaginal smear cannot cast a doubt on the correctness of the prosecution case.

27. The Hon'ble Apex Court has held that even if no injury is found on the body or private parts of the victim, even if the victim is habitual to sexual intercourse, even if no spermatozoa is found in the vaginal smear, if the testimony of the prosecutrix /victim inspires confidence then only on her testimony, accused can be convicted. In this case, the learned trial court has believed the testimony of victim 'K', which has been corroborated partly by her father/informant P.W.1. Even though no injury has been found on the body or private part of the victim, it cannot be a ground to disbelieve her testimony. It has been suggested to the victim that she had an illicit relationship with Ajay Pal and had sexual intercourse with him, but it has been denied by the victim.

28. The Hon'ble Apex Court in the case of *State of U.P. Vs. Manoj Kumar*

Pandey (2009) 1 SCC 72 has held that consent of prosecutrix cannot be presumed on mere fact that she was more than 16 years of age. It has been held by the Hon'ble Apex Court in the case of *Satpal Singh Vs. State of Haryana (2010) 8 SCC 714* that issue of majority becomes irrelevant if the prosecution successfully establishes that it was not a consent case.

29. Learned counsel for the appellant has vehemently argued that the victim was major on the date of the incident and the incident took place due to the consent of the victim, but we are constrained to observe that there is no evidence on record so as to suggest that the victim was major on the date of incident. In the trial court, the victim's father/informant P.W.-1 has proved the High School certificate and mark-sheet of the victim, according to which her date of birth is 01-06-1983 and she was aged about 14 years and six months old on the date of occurrence. As per the supplementary medical report (Ex.Ka-6) the victim was aged about 16-17 years old on the date of occurrence, which is short of the age of majority. In view of this, it cannot be said that the victim was major on the date of occurrence.

30. We are of the opinion that, there is no evidence of consent on the part of the victim. The victim has elaborately mentioned in her cross-examination that she resisted the accused and had tried to escape from his clutches, but she could not succeed. The victim has mentioned that the accused had gagged her mouth, as such she could not continuously shout but whenever the hand of the accused was removed from her mouth, she had shouted and on hearing her hue and cry, her father and uncle had reached the spot and on seeing them, the

accused had fled. The testimony of the victim 'K' P.W.-2 inspires confidence and there is nothing to suggest that she is speaking a lie. The first information report in this case has been registered promptly. The accused has merely said in his examination under Section 313 Cr.P.C. that he has been falsely implicated, but no evidence in this regard has been led by the accused, so as to make the prosecution story doubtful.

31. The learned trial court has believed the prosecution story and we have no reason to differ from the conclusion reached by the trial court, so far as the offence of rape committed on the victim by the accused is concerned.

32. Before amendment on 26-1-2016, Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads as under:-

3(2) Whoever, not being a member of a Schedule Caste or a Schedule Tribe,-

“(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;”

33. The Hon'ble Apex Court in the case of ***Dinesh @ Buddha Vs. State of Rajasthan (2006) 3 SCC 771*** has held that the sine qua non for application of Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

Act, 1989 is that an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes and Scheduled Tribes. It is not the case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect Section 3(2)(v) has no application.

34. The Hon'ble Apex Court in the case of ***Masumsha Hasanasha Musalman Vs. State of Maharashtra (2000) 3 SCC 557*** has held that to attract the provisions of Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the sine qua non is that the victim should be a person, who belongs to a Scheduled Caste or Scheduled Tribe and that the offence under the Indian Penal Code is committed against him on the basis that such a person belongs to a Scheduled Caste or Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises.

35. The Hon'ble Apex Court in the case of ***Ramdas and others Vs. State of Maharashtra (2007) 2 SCC 170*** has held that it is not sufficient that if the accused belongs to upper caste and the victim belongs to Scheduled Caste. It is also necessary to prove that offence was committed on the ground of the victim being of Scheduled Caste. No such allegation has been made in the FIR that the offence was committed because of victim belonged to the Scheduled Caste nor there is any such evidence on record. Thus, the conviction under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be sustained. The fact that the victim belongs to the Scheduled Caste, by itself is not a sufficient ground to bring the case

within the purview of Section 3(2)(v) of the Act.

36. A Coordinate Bench of this Court in the case of *Narain Trivedi and others Vs. State of U.P. 2009 (2) ALJ 550* has held that Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 does not constitute substantive offence. Accused cannot be convicted and sentenced for offence under Section 3(2)(v) of the Act, simplicitor. In cases, where an offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more is committed against a person or property on ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such person, then in such case the accused will be convicted and sentenced for the offence under Indian Penal Code read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 with imprisonment for life and also with fine.

37. In this case, the accused has been convicted by the learned trial court for the substantive offence under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which is illegal. In this case, it is true that the victim belongs to Scheduled Caste 'chamar' community and the accused belongs to upper caste 'thakur' community and it is also true, that the accused knew the victim prior to the incident, but there is no evidence on record to prove that the victim was raped only on the ground that she belonged to Scheduled Caste community. In view of this, the conviction of accused under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, as

recorded by the learned trial court, cannot be sustained and is liable to be set aside.

38. The learned trial court has also convicted the accused under Section 376 I.P.C. and has sentenced him to undergo ten years rigorous imprisonment along with a fine of Rs.5,000/- and in default of payment of fine to further undergo additional imprisonment for one year, but it appears to be excessive. The accused was aged about 35 years at the time of incident. About 27 years have lapsed since the incident. The accused is now about 62 years old. As per the Custody Certificate of Central Prison Fatehgarh, District Farukhabad, dated 30-4-2025, the accused has only remained confined for four months and 11 days in jail till 10-1-2003, since then he is on bail. Keeping in view the present age of the accused, we are of the considered opinion, that if the sentence imposed on the accused by the learned trial court for the offence of rape under Section 376 I.P.C. is reduced from ten years rigorous imprisonment to the minimum punishment of seven years and further to compensate the victim, the fine imposed is enhanced from Rs.5,000/- to Rs.1,00,000/-, then it will meet the ends of justice.

39. Accordingly, this criminal appeal is **partly allowed**, in the above terms.

40. The conviction of appellant Sanjay Singh under Section 376 I.P.C. is maintained but the sentence imposed on him from ten years rigorous imprisonment is reduced to minimum sentence of seven years. Further, the fine imposed by the learned trial court is enhanced from Rs.5,000/- to Rs.1,00,000/- and in default of payment of fine, the appellant is ordered to undergo further imprisonment of one

