

Apex Court in *State of Madhya Pradesh vs. Shyamlal and others, Criminal Appeal No. 1254 of 2024*, we are of the view that following sentence would sub-serve the ends of justice:-

42. Appellant Sukh Ram and Bhupal are sentenced to period already gone under section 304 IPC part II read with 149 of the IPC and they are also sentenced to fine of Rs. 25,000/- each and fine thus imposed shall be paid to the victim.

43. Thus, this appeal deserves to be *partly allowed*. The impugned judgement and order of learned trial court dated 21.12.1985 convicting and sentencing the appellant under section 302 r/w 149 IPC is set aside and they are convicted under section 304 part II read with section 149 I.P.C., section 325 r/w 149 I.P.C. and section 323/149 I.P.C. They are sentenced to period already undergone concurrently and pay fine of Rs. 25,000/- each. The total fine imposed shall be paid to the victim as compensation to the legal heir/ heirs of the deceased Shyam Lal. In default of payment of fine they will undergo imprisonment of three months. The appellants are directed to deposit the fine before the learned trial court within one month.

44. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate concerned for compliance within a week.

45. The Chief Judicial Magistrate, Budaun is also directed to send his compliance report within two months to this Court.

46. Lower court record be sent to the concerned Court forthwith.

47. Registrar General of this Court is also directed to pay an honorarium of Rs.

15,000/- to Sri Javed Alam, learned Amicus Curiae for rendering effective assistance in the matter.

(2025) 5 ILRA 803

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: LUCKNOW 01.05.2025

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.

THE HON'BLE AJAI KUMAR SRIVASTAVA-I, J.

Criminal Appeal No. 482 of 2004

Rajesh & Anr.

...Appellants

Versus

State of U.P.

...Opposite Party

Counsel for the Appellants:

R.P. Singh, K.K. Singh, Kailesh Nath Mishra,
L.K. Gupta

Counsel for the Opposite Party:

G.A.

A. Criminal Law - Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 363, 366 & 376-Indian Evidence Act,1872-Section 114A-challenge to-conviction-Appellants were convicted for raping a 15 year old girl-The FIR alleged that the accused, with the help from others, lured the minor girls 'S' and 'A' took them to Haryana -Victim 'S' gave detailed statements u/s 161 and 164 CrPc, accusing both the accused of forcibly abducting and repeatedly raping her-Victim 'A' turned hostile during trial and denied rape, claiming she went willingly and wanted to marry accused Rajesh-Held, When the prosecutrix is a minor any alleged consent to sexual activity is legally irrelevant-Conviction u/s 376 IPC is sustainable even in absence of physical injuries or medical proof of recent rape-The consistent and uncontroverted statement of the victim u/s 161 and 164 Crpc, when found trustworthy, is sufficient to sustain conviction without

corroboration-Turning hostile by one victim does not vitiate the prosecution case if the other victim's testimony is reliable and corroborated by circumstances-The victim below 18 years of age cannot legally consent to sexual intercourse, thus, even if the act is consensual in fact, it constitutes rape u/s 376 IPC-The evidence of one witness turning hostile does not demolish the case if other prosecution witnesses remain consistent and reliable-It affirms that consent is immaterial in the case of a minor-the evidence of the prosecutrix can be the sole basis for conviction if found credible.(Para 1 to 32)

The appeal is dismissed. (E-6)

List of Cases cited:

1. St. of Mah. Vs Chandraprakash Kewalchand Jain (1990) 1 SCC 550
2. Juwarsingh s/o Bheraji & ors. Vs St. of M.P.(1980) Supp SCC 417
3. Rafiq Vs St. of U.P. (1980) 4 SCC 262
4. Sheikh Zahir Vs St. of Bih.(1983) 4 SCC 10

(Delivered by Hon'ble Mrs. Sangeeta Chandra, J.)

1. The instant Criminal Appeal has been filed by the appellants, namely, Rajesh and Ramu against judgment and order dated 22.10.2003 passed by learned Additional District and Sessions Judge (Fast Track) Court No.5, Lucknow in Sessions Trial No. 55 of 2003, convicting the appellants under Sections 363, 366 and 376 of the I.P.C. and sentencing them to undergo five years imprisonment along with fine under Section 363 I.P.C., to undergo seven years imprisonment under Section 366 along with fine, and to undergo 12 years imprisonment under Section 376

I.P.C. along with fine, with all such sentences to run concurrently.

2. By the time the Appeal came up for hearing the appellants had already undergone their sentence and had been released. This court therefore appointed an Amicus to argue the Appeal on behalf of the appellants.

3. We have heard Sri Kailash Nath Mishra, learned Amicus for the appellants and Sri Balram Singh Yadav learned A.G.A on behalf of the State Respondents.

4. The prosecution story is that one Sri Krishna son of Nihal Raidas approached the Police Station Kakori on 15.09.2002 stating that his brother-in-Law, Sundarlal had sent his daughter 'S' aged about 15 years to live in his house in order to enable her to pursue her studies. 'S' was studying in Class-X. She developed a friendship with 'A', sister of Anand, who was 17 years old and lived in the neighbourhood. The main accused Rajesh used to frequently visit the house of Anand along with Ramu the co-accused, as the sister of Rajesh was married in the same village to one Hari Shankar. On 12.09.2002, 'S' and 'A' left their homes at around 09:00 PM, and they did not return. After searching for 'S' and 'A', the informant Sri Krishna became sure that Rajesh Pasi and Ramu Pasi, along with Hari Shankar had coaxed both the girls to leave their homes and run away with them. He further alleged that 'S' had taken jewellery and cash from the house of the informant while running away. He did not specify the exact amount of jewellery and cash allegedly taken away by 'S' while running away.

5. On such written report, Constable Clerk Vishwanath Sonkar registered an F.I.R. in Case Crime No. 269 of 2002, under Sections 363, 366 and 376 I.P.C. and made entry No. 45 in the GD at 07:30 PM on 15.09.2002 and investigation was assigned to Sub-Inspector Rajiv Ranjan Srivastava.

6. The Investigating Officer submitted charge-sheet after completing investigation only against Rajesh and Ramu, and exonerated Hari Shankar and the case was committed to the Sessions Court by the Judicial Magistrate Lucknow on 10.01.2003

7. The prosecution produced Kumari 'A' as P.W.-1, the informant Sri Krishna as P.W.-2, Kumari 'S' as P.W.-3, S.I. Rajiv Ranjan Srivastava as P.W.-4, Dr. Bharti Sharma as P.W.-5, Vishwanath Sonkar Constable Clerk as P.W.-6, Sati Ram Yadav S.I. as P.W.-7

8. The accused in their statement under Section 313 I.P.C. denied any involvement and alleged that they had been falsely implicated because of enmity and claimed trial but they did not produce any evidence in their defence.

9. After trial was concluded and the Trial Court convicted the appellants as aforesaid, this appeal has been filed and the counsel for the appellants has argued that the conviction of the accused Rajesh and Ramu cannot be sustained as the prosecution failed to establish their guilt beyond all reasonable doubt. The evidence that was produced before the Trial Court was not sufficient to prove the appellants guilty as the prosecution witnesses have not supported the prosecution story and were declared hostile. Also, the statements of

prosecution witnesses were contradictory and the investigation itself was tainted with pre-meditation and malafides. Conviction has been based solely on the oral statement made by P.W.-3 Kumari 'S' about her date of birth being 12.04.1988. Even if such date of birth is taken to be true, the prosecution witness / victim was more than 16 years of age on 12.09.2002 and the Trial Court did not give the grace period of two years as is required to be given under law.

10. This court has gone through the statements of the two victims given under Section 164 to the Magistrate on their being recovered from the custody of the accused. 'S' stated that she was 14 years of age and that on 12.09.2002, she had gone to ease herself when 'A' also was seen coming by her. 'A' being a friend told 'S' to walk a little further. As soon as they reached under a tree and 'S' was about to sit to ease herself, Rajesh and Ramu, the two accused had come there, and Rajesh tried to strangle her with her Dupatta and 'A' and Ramu both caught her hands. It was then that she realised that 'A' was in collusion with Rajesh and Ramu. She lost consciousness and regained it only at Delhi bus station. Again 'A' made her lose her consciousness. As soon as she came around, she told them that she wanted to go home to her father. However, 'A' forcibly put her hand on her mouth and she lost consciousness again. She regained consciousness only at Kaithal as revealed to her by 'A'. There Rajesh and Ramu took turns to violate her modesty, and when she screamed for help, 'A' caught hold of her and quietened her. After about four days, Ramu's brother Pappu and Rajesh's father also arrived in Kaithal and Rajesh's father and Pappu told 'S' to write down that she had come with them of her own sweet and had performed court marriage. When she

refused, she was told that she would be sold off by them. It was also stated that when Rajesh and Ramu abducted her both had guns with them. Even Pappu had a gun with him, and all of them threatened her. Pappu forcibly made her write a letter that she had run away on her own. All of them forced her to say that it was her own mistake and not that of Rajesh and Ramu. When the neighbours came to know, Rajesh and Ramu changed the room in which 'S' was kept and took her to Kurukshetra. She was kept in Kurukshetra for about six days and forcibly made to wear Sindoor and bangles by Ramu. One day she found opportunity to run away and met one good man and his parents and told them about her story. They asked 'S' to take them to the room where she had been kept captive. When 'S' took them to the room, they found Ramu, Rajesh and 'A' there in the room and the people accompanying her quietly locked the door of the room from outside and took 'S' to the police station for filing a report. After the report was lodged, the police came and arrested Rajesh and Ramu and 'A', and also called up her father who came along with local police to rescue her. 'S' also stated before the Magistrate that she wanted to go to her home with her father, and that Pappu and Rajesh's father had threatened to kill her family.

11. 'A' on the other hand when produced before the Magistrate on 07.10.2002 stated on oath that she was sixteen and a half years old and that on 12.09.2002, when she had gone out to ease herself, she met 'S' who asked her to take take a stroll. While 'A' was strolling with 'S' who had already colluded with the two boys, Rajesh and Ramu, they abducted her and took her to some other town. Later on, she was taken to Kaithal where they rented

a room. When 'A' started crying that she wanted to go to her parents house, Rajesh and Ramu were instigated by 'S' to rape 'A'. After she was raped, 'A' told them that had they told her parents, they would have readily married her to them. Rajesh and Ramu along with 'S' then told her that they will take her to her parents after their work is finished. Whatever 'S' told Rajesh and Ramu to do with 'A', they obeyed her and behaved accordingly. Later on, when they were ready to leave her with her parents, the police came and arrested them. But 'A' also deposed that Rajesh and Ramu had threatened 'S' that in case she went home to her parents, they would kill her.

12. A medical examination of both 'A' and 'S' was conducted by a lady doctor in a Government hospital, 12.09.2002, and no mark of injury was found on their body. Their hymen was old, torn and healed and on the basis of finger test, the doctor was of the opinion that both the girls were accustomed to sexual activity and no opinion regarding them being raped could be given. On the basis of their x-ray report both 'S' and 'A' was found to be around 17 years of age.

13. The statement of the Sub-Inspector Rajiv Ranjan Srivastava the first Investigating Officer was taken by the Trial Court and he deposed that after information regarding both 'S' and 'A' being missing was received, efforts were made to to recover them. On the basis of information received from an informer, they reached Durga Ganj crossing where both the abducted girls were found sitting in a hotel. On being approached, both the girls said that the accused had gone to buy some things for them from a shop nearby. The police team waited for the accused and arrested them on their arrival. Both the

recovered girls were produced before the Magistrate. They gave their statements under Section 164 Cr.P.C. implicating each other as having colluded with Rajesh and Ramu. On their request, they were handed over to their parents on 07.10.2002, and '*Supurdagi Nama*' was prepared accordingly.

14. After trial was committed to the Sessions Court charge was framed against both the accused regarding kidnapping both girls from their lawful guardians with the intent of illicit intercourse and then committing rape on them i.e. Sections 363, 366 & 376 of I.P.C.

15. Kumari 'A' was produced as P.W.-1 and in her examination-in-Chief before the Trial Court, she stated that she knew both the accused Rajesh and Ramu since long, and that she had relationship like brother and sister with Rajesh. 'S' was originally from Malihabad, but she had relatives in her village in Kakori, and she came to live in her village and 'A' and 'S' became friends. She also stated that she had gone on her own with Rajesh and Ramu and 'S' was also with them. They stayed in Kurukshetra Haryana, for sometime where Rajesh had taken a room on rent. Ramu and 'S' were also living with them. Neither Rajesh nor Ramu committed any sexual offence with her at the time when she had gone with them or while she was living with them. She was nineteen and a half years old. She returned after her brother and her father found her in Haryana. She did not get married to either Ramu or Rajesh. She further admitted to having been medically examined and also to have given a statement before the Magistrate. She was declared hostile by the Trial Court upon application of the prosecution and permitted to be cross examined. She stated

in cross-examination that whatever statement she had given to the Magistrate earlier under Section 164 Cr.P.C. was under the influence of the Sub-Inspector. Her statement under Section 161 Cr.P.C. was read out to her, but she denied giving any such statement and she said she had left her home out of her own sweet will and she was nineteen and a half years old at the time. She had not told anyone while she was living in Kurukshetra, and she had not informed her family as they would have scolded and beaten her up. Also, on being cross examined by the counsel for the accused, she stated that 'S' had gone with them on her own out of her own sweet will and that Ramu had not committed any sexual assault on 'S'. P.W.-1 also stated that the accused as well as 'S' and 'A' were together at all times in Haryana. During the night, she used to sleep with 'S', whereas Ramu and Rajesh used to sleep separately. She also stated that she wanted to marry Rajesh and 'S' wanted to marry Ramu. She had no complaints of any sexual offence having been committed either by Ramu or Rajesh with her. She also stated that because the father of 'S' was a home guard, the Investigating Officer had threatened her to give statement against accused.

The informant Sri Krishna son of Nihal was produced as P.W.-2. He stated that his brother-in-law Sunder Lal used to live in Malihabad whose daughter 'S' had come to stay with his family in his village in Kakori around four months ago in order to continue her studies and she was a student of Class X in Kakori. She befriended one 'A' who used to live in the neighbourhood. And on 12.09.2002 at around eight or nine o'clock at night 'S' told the family that she was going out to ease herself. She did not return for around 15 minutes and then they started searching

for her. When 'S' did not return even in the morning, P.W.-2 called up her father and then they went to the police station to lodge a report against Hari Shankar, Ramu and Rajesh. According to P.W.-2 Rajesh used to visit the house of Hari Shankar and also that of one Anand living in the same village. He was also friendly with Ramu. He stated that the F.I.R. was written by him on the prompting of other villagers and he believed that Ramu had taken 'S' to Jalandhar. 'S' returned after 10 days along with 'A'. 'S' did not tell anything of what happened to her she also did not tell him whether both of the victims had gone on their own with the accused. They were brought home from Kurukshetra, Haryana by Sundar Lal and Anand, and the Sub-Inspector. The local police had called him after receiving a call from the Police at Kurukshetra, Haryana, but he had not gone to bring back 'S'.

Kumari 'S' was produced as P.W.-3. She stated that the incident was of 11.09.2002 at around 09:00 P.M., and that she was living in the house of her maternal uncle Sri Krishna at the time and studying in Kakori Unique Inter College in High School and that her date of birth was 12.04.1988. 'A' was her neighbour and a friend, and on that night when she had gone out to ease herself, she was followed by 'A' and she reiterated her statement under Section 161 and 164 of the Cr.P.C. given to the Police and the Magistrate.

16. 'S' as P.W.-3 stated that Ramu and Rajesh both committed rape on her and kept her at Kaithal for 15 days. Whenever she resisted sexual assault, Rajesh and Ramu and 'A' all ganged up together against her and threatened to sell her off. After Rajesh's father and Pappu Ramu's brother, arrived in Kaithal, the accused took her to Kurukshetra

Haryana, where she was kept for 5-6 days. Again Rajesh and Ramu both committed rape upon her. Thereafter, all of them returned to Gola Kuan, Malihabad, and when they were waiting for Rajesh and Ramu at Gola Kuan, 'S' and 'A' were away by the police who completed some formalities and got their medical examination done and thereafter handed over 'S' to her father and 'A' to her mother Srimathi Raghurai. She gave her statement under Section 161 and 164 Cr.P.C. on her own and stood by them. 'S' was not cross-examined either by Rajesh or Ramu although they were given opportunity by the Trial Court.

17. P.W.-4 Rajiv Ranjan Srivastava, the first Investigating Officer deposed before the Trial Court that he was posted as Sub-Inspector in Kakori Police Station on 15.09.2002, after writing down the statements of the informant and witnesses in the Case Diary, including that of Anand, Sunderlal, Santosh, Gita and Sangeeta and Smt. Raghurai, Vijay and Murali, he also searched for the kidnapped victims. Ultimately on 29.09.2002, the victims were found near Behta Nala in Malihabad and recovery memo was prepared. Medical examination was got done of the victims 'S' and 'A', after recording their statements under Section 161 and 164 Cr.P.C. on 07.10.2002, they were handed over to their guardians.

18. At the time when the victims were recovered, the two accused were not present with them. P.W.-4 also stated in his examination-in-Chief that the girls had told him that the accused had assured them that after they returned to their native village they will try and convince their family members to get the victims married to the accused. They were making plans to get married in court also.

19. While the girls were recovered in the morning of 29.09.2002, the accused

were apprehended in the evening the same day. The arrest memo was prepared, but no independent witnesses could be found.

20. Dr. Bharti Sharma, Medical Officer, Dufferin Hospital, Lucknow was examined as P.W.-5 and she deposed that both 'S' and 'A' were habitual of sexual activity and no opinion could be given of whether they were raped. She had advised X-ray of knee, wrist and elbow joints for determination of age of the victims. The X-ray was done which had found epiphysis line being either fused or in the process of being fused in both the victims. The radiological age of both victims was around 17 years. However, neither the pathologist nor the radiologist were produced before the Trial Court to prove their reports.

The second Investigating Officer Sati Ram Yadav was produced as P.W.-7 and he stated that had filed the charge-sheet in Court under Section 363, 366 and 376 of the I.P.C. against the accused Rajesh and Ramu on the basis of evidence collected by the first Investigating Officer, Rajiv Ranjan Srivastava.

21. In their statements under Section 313 of the Cr.P.C., both Rajesh and Ramu had denied having kidnapped the victims and stated that the case was fake and they had been falsely implicated because of conspiracy. However, nothing further was stated by them as to what kind of conspiracy they were referring to. They did not try to explain why they were falsely implicated.

We have gone through the judgement of the trial judge wherein he has stated the prosecution story and the evidence collected by the first Investigating Officer Rajiv Ranjan Srivastava and then

discussed statements of all the prosecution witnesses and then has observed that Sri Krishna the informant P.W.-2 had only given his statement in examination-in-Chief but the prosecution did not produce him later on and, therefore, he could not be cross examined by the accused. Hence, his statement cannot be read against the accused.

P.W.-1 had initially supported the prosecution case in her statement under Section 161 Cr.P.C. and in her statement before the Magistrate under Section 164 Cr.P.C., but later on she resiled and said that her earlier statements were given because of fear of the Investigating Officer. At the time when she had run away on her own with Ramu and Rajesh and 'S', she was nineteen and a half years old, and that Ramu and Rajesh had not committed any sexual assault on her. The prosecution got her declared as hostile and then cross examined her with regard to the statements given by her before the Magistrate under Section 161 and 164 Cr.P.C. but she denied having made any statement. The defence counsel for the accused also examined P.W.-1 and she admitted that she wanted to marry Rajesh and that she had no complaint against either Ramu or Rajesh, who had treated her well.

22. The Trial Judge has observed that P.W.-1 the alleged victim had stated that she had a good relationship like that of brother and sister with Rajesh, she had also stated that she wanted to marry him. The Trial Court also observed that in her statement under Section 161 and 164 Cr.P.C. she had stated that Ramu and Rajesh had kidnapped her in collusion with 'S', and they had committed rape on her on the instigation of 'S'. The Trial Court observed that such prosecution witness was

wholly unreliable and hence discarded her evidence.

P.W.-3, on the other hand, had supported and stood by her statements given under Section 161 Cr.P.C. and Section 164 Cr.P.C. she had stated also that she was 15 years old at the time of giving her statement before the court and her date of birth was 12.04.1988, and she was studying in Kakori Unique Inter College in high school when she had been abducted by the accused Rajesh and Ramu in collusion with 'A'. Since the accused had not cross-examined P.W.-3, even after they were given opportunity to do so, and they had thereafter moved an application under Section 311 Cr.P.C., but had not pressed the same on 16.10.2002, and the said application had been rejected for want of prosecution; her statements could be said to be uncontroverted and reliable evidence.

The Trial Court has considered the medical officers' evidence regarding epiphyseal lines of elbow and knee joint having fused, and her radiological age being around 17 years, but has observed that neither the X-ray report nor the ultrasound reports were proved in court by the persons who had prepared them. The pathological examination report was also not proved and hence he relied upon the date of birth as mentioned by P.W.-3 being recorded in her school.

23. The Trial Court observed that since the testimony of P.W.-3 'S' was consistent with her statements under Section 161 and 164 Cr.P.C. and the accused had also not cross-examined her despite opportunity being given to them, it was of the opinion that P.W.3, 'S', was a wholly reliable witness, and since she was only 14 years of age at the time of her

abduction, as per her school records, any consent given by her as alleged by the accused, to any sexual activity would amount to no consent at all as she was a minor. Even if a margin of two years is given to the victim, she would still be only 16 years old at the time of her abduction by the accused who had forcibly taken her to Haryana in September, 2002; and the accused having admittedly violated her modesty, had committed rape on her.

24. The Trial Court looking into the circumstances where out of two alleged victims to the crime, one had resiled and given a statement in favour of the accused and was declared hostile, whereas the other had remained consistent in her testimony right from the time of her recovery and during trial and also looking into the age of the victim, 'S' who was produced by the prosecution as P.W.-3 at the time she was taken away from home village; has come to a conclusion that 'S' being a minor, the accused can be said to be guilty of offence under Section 363, and Section 376 I.P.C. The Trial Court has considered also the fact that the accused had said in their statements under Section 313 that they had been falsely implicated out of enmity, but they did not mention any details as to what was the enmity between the parties and how they had been falsely implicated. They did not cross examine either P.W.-2, the informant or P.W.-3, the victim 'S'.

The Trial Court also was of the opinion that P.W.-3 the victim 'S' would not have subjected herself to character assassination only on the instigation of her maternal uncle, the informant Sri Krishna S/o Hardayal.

The Trial Court having found both the accused guilty as aforesaid had

sentenced them to 12 years rigorous imprisonment.

25. Thus, having noticed the fact that the victim 'S' was aged about 15 years on the date of the incident and was a minor, any question of sexual relationship does not arise. Once the victim has stated that rape was committed upon her without her consent, having regard to the provision contained in Section 114A of the Evidence Act, it shall be presumed that there was no consent of the victim, who was a minor on the date of the incident and, even otherwise, was a minor.

26. In **State of Maharashtra vs. Chandraprakash Kewalchand Jain** reported in (1990) 1 SCC 550, Hon'ble the Supreme Court in paragraph No.16 has held as under :-

"16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated

in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

"It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary."

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same

weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation.”

(emphasis supplied by us)

27. At the outset, we may, at the cost of repetition, mention that out of the two victims, victim ‘A’, who has been examined as P.W.-1, has turned hostile. Therefore, it was vehemently contended by learned counsel for the appellants that as one of the witnesses of the same incident has not supported the prosecution case, therefore, the testimony of victim ‘S’ cannot be relied upon and the learned trial, while doing so, has committed manifest error of law. In this regard, we would like to observe that it is not the law that, in case, one of the witnesses of alleged incident turned hostile, it would demolish the entire case of prosecution despite the same having been supported by reliable testimonies of other prosecution witnesses. It is no more *res integra* that the testimony of one of the prosecution witnesses is not to be tested on the touchstone of reliability of statement of any other prosecution witness. Therefore, as we have found the testimonies of prosecution witnesses of fact, namely, P.W.-2, the informant and P.W.-3, the victim ‘S’, to be reliable, we are not persuaded to disbelieve the same only because one of the victims i.e. the victim ‘A’, P.W.-1 has not supported the prosecution case and that too for the reason which is clearly reflected in her testimony that admittedly she wanted to marry with one of the co-accused, namely, Rajesh.

28. Adverting to the facts of the present case, we have already noticed that

not only the victim was minor on the date of incident, but also she has categorically stated that the appellants have committed rape upon her without her consent. There has been no cross-examination of P.W.-2, the informant, and P.W.-3, the victim ‘S’ despite opportunity to do so, therefore, their statements would be admissible against the appellants in toto, if the same is, otherwise, found to be reliable. In this regard, a judgment rendered by Hon’ble the Supreme Court in **Juarsingh S/o Bheraji and others vs. State of Madhya Pradesh**¹ may be usefully referred to.

29. In **Rafiq vs. State of U.P.**², Hon’ble the Supreme Court in paragraph No.6 has observed as under :-

“6. There are several “sacred cows” of the criminal law in Indo-Anglican jurisprudence which are superstitious survivals and need to be re-examined. When rapists are revelling in their promiscuous pursuits and half of humankind — womankind — is protesting against its hapless lot, **when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative testimony, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. In this case, the testimony has commanded acceptance from two courts. When a woman is ravished what is inflicted is not merely physical injury, but “the deep sense of some deathless shame”.**

A rape! a rape! ...

Yes, you have ravish'd justice;

Forced her to do your pleasure.”

(emphasis supplied by us)

30. Now coming to the issue of absence of any injury on the person of prosecutrix and its effect, we would like to refer to a judgment rendered by Hon'ble the Supreme Court in **Sheikh Zakir vs. State of Bihar** wherein Hon'ble the Supreme Court has held that the absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. Merely because the complainant was a helpless victim who was by force prevented from offering serious physical resistance she cannot be disbelieved. In this situation the non-production of a medical report would not be of much consequence if the other evidence on record is believable.

31. In the aforesaid background, we do not find any factual or legal infirmity in the judgment impugned, which does not suffer from any material irregularity also.

32. The appeal, which is bereft of merit, stands **dismissed**.

33. As the appellants have already served out the sentence awarded to them and the fine imposed has already been deposited by them, therefore, in such a situation, they are not required to surrender

34. Let a copy of this judgment be sent to learned trial court concerned alongwith trial court record for its information and necessary compliance forthwith.

(2025) 5 ILRA 813

**APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.05.2025**

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Criminal Appeal No. 1014 of 2025

Radhey Lal ...Appellant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Appellant:
Mohammad Alam

Counsel for the Opposite Parties:
G.A.

A. Criminal Law - Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sectionss 147 & 323 - The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(X) -BNSS,2023-Section 239 (216 Crpc)-The appellant challenged the order dated 19.11.2024 passed by special judge, SC/ST-The challenge was specifically against the dismissal of his application u/s 239 of BNSS (formerly section 216 Crpc) seeking alteration of charges framed u/s 3(1)(X) of the SC/ST Act- -The appellant filed an application for alteration of charges under SC/ST Act as he belongs to Schedule Caste and section 3(1)(X) which applies only to non – SC/ST persons, cannot be invoked against him-The Special Judge SC/ST rejected the application-Held-Only courts have the authority to alter charges under BNSS not the parties-SC/ST Act provisions cannot be invoked against SC/ST persons, and courts must rectify such legal errors even if brought up by the accused-The trial court is at liberty to suo motu consider the application and if convinced, correct the erroneous charges.(Para 1 to 26)

The appeal was dismissed. (E-6)

List of Cases cited:

1. Anant Prakash Sinha Vs St. of Har.(2016) 6 SCC 105
2. P. Kartikalakshmi Vs Sri Ganesh & anr. (2017) 3 SCC 347