

Neutral Citation No. - 2025:AHC-LKO:36985  
Reserved/AFR

**Court No.12**

**Case:-** CRIMINAL APPEAL. No. 889 of 2009

**Appellant:-** Pradeep Kumar @ Pappu @ Bhuriya

**Respondent:-** State of U.P.

**Counsel for Appellant:-** B.S. Patel, Ashutosh Singh (Amicus)

**Counsel for Respondent:-** G.A.

**Hon'ble Rajnish Kumar, J.**

1. Heard Sri Ashutosh Singh, learned counsel for the appellant and Shri Badrul Hasan, learned Additional Government Advocate (here-in-after referred as AGA).

2. This Criminal Appeal under Section 374(2) of Code of Criminal Procedure Code (here-in-after referred as CrPC) has been filed for setting aside the conviction and sentence awarded by Additional Sessions Judge/Fast Track Court No. 2, Lucknow by means of the judgment and order dated 06.02.2009 passed in Session Trial No. 391/2008: State Vs. Pradeep Kumar @ Pappu @ Bhuriya arising out of Case Crime No. 266/04 under Section 363/366/376/511/354 of Indian Penal Code (here-in-after referred as IPC), Police Station Aliganj, District Lucknow, by which the appellant has been convicted and awarded sentence of 10 years rigorous imprisonment and Rs. 5000 fine under Section 376/511 IPC and in default of payment of fine one year additional imprisonment and sentence of 7 years simple imprisonment and Rs. 3000 fine under Section 366 IPC and in default of payment of fine, six months additional imprisonment and sentence of 5 years simple imprisonment and Rs. 2000 fine under Section 363 IPC and in default of payment of fine, four months additional

imprisonment and sentence of 1 year simple imprisonment and Rs. 1000 fine under Section 354 IPC and in default of payment of fine, two months additional imprisonment. It has further been provided that, from the fine deposited by the appellant, Rs. 5000/- shall be paid to the victim as compensation and all the sentences shall run concurrently.

3. Learned counsel for the appellant submitted that there is a delay of 21 days in lodging FIR because it was a case of consent by the victim, on account of an affair between the appellant and the victim, therefore FIR was not lodged for a period of twenty days. On coming to know that the appellant and the victim were going out, the FIR was lodged and the victim was recovered from the crossing, whereas no alarm was raised by the victim. Even otherwise the submission was that the charge of Section 376 has not been proved on account of fact that the victim, who appeared as P.W. 2 has not made any such allegation and in fact denied the same. He further submitted that the medical age of the victim has come as 18 years. He next submitted that the learned trial court, without considering the above and the evidence and material on record, passed the impugned judgment and order convicting and punishing the appellant, which is not sustainable in the eyes of law and is liable to be set aside. He relied on judgment and order dated 04.01.2024 passed in **Darshan Singh vs. State of Punjab in Criminal Appeal No. 163 of 2010; 2024 INSC 19** by the Hon'ble Supreme Court of India, judgment and order dated 07.01.2025 passed in **State (GNCT of Delhi) vs. Vipin @ Lalla; Criminal Appeal No. 94 of 2025** by the Hon'ble Supreme Court of India, judgment and order dated 29.09.2006 passed in the case of

**Tarkeshwar Sahu vs. State of Bihar (Now Jharkhand); AIR ONLINE 2006 SC 383.**

4. Per contra, learned AGA submitted that the victim was kidnapped forcefully and in custody of the appellant for a period of twenty days and there is no denial of the recovery of the victim from the custody of accused i.e. the appellant. He next submitted that the explanation for delay in lodging the FIR has been given in the FIR itself. Even otherwise delay is immaterial in such cases. He further submitted that there is no proof of marriage and in the statement under Section 313 CrPC also, there is no plea of affair between the parties and the plea of implication of the appellant is due to enmity, which could not be proved. He further submitted that the burden to prove the consent was on the accused but he failed to do so. He also submitted that the FIR and medical report have been proved, according to which, hymen was found torn. Even otherwise attempt for rape has been proved beyond doubt. Thus, learned AGA submitted that the appellant has rightly been convicted by passing a reasoned and speaking order on the basis of evidence and material on record and adequate punishment has been awarded. There is no illegality or infirmity in it. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed. He relied on **State of Himachal Pradesh vs. Prem Singh; 2009 (64) ACC 287**, **Satpal Singh vs. State of Haryana; 2010 CRI. L. J. 4283**, **Pandharinath vs. State of Maharashtra; (2009) 14 SCC 537**, **State of Himachal Pradesh vs. Shree Kant Shekari; 2004 CRI. L. J. 4232**, **Koppula Venkat Rao vs. State of Andhra Pradesh; (2004) 3 SCC 602**, **State of Bihar and others vs. Tabarak Hussain; MANU/BH/0131/1982**, **Ganga Singh vs. State of Madhya Pradesh; AIR 2013 SC 3008**, **Roop**

**Singh vs. State of Madhya Pradesh; (2013) 7 SCC 89, Kalu Alias Laxminarayan vs. State of Madhya Pradesh; (2019) 10 SCC 211; Chaitu Lal vs. State of Uttarakhand; (2019) 20 SCC 272** and the judgment and order dated 12.11.2013 passed in **Israil vs. State of Uttar Pradesh.; Criminal Appeal 40 of 2001; Neutral Citation No. - 2013:AHC-LKO:14455** by a co-ordinate Bench of this Court.

5. I have heard learned counsels for the parties and perused the records.

6. The prosecution case, as per the first information report is that a written complaint was given by the complainant; Shanti Devi wife of Ramdularey Nai on 31.08.2004 in the Police Station- Aliganj, District-Lucknow stating therein that her daughter, who is aged about 16 years, has been missing since 10.08.2004. She is being searched by her with the help of her relatives till today and she has come to know from reliable sources that Pappu @ Bhuri son of Motilal Kashyap of her Mohalla abducted her by alluring and he is also missing since 10.08.2004, therefore, an FIR may be lodged against Pappu @ Bhuriya and recover her daughter. On 31.08.2004 at 12:35, the case vide Case Crime No. 266 of 2004 under Sections 363/366 IPC was registered and the investigation was handed over to Shri Ram Vachan Prasad, Investigating Officer. The victim was recovered at 16:30 on the same day i.e. 31.08.2004 from the custody of the appellant. Thereafter, after preparing the recovery memo before the witnesses, custody of the girl was given to her natural guardian i.e. her mother and the accused was arrested. A statement of the victim, under Section 164 CrPC, was recorded before the Magistrate. The matter was investigated by the Investigating Officer and on the basis of statements recorded

in the investigation and the medical examination report of the victim, chargesheet under Sections 363/366/354 and 376/511 IPC was submitted. The copies of prosecution papers were provided to the accused under Section 207 CrPC and the matter was committed to the Session for trial. The charge under Sections 363/366/354 and 376/511 IPC was framed against the appellant. The appellant denied the charges and prayed for trial.

7. The prosecution produced Smt. Shanti Devi, the complainant as P.W. 1, the victim as P.W. 2., Dr. Shobha Rani Dwivedi as P.W. 3, Constable Moharir Harivansh as P.W. 4 and Investigating Officer Ramswaroop as P.W. 5. After the conclusion of the evidence of prosecution witnesses, the statement of the accused under Section 313 CrPC was recorded. In his statement, the appellant stated that the witnesses have given false evidence. The statement of the victim under Section 164 CrPC before the Magistrate was given by the victim under the pressure of family members and the prosecution witnesses have given false and wrong evidence. Lastly, he stated that he is innocent and he has been falsely implicated, on account of the enmity, whereas he has not committed any crime. He also prayed for adducing evidence in defence. In defence, he produced certain letters along with a list of documents and an application sent to the District Magistrate, Gonda. Learned trial court, after hearing learned counsels for the parties and considering the evidence and material on record, convicted the appellant and punished with the aforesaid punishments.

8. The complainant Shanti Devi appeared as P.W. 1 to prove the prosecution case. She stated that Beenu is her daughter and lives with her. She was missing since the afternoon of 10.08.2004. For her search, help of the relatives were sought as there was

no male member in her home because her husband had died. The girl could not be traced. Subsequently, it came to knowledge from the persons in the vicinity that her daughter has been abducted by Pappu alias Bhuria of her Mohalla by alluring her, therefore, a report was lodged in Police Station Aliganj. He proved the report contained in Paper No. A5/2 as Pradarsh Ka-1. She also stated that the girl was recovered on 31.08.2004 by the police and handed over to her.

9. The victim appeared as P.W. 2. She stated that she knows Pappu @ Bhuria, whose name is also Pradeep. He resides in Pandey Tola. She further stated that about 3 years ago, the date is not remembered to her, when she was going to market from her house, the accused met her on the way and asked her to go with him for a stroll. She denied. Then, she forcibly got her sit on vehicle and took her towards Sitapur. He kept her at the residence of some of his relative for about 20 days. She was kept forcibly. She next stated that she had made noise. She also stated that the accused had done bad work with her. The bad work was done against her wish. Her statement was recorded before the Magistrate, which is available in the file. She reiterated the statement made under Section 164 CrPC before Magistrate. The Daroga had also recorded her statement.

10. Dr. Shobha Rani Dwivedi appeared as P.W. 3. She stated that she was posted on 31.08.2004 as Medical Officer in Veerangana Avanti Bai Hospital, Lucknow. On the said date, the victim Km. Beenu was examined by her with the consent of her mother Shanti Devi. She proved the medical examination report. In the internal examination, she found that there was no injury mark on the private parts, stomach and thighs. The hymen was torn and the injury was old. Her medical age was found to be

about 18 years. However, no definite opinion could be given in regard to rape. He proved the medical report as Paper No. A8/4 and supplementary report as Paper No. A8/3, which have been marked as Pradarsh Ka-2 and Pradarsh Ka-3. X-ray report is Paper No. A8/1, which was marked as Pradarsh Ka-4.

11. Constable Moharir Harikesh appeared as P.W. 4, who proved the chick FIR and GD, which have been marked as Pradarsh Ka-5 and Pradarsh Ka-6.

12. Ramswaroop, who appeared as P.W. 5, stated that the Investigating Officer of the case Ram Achal Prasad had died. He was posted with him. He recognizes his handwriting and his signature. He also stated that he was with the Investigating Officer at the time of recovery of the victim. He proved the recovery memo, site plan, site plan of place of recovery and chargesheet as Pradarsh Ka-6, Pradarsh Ka-7, Pradarsh Ka-8 and Pradarsh Ka-9.

13. P.W. 1-Shanti Devi ie. mother of the victim, stated in her evidence on oath that the accused had abducted the victim by alluring her, who was recovered from the custody of the accused on 31.08.2004. P.W. 2-the Victim herself had also stated in her examination-in-chief that she was coming from her house to market when the accused met her on the way and asked her to go with him, but she denied to do so, therefore, the accused forcefully got her sit on the vehicle. She further stated that she was kept forcibly by the appellant at the residence of some of his relative for about 20 days. In cross-examination also she reiterated the same. Considering the evidence of P.W. 1 and P.W. 2, the learned trial court has recorded a finding that the victim had not gone with her will with the accused rather she was forcibly taken away by the accused.

14. P.W. 2 i.e. the victim had stated in her statement under Section 164 CrPC before Magistrate that she was forcibly got her sit in Maruti Van and taken away by the appellant. She had cried but none had heard. He had taken her to the house of his relative, who resides at Sitapur Road. She was kept by the appellant there for about 20 days forcibly. The appellant had done bad work with her there. He tried to do bad work, however, the same was not done on her protest. He had tried to do it twice, however, he had not done the penetration. P.W. 2 in her evidence before the trial court also supported the aforesaid statement given before the Magistrate under Section 164 CrPC. She had stated that the statement given by her that the accused had done bad work with her is the correct statement. Thus, the charges under Sections 363, 366, 376/511 and 354 IPC have been proved.

15. Section 363 IPC provides punishment for kidnapping. It provides that whoever kidnaps any person, from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Section 366 IPC provides kidnapping, abducting or inducing woman to compel her marriage, etc. It provides that whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The definition of rape has been given in under Section 375 IPC. Section 376

provides the punishment for rape. Section 354 provides assault or criminal force to woman with intent to outrage her modesty. It provides that whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine. Section 511 IPC provides punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. It provides that whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both. Thus, where a person attempts to commit an offence punishable by this Code, he can be punished for a term which may extend to one half of the imprisonment provided for the offence or with fine or both.

16. The Hon'ble Supreme Court, in the case of **Satpal Singh vs. State of Haryana (Supra)**, considering the judgment of Hon'ble Supreme Court in the case of **State of Himachal Pradesh vs. Prem Singh (Supra)**, has held that in case of sexual offence, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter

to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. The relevant paragraphs 15, 16 and 17 are extracted hereinbelow:-

*“15. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon" [vide Satyapal Vs. State of Haryana AIR 2009 SC 2190].*

*16. In State of Himachal Pradesh Vs. Prem Singh AIR 2009 SC 1010, this Court considered the issue at length and observed as under :-*

*"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."*

*17. Thus, in view of the above, the delay in lodging FIR in sexual offences has to be considered with a different yardstick.”*

17. The Hon'ble Supreme Court, in the case of **Tarkeshwar Sahu vs. State of Bihar (Now Jharkhand) (Supra)**, has held that the important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration. No offence under Section 376 IPC can be made out unless there was penetration to some extent. It has further been held that the ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. The word 'modesty' is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a

female on account of her sex. In the said case, the Hon'ble Supreme Court set aside the conviction under Section 376, 511 IPC therein recording a finding that the appellant had neither undressed himself nor even asked the prosecutrix to undress so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Section 376/511 IPC is wholly illegal and unsustainable. This case is not applicable on the facts and circumstances of the present case as in the present case, the victim has stated not only in her statement under Section 164 CrPC before the Magistrate but in evidence before the trial court also that the appellant had undressed her, however on her protest, he could not do intercourse but he could not done bad work with her.

18. The Hon'ble Supreme Court, in the case of **Pandharinath vs. State of Maharashtra (Supra)**, has held that if the accused-appellant had removed her clothes and he had not rebutted this statement of the prosecutrix in his examination-in-chief, it is definitely a case of attempt to rape.

19. The Hon'ble Supreme Court, in the case of **Koppula Venkat Rao vs. State of Andhra Pradesh (Supra)**, has held that the plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to commit, secondly preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the Act under Section 511 IPC The relevant paragraphs 8, 11, 12 and 13 are extracted hereinbelow:-

*“8. The plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to*

*commit, secondly preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the Act, Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.*

*11. The sine qua non of the offence of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of "rape" as contained in Section 375 IPC refers to "sexual intercourse" and the Explanation appended to the Section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection.*

*12. In the instant case that connection has not been established. Courts below were not correct in their view.*

*13. When the evidence of the prosecutrix is considered in the proper perspective, it is clear that the commission of actual rape has not been established. However, the evidence is sufficient to prove that attempt to commit rape was made. That being the position, conviction is altered from Section 376 IPC to Section 376/511 IPC. Custodial sentence of 3 and 1/2 years would meet the ends of justice. The accused who is on bail shall surrender to custody to serve remainder of his sentence."*

20. The Hon'ble Supreme Court, in the case of **Chaitu Lal vs. State of Uttarakhand (Supra)**, held that the attempt to commit an offence begins when the accused commences to do an act with the necessary intention.

21. A coordinate Bench of this Court, in **Israil vs. State of Uttar Pradesh (Supra)**, has held that for the commission of every offence there are three stages, the first is the intention to commit the offence, thereafter comes the preparation to commit the offence and third is attempt to commit offence. If the attempt succeeds, he has committed the offence, if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the

necessary intention, he commences his attempt to commit the offence. Thereafter, considering several reports of the Hon'ble Supreme Court on the issue, the Court observed that in view of the case laws referred, it is clear that in order to hold the accused guilty of an attempt to commit rape the Court has to be satisfied that the accused, when he laid down the prosecutrix not only desired to gratify the passion upon her but that he intended to do so in all events, notwithstanding any resistance on her part. The Court after dealing with situation to the facts of the present case held that the conclusion is irresistible when the offence committed by the accused falls within the category of attempt of rape and it cannot, by any stretch of imagination, be said to be an offence under Section 354 IPC. The relevant paragraphs 14 and 21 are extracted hereinbelow:-

*“14. For the commission of every offence there are three stages, the first is the intention to commit the offence, thereafter comes the preparation of commit the offence and third is attempt to commit offence. If the attempt succeeds, he has committed the offence, if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. The point as to what would amount to attempt to rape has been considered by Hon'ble Apex Court in several cases.*

*21. In view of the aforementioned case laws it is clear that in order to hold the accused guilty of an attempt to commit rape the Court has to be satisfied that the accused, when he laid down the prosecutrix not only desired to gratify the passion upon her but that he intended to do so in all events, notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts of rape. In order to come to a conclusion that the conduct of the accused was suggestive of determination to gratify his passion at all events and inspite of all resistance, there must be material on record. The offence under Section 354 IPC is much lesser than the offence under*

*Sections 376/511 IPC. Even if a person gives slight slap in public view on the posterior of a lady with a culpable intention, then the offence under Section 354 IPC is complete. But in order to commit an offence under Section 376 read with Section 511 IPC, as stated above, there must be evidence on record to show that the accused had all the intention to satisfy his lust. When the aforesaid settled legal position is applied to the facts of the present case then the conclusion is irresistible then the accused has committed an offence to commit rape because he has not only undressed the victim but has also undressed himself, took her inside the Arhar field and laid on the victim. He was moving his waist at that time. He left the victim only when her grand mother reached on the place of occurrence and pulled him by holding his hairs. It is only thereafter he ran away from the place of occurrence. Therefore, the offence committed by the accused falls within the category of attempt of rape and it cannot, by any stretch of imagination, be said to be an offence under Section 354 IPC. A half hearted argument regarding the false implication of the appellant has also been raised but there is nothing on record to support such false implication. The victim has stated that the accused was his uncle and this fact has not been challenged in the cross-examination. It is absolutely unbelievable that the grand father would involve his grand daughter aged about 9 years in such an offence and thereby he would destroy her future because the stigma attached with the victim of offence of rape, in the Indian perspective, remains attached with her throughout her life and a great damage is done not only to the victim but to the entire family of the victim. No specific enmity, nor any other material is on record to justify the theory of false implication due to enmity"*

22. The Hon'ble Supreme Court dismissed the case of **State (GNCT of Delhi) vs. Vipin @ Lalla (Supra)** filed against the order of High Court by which the judgment of trial court of acquittal was confirmed on the ground that it is not believable that when the prosecutrix was caught by the accused who is known to the prosecutrix, she went with him quite a distance in the Bazaar and then to a shop, she never raised any alarm. This case is not applicable on the facts of the present case because in the present case, there is specific case of the victim that she was forcibly kidnapped by the appellant and kept in the house of a relative and tried to do bad work with her forcibly and had also undressed her.

23. The Hon'ble Supreme Court, in the case of **Roop Singh vs. State of Madhya Pradesh (Supra)**, has held that unless there is voluntary participation by the woman to a sexual act after fully exercising the choice in favour of the assent, the Court cannot hold that the woman gave consent to the sexual intercourse.

24. The Hon'ble Supreme Court, in the case of **State of Himachal Pradesh vs. Shree Kant Shekari (Supra)**, has held that the question of consent is really a matter of defence by the accused and it was for him to place materials to show that there was consent. It is significant to note that during cross-examination and the statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') plea of consent was not taken or pleaded. In fact in the statement under Section 313 of the Code the plea was complete denial and false implication. It has further been held that it is well settled that a prosecutrix complaining of having been a victim of the offence of rape stands at a higher pedestal than an injured witness and there is no rule of law that her testimony cannot be acted without corroboration in material particulars.

25. The Hon'ble Supreme Court, in the case of **Kalu Alias Laxminarayan vs. State of Madhya Pradesh (Supra)**, held that once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313, Cr.P.C. with regard to the circumstances. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased.

26. The Hon'ble Supreme Court, in the case of **Ganga Singh vs. State of Madhya Pradesh (Supra)**, has held that if the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt.

27. In the judgment in the case of **State of Bihar and others vs. Tabarak Hussain (Supra)** by a co-ordinate Bench of the Jharkhand High Court (Ranchi Bench) is not applicable to the facts of the present case.

28. Adverting to the facts of the present case, this Court finds that it has been proved by the prosecution that the victim of the crime was forcibly kidnapped by the appellant with intention to marry and intercourse with her. He with the said motive kept her at the residence of his relative for about 20 days, where he not only outraged the modesty of the victim but also attempted rape by undressing her. However, he could not commit intercourse on account of her protest. The victim has stated that the appellant had done bad work with her. The victim reiterated and supported the statement given under Section 164 CrPC before the Magistrate in her evidence during trial also. Nothing could be extracted from her in cross-examination, which may create any doubt on her version or about the veracity of her evidence. The appellant also tried to establish prior relationship with the victim by producing certain letters, which have been denied to be written by the victim by her in evidence and no cogent material could be placed on record to prove the same. The delay in lodging the FIR has properly been explained in the FIR itself and in view of law laid down by the Hon'ble Apex Court as discussed above, the delay is immaterial in such cases, particularly when the prosecution has proved its case. The plea of implication of the applicant on the ground of enmity could not be proved by the appellant and no evidence could be adduced to prove any enmity. Thus, the impugned judgment and order has been passed after considering the evidence and material on record

and the appellant has rightly and in accordance with law been convicted and punished under Sections 363, 366, 376/511 and 354 IPC, therefore it does not call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds and it is liable to be dismissed.

29. The appeal is, accordingly, **dismissed**.

**Order Dated:01.07.2025/Raj**