Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1594 of 2017
(with Criminal Appeal Nos. 1897 of 2017,
1580 of 2017 and 1282 of 2015)

Irfan .....Appellant

Versus

State of U.P. .....Respondent

Counsel for Appellant	:	Mr. Kamta Prasad in Criminal Appeal No. 1594 Mr. Sushil Kumar Dwivedi in Criminal Appeal No. 1897 of 2017, Mr. M. P. Yadav in Criminal Appeal No. 1580 of 2017, and, Mr. Indra Pal Singh Rajpoot in Criminal Appeal No. 1282 of 2017
Counsel for Respondent	:	Mr. Shashi Shekhar Tiwari, A.G.A. along with Mr. K. K. Nishad, State Law Officer on behalf of the State in all the appeals

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Court No. - 42

HON'BLE J.J. MUNIR, J.

1. These are appeals by four convicts, who stood their trial before Mr. Ram Kushal, the Additional Sessions Judge/ F.T.C., Mahoba, in Sessions Trial No.55 of 2015 (arising out of Crime No.7 of 2015), under Section 376-D of the Indian Penal Code, 1860 (for short, 'IPC'), Police Station Charkhari, District Mahoba. All the four convicts, to wit, Irfan son of Shahzade, Irfan @ Golu son of Habeeb, Ritesh @ Shanu and Manvendra @ Kallu, were sentenced by the learned Trial Judge to suffer rigorous imprisonment for a term of 20 years along with a fine in the sum of

Rs.20,000/- each; and, in default, to undergo for a further term of two years.

2. A First Information Report (for short, 'FIR') was lodged on 13.01.2015 by the informant Shyam Kumar son of Mani Lal, a resident of Mohalla, Qasba and Police Station Charkhari, District Mahoba, with Police Station Charkhari at 7.30 p.m., saying that his daughter 'A', aged 20 years, had left home on 11.01.2015 at about 7 o'clock in the evening in order to buy some *gutkha* for him. It is said that on account of cold weather and fog, almost all shops in the vicinity of the informant's home had closed for the day. ‘A’, who shall hereinafter be referred to as 'the prosecutrix', found Irfan @ Golu and Ritesh @ Shanu outside the informant's home, who muffled her voice and forcibly took her to a building in ruins, situate behind a shop, called Gaffar *Chacha*'s. There, these two men had the company of another two, whom the prosecutrix does not know, but can recognize them. The two men, last mentioned, were already there. All four of them forced the prosecutrix to imbibe alcohol and beat her up. Next, all the four ravished the prosecutrix one by one and left her there, still inebriated.

3. On the 12th of January, 2015 at about 7 o'clock in the morning, the prosecutrix regained consciousness and raised alarm. It was then that, according to the informant, one Babu Lal Shankhwar informed him that his daughter, the prosecutrix, was lying in the ruins behind *Gaffar Chacha*'s shop and that she was groaning. The informant, along with his wife, then picked up the prosecutrix and brought her to the police station. His daughter was in a state of shock and fear. At that time, according to the informant, she disclosed so much and no more to the informant that Irfan @ Golu had beaten her up. Thereupon, the informant got NCR No.3 of 2015 registered against Irfan @ Golu under Section 323 IPC, but on the following day, when the prosecutrix

fully regained her senses, she told the informant that on 11.01.2015, Irfan @ Golu and Shanu, besides two of his accomplices, had ravished her by turns. The informant was, therefore, reporting the offence to the Police for action to be taken in accordance with law.

4. There is indeed on record, though not included in the paper-book, an information dated 12.01.2015 lodged by the informant, giving rise to NCR No.3 of 2015, under Section 323 IPC, relating to the selfsame incident dated 11.01.2015, as the one subject matter of the FIR, lodged on 13.01.2015. Allusion would be made to this NCR later in this judgment.

5. The written information, on the basis of which the FIR, giving rise to the present appeal was registered, was, after proof, marked as Ex. *Ka*-1, whereas the *check* FIR marked Ex. *Ka*-6. The prosecutrix's statement under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') was taken down by Lady Constable, Shashi Prabha, on 14.01.2015 and signed by the prosecutrix. Upon proof of the said statement by the prosecutrix, it was marked Ex. *Ka*-4. The prosecutrix's statement under Section 164 Cr.P.C. was recorded before a Judicial Magistrate on 16.01.2015, who was functioning as the Civil Judge (Jr. Div.), Mahoba.

6. After investigation, the Police filed a charge-sheet on 10.02.2015 against six accused, to wit, Irfan @ Golu, Shanu son of Qasim, Irfan son of Shahzade, Chhotu @ Imran, Ritesh son of Bhawani Prasad and Kallu @ Manvendra Singh.

7. The Magistrate took cognizance on 08.04.2015. In due course, the case was committed to the Sessions, where all the six accused were jointly charged by the learned Additional Sessions Judge/ F.T.C., Mahoba on 29.04.2015 for an offence punishable

under Section 376-D IPC. All the four accused pleaded not guilty and claimed trial.

8. The following witnesses were examined on behalf of the prosecution: PW-1, Shyam Kumar, the first informant; PW-2, the prosecutrix; PW-3, Lady Constable Shashi Prabha; PW-4, Dr. Amrita Singh; PW-5, Abdul Rajjak; and, PW-6, Dr. Anand Swaroop.

9. The following documents were produced at the trial: the written first information report, Ex. *Ka*-1; memo of recovery relating to slippers of the prosecutrix, water and liquor bottles recovered from the scene of occurrence, Ex. *Ka*-2; memo relating to clothes of the prosecutrix worn at the time of occurrence that were seized as material evidence, Ex. *Ka*-3; the statement of the prosecutrix under Section 161 Cr.P.C. recorded by the Lady Constable, Ex. *Ka*-4; the statement of the prosecutrix recorded by the Magistrate under Section 164 Cr.P.C., Ex. *Ka*-5; *check* FIR, Ex. *Ka*-6; GD Entry evidencing registration of the crime at the police station, Ex. *Ka*-7; the prosecutrix's medical examination report, Ex. *Ka*-8; the site-plan relating to the place of occurrence drawn up by the Investigating Officer, Ex. *Ka*-9; memo of arrest relating to Golu @ Irfan and Shanu, Ex. *Ka*-10; memo of arrest relating to Ritesh, Kallu @ Manvendra, Irfan son of Shahzade and Chhotu @ Imran, Ex. *Ka*-11; the charge-sheet, Ex. *Ka*-12; memo of the prosecutrix's statement recorded on a Compact Disk (CD), Ex. *Ka*-13; memo of recovery relating to Golu @ Irfan's underwear, Ex. *Ka*-14; memo of recovery relating to underwear of Ritesh, Manvendra, Chhotu @ Imran and Irfan son of Shahzade, Ex. *Ka*-15; report relating to material exhibit received from the forensic science laboratory, Ex. *Ka*-16; and, the primary or the first medical examination report relating to the prosecutrix, Ex. *Ka*-17.

10. The following material evidence was produced by the prosecution: CD carrying the prosecutrix's recorded statement, Material Exhibit (ME) 1; water bottle, wooden planks, slippers, liquor bottle, cigarettes and matchbox recovered from the place of occurrence, ME-2 to ME-13; and, pant, jacket and other clothes worn by the prosecutrix at the time of occurrence, ME-14 to ME-20.

11. After the prosecution evidence was over, the statement of the appellants as well as the co-accused acquitted were recorded under Section 313 Cr.P.C.

12. We propose to refer to the material part of the statements under Section 313 Cr.P.C. relating to the appellants alone. All the appellants, to wit, Irfan son of Shahzade, Irfan @ Golu son of Habeeb, Ritesh @ Shanu and Manvendra @ Kallu, after generally denying the evidence shown to be appearing against them, said that they had been falsely implicated and wish to lead evidence in defence. Head Constable, Virendra Kumar Shukla was examined by the appellants as DW-1.

13. The learned Sessions Judge, *vide* judgment and order dated 02.03.2017, convicted Irfan son of Shahzade, Irfan @ Golu son of Habeeb, Ritesh @ Shanu and Manvendra @ Kallu under Section 376-D IPC and sentenced each of them in the manner already indicated.

14. Aggrieved, these appeals have been filed.

15. Since all the appeals arise out of the same crime, where all the appellants were jointly tried and convicted by the same judgment, all the appeals have been heard together and are decided by this common judgment.

16. Heard Mr. Kamta Prasad, learned Counsel for the appellant in support of Criminal Appeal No. 1594 of 2017, Mr. Sushil Kumar

Dwivedi, learned Counsel for the appellant in Criminal Appeal No. 1897 of 2017, Mr. M. P. Yadav, learned Counsel for the appellant in Criminal Appeal No. 1580 of 2017, and, Mr. Indra Pal Singh Rajpoot, learned Counsel for the appellant in Criminal Appeal No. 1282 of 2017. Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate along with Mr. K. K. Nishad, learned State Law Officer has been heard on behalf of the State.

17. The learned Counsel for the appellants, appearing in all the appeals, have advanced some common submissions to discredit the prosecution case against them. They have much emphasized the fact that there is a solitary occurrence, that happened on 11.01.2015 at 7.00 p.m., but two different versions of the same occurrence have been put forward by the informant before the Police – the first being reported as an NCR on 12.01.2015, and, the other, as an FIR on 13.01.2015. They submit that relating to the same occurrence dated 11.01.2015, in N.C.R. No.3 of 2015, which was registered at 7.30 a.m. at the instance of the prosecutrix, the allegation is one of assault. The prosecutrix was, therefore, sent to the Community Health Centre, Charkhari, along with Lady Constable Shashi Prabha, PW-3, on the strength of a *Chitthi Majrubi* for medical examination. On 12.01.2015 at five minutes past twelve in the afternoon, the prosecutrix was medically examined by Dr. Anand Swaroop, PW-6, who noticed six external injuries and referred the prosecutrix to the Women District Hospital, Mahoba for her internal examination. On 13.01.2015 at 5.30 p.m., the prosecutrix was subjected to an internal examination by PW-4, Dr. Amrita Singh. She did not notice any telltale injury on the prosecutrix's private part, suggestive of sexual assault. Learned Counsel for the appellants emphasized that until this time on 12.01.2015, there was nothing said about the case of gang-rape i.e. until 5.30 p.m. on 13.01.2015.

18. On 13.01.2015, the FIR, giving rise to Crime No.7 of 2015, under Section 376-D IPC, was got registered at Police Station Charkhari by the informant at 7.30 p.m. against two nominated accused, Irfan @ Golu and Shanu son of unknown, together with two unnamed offenders. The case in the FIR is entirely different, which speaks about abduction by two of the nominated accused, who carried her off to a building in ruins, behind Gaffar's shop, made her forcibly drink alcohol upon pain of assault and then ravished her by turns throughout the night.

19. It is next submitted that the allegation against Irfan @ Golu was that when the proecutrix was proceeding to buy *gutkha* for her father leaving home, Irfan @ Golu met her on way, caught hold of her along with co-accused Shanu, who has been acquitted. Both of them forced her to a remote place, where she was ravished. It is also emphasized by the learned Counsel for the appellants that in her statement under Section 161 Cr.P.C., the prosecutrix came up with allegations against Irfan @ Golu and the acquitted co-accused Shanu, who caught hold of her, when she was proceeding to buy *gutkha* for her father. It is said that she raised alarm, but in vain. What is emphasized is that in this statement too, there is no reference to the appellants, Ritesh, Kallu @ Manvendra Singh and Chhotu @ Imran.

20. It is next submitted that according to the testimony of PW-5, the Investigating Officer, he recorded Irfan @ Golu's confession as well as that of Shanu, the acquitted co-accused, in police custody. It is urged that without any lawful evidence appearing against the other four, to wit, Ritesh, Kallu, Irfan and Chhotu @ Imran, PW-5 implicated them on the basis of co-accused's confession, which the learned Counsel for the appellants say, is inadmissible in evidence. At this stage, learned Counsel for the appellants point out that on 14.01.2015, according to the

testimony of PW-5, Inspector Abdul Rajjak, the appellant Irfan @ Golu and the acquitted co-accused Shanu, were arrested.

21. Learned Counsel for the appellants say that on 15.01.2015, the remainder of the unnamed accused, to wit, Ritesh, Kallu @ Manvendra Singh, Irfan son of Shahzade and Chhotu @ Imran, were arrested by PW-5, Inspector Rajjak, on account of heavy pressure from the Bharatiya Janata Party Leaders, which came in consequence of the confessions of Irfan @ Golu and the acquitted co-accused Shanu.

22. It is argued by the learned Counsel for the appellants that on 16.01.2015, the prosecutrix was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C. In that statement, the prosecutrix disclosed the name of Irfan @ Golu, Shanu and another Irfan, besides one unknown offender, whose face had been covered by a scarf, all through moments of the crime. Learned Counsel for the appellants emphasize that in the statement under Section 164 Cr.P.C., the names of appellants, Ritesh, Kallu @ Manvendra Singh, were not disclosed by the prosecutrix. Learned Counsel say in one voice that the statement under Section 164 Cr.P.C. was a third opportunity, where the prosecutrix could disclose these two appellants, to wit, Ritesh and Kallu @ Manvendra Singh's name, but she did not. At this stage, there was no fear, if what she had to say were correct. It is next submitted, adding force to the attack, that the prosecution story carried in the FIR dated 13.01.2015, the prosecutrix's testimony recorded under Section 161 Cr.P.C. as well as that recorded under Section 164 Cr.P.C. on 16.01.2015, carry no allegation against Ritesh, Kallu @ Manvendra, not to speak of the acquitted co-accused, Chhotu @ Imran. The learned Counsel for the appellants say that these men were nevertheless arrested on 15.01.2015 and charge-sheeted on 10.02.2015 by PW-5 to assuage public feelings.

23. It is argued by the learned Counsel that these arrests were made under political pressure from leaders of the Bharatiya Janata Party and the Vishwa Hindu Vahini. It is next said by the learned Counsel for the appellants that PW-5, in his testimony, has said that no doubt he had arrested Irfan @ Golu and Shanu and the rest of the men on 15.01.2015, on the basis of confessions made by Irfan @ Golu and Shanu, but to assure himself of the veracity of the prosecution, he had interrogated the prosecutrix again on 01.02.2015. According to PW-5, learned Counsel for the appellants emphasize, the prosecutrix disclosed the names of Ritesh, Irfan son of Shahzade, Kallu @ Manvendra and Chhotu @ Imran. Learned Counsel submit, with reference to these facts, that the entire prosecution story is based on falsehood, that was conjectured much after the occurrence with a good deal of deliberation and delay in shady settings, highly redolent of doubt and suspicion.

24. Mr. Kamta Prasad, learned Counsel appearing for the appellant, Irfan son of Shahzade and Ritesh in Criminal Appeal No.1594 of 2017 and 1580 of 2017 respectively, has made some submissions specific to the case of these two appellants, which we must note. It is argued that on 12.01.2015 at 7.30 p.m., the prosecutrix arrived at the police station, accompanied by her father Shyam Kumar and his wife, that is to say, the prosecutrix's mother. It is argued that during this visit to the police station, the prosecutrix was fully conscious and there was no impediment, physical or mental, that would keep her back from reporting the offence of rape, if there was one. It is argued that on 12.01.2015, the prosecutrix was sent for her medical examination, but at the time of her medical examination, she did not disclose the fact that she had suffered rape. On 13.01.2015, the prosecutrix was internally examined at the Women District Hospital, Mahoba, but she did not say anything, about being ravished, to PW-4 Dr.

Amrita Singh. On the same day i.e. 13.01.2015, the prosecutrix did a U-turn and transmuted a case of assault into one of rape.

25. It is next submitted by Mr. Kamta Prasad that while the FIR lodged on 13.01.2015 mentions NCR No.3 of 2015 in connection with the allegations that figure against Irfan @ Golu, the origin and genesis of the case of assault, earlier set up, was completely suppressed by the prosecution, that was launched on the foot of the FIR, later lodged regarding commission of offence of gang-rape. It is also urged that falsehood of the prosecution can be fathomed by the fact that the appellants, Irfan son of Shahzade and Ritesh, were not named in the FIR, where the nominated accused were Irfan @ Golu and the acquitted co-accused, Shanu son of Qasim. Learned Counsel for the appellants here emphasizes that Irfan @ Golu and Shanu son of Qasim were arrested by Inspector Abdul Rajjak on 14.01.2015 and without any corroborating evidence, the appellants, Irfan son of Shahzade and Ritesh, together with Kallu @ Manvendra and Chhotu @ Imran, were arrested on 15.01.2015 on the basis of a confession attributed to Irfan @ Golu and Shanu son of Qasim. It is emphasized that so far as the appellant Ritesh is concerned, his name has not been disclosed by the prosecutrix, either in her statement under Section 161 Cr.P.C. or Section 164. It is then urged that while the medical examination dated 12.01.2015 certainly supports a case of physical altercation, but the internal examination done later, on 13.01.2015, falsifies the prosecution story of gang-rape, involving six offenders.

26. Learned Counsel for the appellants has drawn our attention to the medico-legal report, that was authored by Dr. Amrita Singh, PW-4, where he emphasizes that she did not find any injury upon an internal examination of the prosecutrix. The doctor found no marks of violence suffered by the prosecutrix to her private parts, that would surely be there, if she was indeed ravished by six men

or four. In support of this contention, learned Counsel for the appellants has reposed faith in **Lilia alias Ram Swaroop v. State of Rajasthan, (2014) 16 SCC 303**.

27. It is submitted by Mr. Kamta Prasad that both the appellants, to wit, Irfan son of Shahzade and Ritesh, are apparently victims of a patently false prosecution. He emphasizes that in contemporary society, laying of false charges of rape is not an uncommon phenomenon. There have been instances, where a parent has persuaded a gullible or obedient daughter to come up with a false charge of rape, either to take revenge or extort money or get rid of financial liability. The case here falls under a cloud of doubt also because Shanu, whose name figured in the FIR as also the statements under Sections 161 and 164 Cr.P.C., has been acquitted by the Trial Court.

28. Learned Counsel points out that the prosecutrix, in her dock evidence, resiled from the allegations against Shanu son of Qasim and Chhotu @ Imran. It was on this account that the Trial Court acquitted them on the same evidence as that appearing against the two appellants. It is emphasized that the Trial Court convicted the appellant, Ritesh, treating him as Shanu, without any cogent or corroborating evidence appearing against him.

29. It is next submitted that the false implication of the appellants is evident from the fact that the prosecutrix did not disclose the name, features or age of the appellants, Irfan son of Shahzade and Ritesh, in any of her statements recorded at the stage of investigation, but identified both Irfan son of Shahzade and Ritesh in the dock for the first time in her testimony recorded about 7-8 months after the occurrence. Ritesh's conviction, according to the learned Counsel, is one absolutely based on flimsy and undependable evidence, which cannot be countenanced. In support of his submission last mentioned,

learned Counsel for the appellants has placed reliance upon **Amrik Singh v. State of Punjab, (2022) 9 SCC 402** and **Allarakha Habib Memon and others v. State of Gujarat, (2024) 9 SCC 546**.

30. Elaborating on this submission of his, learned Counsel submits that the dock identification of the two appellants by the prosecutrix, PW-2, done after 7-8 months of the occurrence, is absolutely unreliable. The said witness had not given out either the name or the description of the two appellants, Irfan son of Shahzade and Ritesh in her statement to the Police or that recorded by the learned Magistrate under Section 164 Cr.P.C. Therefore, according to learned Counsel, if at all the prosecution was desirous of establishing the appellants' complicity, the prosecutrix should have been required to identify the two of them in a test identification parade, organized during investigation. Their identification in the dock for the first time is unacceptable. In support of this contention, learned Counsel for the appellants has placed reliance upon **Kanan and others v. State of Kerala, (1979) 3 SCC 319** and **Dana Yadav alias Dahu and others v. State of Bihar, (2002) 7 SCC 295**.

31. Mr. Sushil Kumar Dwivedi, learned Counsel for the appellant, Irfan @ Golu, appearing in Criminal Appeal No.1897 of 2017, has advanced his own arguments, amongst which what is worth mention is that according to the learned Counsel, the first informant in his examination-in-chief has said that on 12.01.2015 at about 7 o'clock in the morning, behind Javed Photographer's shop, he found the prosecutrix lying unconscious in the ruins there. The prosecutrix said that Irfan @ Golu had assaulted her. Therefore, she was medically examined and an N.C.R. registered under Section 323 IPC against Irfan @ Golu alone. On 13.01.2015, according to the informant, when the prosecutrix regained consciousness, she told her mother, Maya Devi, the

informant's wife, that Irfan @ Golu, Shanu, Irfan son of Shahzade and Chhotu had ravished her in the ruins. Learned Counsel emphasizes that the FIR, that was lodged on 13.01.2015, nominated two accused and carried the name of two unnamed offenders. It is emphasized that when the prosecutrix had told the entire incident and confided the names of all the four accused with her mother, it is not understandable why the FIR was lodged against two nominated men alone, leaving the identity of two others to uncertainty.

32. It is next pointed out by the learned Counsel for the appellant that the informant, Shyam Kumar, PW-1, along with his wife, Maya Devi, and the prosecutrix went to the police station on 12.01.2015 and lodged an N.C.R. relating to a case of assault, the previous evening at 7.00. The prosecutrix was sent for her medical examination in reference to N.C.R. No.3 of 2015, under Section 323 IPC. Learned Counsel for the appellant is quick to add that in the testimony of PW-2, the prosecutrix, it is clearly said that on 11.01.2015 at about 9.00 p.m., she was conscious and had shared the entire occurrence with her mother, that is to say, whatever had befallen her in the night of 11.01.2015. She was also fully conscious on 12.01.2015, while in the safety of her parents' home and talked to her parents. It is argued that the distance of the place of incident from the police station is one kilometer, but the informant and his wife as also the prosecutrix did not go to the police station until 12.01.2015. They went to the police station and lodged an N.C.R. Neither the informant nor his wife nor the prosecutrix ever came up with a case of rape, when they lodged the N.C.R. on 12.01.2015. The incident had taken place on 7.00 p.m. on 11.01.2015 and the place of occurrence is in the centre of a densely populated area. There are several shops, selling all kinds of wares. Men and women from the locality frequent the place and most of them know the prosecutrix.

Learned Counsel submits that it is hard to believe that none of them would have seen or heard the prosecutrix suffer.

33. According to the learned Counsel, this is a case, which, on the evidence forthcoming and the circumstances, is not one which can be accepted by a man of ordinary prudence. It is said that after inquiry into the N.C.R., the prosecutrix was sent for her medical examination by the Police to the Community Health Centre. The informant, with the help of Jagdish Parihar, a local politician, and another Arvind Singh, besides 14-15 persons belonging to the Hindu Vahini, collectively reached Police Station Charkhari, District Mahoba, and successfully pressurized the Police into registering a case under Section 376-D IPC.

34. On behalf of Kallu @ Manvendra Singh, the appellant in Criminal Appeal No.1282 of 2017, Mr. Indra Pal Singh Rajpoot, learned Counsel for the appellant, has advanced elaborate submissions, but in most of those he is *ad idem* with the learned Counsel in other appeals, whose submissions have already been noticed.

35. Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate, has supported the impugned judgment and urged that on the evidence on record, the prosecution have established their case beyond reasonable doubt. The learned Trial Judge has rightly convicted all the appellants. He has particularly submitted that PW-1 and PW-2, who are witnesses of fact, have supported the prosecution flawlessly in their dock evidence and successfully withstood a searching cross-examination. The prosecutrix, in particular, has remained consistent in her testimony about the crime and the manner in which it was committed. Her testimony is unshaken, free from blemish or exaggeration. The prosecutrix's evidence is corroborated by the forensic report, Ex. *Ka*-16 and the injury reports, Ex. *Ka*-17 and *Ka*-8. It is emphasized by Mr. Tiwari

that the prosecutrix had named four accused and the case was registered against them. Mr. Tiwari has, particularly, urged that the prosecutrix is the sole witness of the crime and her testimony, being consistent and corroborated by forensic evidence, cannot be disbelieved. It is also pointed out by the learned A.G.A. that the appellants have not offered any explanation why the prosecutrix would implicate them falsely or testify against them in Court on a false charge. There is no prior enmity between the prosecutrix, her family and the appellants. The appellants have not been able to lead any evidence to show the motive for a false implication. It is urged very emphatically that the appellants have sexually assaulted the prosecutrix, tortured her, beat her up, and in consequence of all these travails, she has sustained injuries, which the doctor has noticed upon her person.

1. If a case of change or improvement of the prosecutrix's case from one of simple assault to rape:

36. The learned Counsel for the appellants have scathingly criticized the prosecution for coming up with a case that was changed from one of simple assault into rape. They have much harped upon the fact that an N.C.R., bearing No.3 of 2015, was registered on 12.01.2015 at 7.30 a.m., but after the prosecutrix was examined at the Community Health Centre and then at the District Women Hospital on 12.01.2015, the following day, i.e. 13.01.2015 at 7.30 p.m., she came up with allegations of rape regarding the selfsame incident, which was earlier reported as a non-cognizable case to the Police. Learned Counsel for the appellants would say that this is not just an improvement, but a transmutation of one case into another, which initially never was.

37. Upon a perusal of the record, we find that it is true that regarding the occurrence dated 11.01.2015, that happened at 7.00 p.m., when the prosecutrix left home to buy *gutkha* for her father, an N.C.R. was lodged by the prosecutrix's father, after she

was rescued by her parents in the morning of 12.01.2015. It does seem odd at the first blush that the prosecutrix, who went to the police station and thence to the two doctors for her medical examination on 12.01.2015, one at the Community Health Centre and the other at the District Women Hospital, where one of the doctors was a woman, she did not speak anything about being ravished. She came up with the allegation on 13.01.2015, confiding in the first informant what had befallen her during the night, intervening 11/12.01.2015. The explanation furnished in the FIR for not reporting the outrageous crime of gang-rape, was shock and fear that she had suffered. It has elsewhere figured in evidence, particularly, the testimony of PW-1, the first informant, that the prosecutrix was not in the complete possession of her senses due to stupor, resulting from alcohol, and for that reason, revealed a case of assault by Irfan @ Golu on the 12th of January, 2015, when she was recovered. That case was promptly reported to the Police. On the following day, i.e. 13.01.2015, when she fully regained her senses, she disclosed the entire occurrence to her mother, that is to say, the fact that she was gang-raped by the four appellants. It was then that the first informant lodged the present FIR, narrating what had befallen the prosecutrix. The relevant part of the first informant's (PW-1's) testimony reads:

> "12 जनवरी को सुबह 7.00 बजे जावेद फोटो वाले के पीछे खण्डहर मे बेहोशी की हालत मे मिली। इसके बाद मै उसे थाने लेकर गया। बच्ची ने मुझे मारपीट वाली बात बतायी थी। उसने बताया कि गोलू @ इरफान ने मारा पीटा है। रिपोर्ट लिखवाकर व डाक्टरी कराकर हम वापस आ गये। 13 तारीख को जब वह होश मे आयी तो उसने अपनी माँ को बताया और मेरी पत्नी मायादेवी ने मुझे बताया। उसने बताया था कि गोलू @ इरफान, शानू, इरफान व छोटू ने उसके साथ खण्डहर मे गलत काम किया था। 13 तारीख को जब रिपोर्ट लिखायी तब बच्ची ने अपने हाथ से एक तहरीरी प्रार्थना पत्र लिखा था। उस प्रार्थना पत्र को थाने मे देकर मुकदमा कायम कराया था।"

38. In the FIR lodged by this witness, it is said:

> "तब मै तथा मेरी पत्नी xxxx को उठाकर थाने लाये थे मेरी पुत्री उसे समय सदमें तथा भय मे थी उस समय उसने मुझे सिर्फ इतना बताया था कि इरफान उर्फ गोलू ने मुझे मारा–पीटा है तब मैने इरफान उर्फ गोलू के खिलाफ NCR No.3/15 धारा 323 IPC पंजीकृत कराया था किन्तु आज जब मेरी पुत्री xxxx को पूरी तरह से होश आया तो उसने

मुझे बताया कि दिनांक–11–1–15 को इरफान उर्फ गोलू व शानू एवं उसके दो अन्य साथियों ने उसके साथ बारी–बारी से दुष्कर्म किया है।"

39. In her testimony (cross-examination dated 24.09.2015), the prosecutrix has explained the sequence of events and the reason for not reporting on the first day the crime of gang-rape, in the following words:

"घटना के बाद मे सुबह छैः बजे अपने घर पिता जी के पास आ गई थी। खण्डर से मुझे मेरे पिता जी व मम्मी लेकर आये थे। मैने खण्डर मे आये अपने मम्मी पापा को देख लिया था व पहचान लिया था उस समय मै होश हवाश मे थी लेकिन मदिरा का नशा था। जब मेरे माता पिता मुझे खण्डर मे लेने आये थे तो मेरे आस पास देशी शराब के क्वाटर पानी की प्लास्टिक की खाली शीशी क्वाटर शराब की खाली शीशी सिगरेट की डिब्बी व कुछ जली अधजली सिगरेट के टुकड़े व माचिस आदि पड़ी थी। ये सभी चीजे मेरी घटना से जुड़ी हुई थी। मेरी चप्पल व पानी की दो भरी हुई बोतल पड़ी थी। मेरे मम्मी पापा जब मुझे लेने पहुँचे तब उन्होने व मैने यह सभी सामान पड़ा हुआ देख लिया था। मैने घर पर आकर मुँह हाथ नही धोया न फ्रेश हुई। मै करीब दस मिनट घर पर रूकी थी। मैने पापा को थोडी सी घटना रात वाली बतायी थी। मैने अपने पापा को यह बता दिया था कि गोलू उर्फ इरफान मुझे पकड़कर ले गया पकड़ने वालो मे दूसरा इरफान भी था दो लोग और थे। पिताजी को मैने इस दस मिनट के दौरान यह बताया था कि इरफान उर्फ गोलू और दूसरा इरफान ने मुझे पकड़कर खण्डर ले गये और खण्डर मे चार लोग हो गये वहां मुझे शराब जबरदस्ती पिलाई व चार लोगो ने मेरे साथ दुष्कर्म किया। फिर मेरे मम्मी पापा मुझे लेकर रिपोर्ट करने थाने गये। कोई प्रार्थना पत्र घटना का लिखके थाने मेरे पिताजी नही गये थे। बल्कि ऐसे ही गये थे। थाने पर जब हम पहुँचे तब वहां पर इन्सपेक्टर रज्जाक व दरोगा सिपाही मौजूद थे। दरोगा जी से मेरे पिताजी ने घटना बतायी थी मुझसे दरोगा जी ने घटना के बारे मे कुछ नही पूछा था। हम थाने पर 7.30 बजे सुबह पहुंच गये थे। और दिन मे 2 बजे तक रहे थे। मै बातचीत करने मे उस समय सक्षम थी। मेरी शरीर पर चोटे थी मेरे पिताजी के बताने पर थाने मे घटना की रिपोर्ट लिखली गई और मेरी डाक्टरी कराने सरकारी अस्पताल चरखारी भेजा गया। जब मेरे पिताजी थाने मे रिपोर्ट दर्ज करा रहे थे तब मै अपने पिता के पास मौजूद थी। पिताजी ने इरफान उर्फ गोलू के खिलाफ केवल मारपीट की रिपोर्ट दर्ज कराई थी। मैने पापा को लिखाते समय नही रोका था कि मारपीट के अलावा बलात्कार की भी रिपोर्ट क्यो नही कर रहे हो। जब मेरा डाक्टरी परीक्षण कराने सिपाही ले गयी थी तब मैने वहां भी डाक्टरो व सिपाहियो को बलात्कार की घटना की बात नही बताई। मैने थाने पर अस्पताल मे दरोगा पुलिस व डाक्टर को दुष्कर्म की बात भय के कारण नही बताई थी।"

40. Later on, in her cross-examination dated 28.10.2015, the prosecutrix has stated:

"ग्यारह तारीख को ही रात्रि में 9.00 बजे ही मेरा सारा नशा उतर गया था और में पूरे होश हवास में हो गई थी। बारह तारीख को भी मैं पूरे दिन होश हवास में अपने घर पर रही और अपने माता पिता से बोलती चालती रही। होश में आने के ग्यारह तारीख को ही घटना के बारे में मैंने अपनी मां को बता दिया था। मेरे पिता को घटना के बारे में ग्यारह तारीख को ही पता चल गया था। दिनांक बारह तारीख को मेरे माता पिता ने पुलिस व अन्य किसी को घटना के बारे में नहीं बताया था। तेरह तारीख को सुबह नौ बजे हिन्दू युवा वाहिनी के कार्यकर्ता मेरे घर पर आये थे। आठ दस कार्यकर्ता आये थे। उनमें से भारतीय जनता पार्टी के नेता जगदीश परिहार तथा पूर्व चेयर मेन नगर पालिका पर० के अरविन्द सिंह चौहान भी आये थे। इन लोगो से मेरे मम्मी पापा ने बात की थी मैंने इनसे

बातचीत नहीं की थी। मेरे माता पिता ने इन लोगों को घटना के बारे में जानकारी दी थी हिन्दु मुस्लिम के बारे में नहीं बताया था। मुझे यह पता कि अरविन्द सिंह चौहान चरखारी के बड़े वकील हैं। मैंने घटना करने वालों में गोलू का ही नाम बताया था और मुल्जिमानों के नाम मुझे मालूम नहीं थे। इसलिए नहीं बताये थे। हिन्दु युवा वाहिनी के कार्यकर्ता आदि हमे थाने लेकर गये। इन लोगों ने थाने पर इन्सपेक्टर के खिलाफ नारेबाजी नहीं की। रिपोर्ट लिखने के लिए इन्सपेक्टर से कहा था। प्रदर्श क–1 मैंने किसी के बोलने व बताने से नहीं लिखी थी बल्कि मेरे साथ जो घटना हुई थी वही मैंने अपने मन से लिखी थी पिता जी ने भी नहीं बोली थी। थाने मैं तहरीर मैंने इन्सपेक्टर साहब के सामने लीखी थी।"

41. The appellants' case that the prosecutrix changed the case from one of simple assault into gang-rape, discrediting the prosecution altogether, cannot be accepted. Appreciation of evidence, particularly the conduct of parties, cannot be tested on predetermined models of some standard behaviour. A victim, like the prosecutrix, can behave very differently, according to the socioeconomic background, the society where she stays, the kind of village, town or city she lives in, and many other similar and relevant factors. The prosecutrix's father is a Class-IV employee working with the Block Development Office and her mother, a mid-day meal worker. She herself is a student of B.A. Final Year at the Government Girls College, Charkhari. Charkhari is a small town, governed by a *Nagar Palika*. In these circumstances, for the prosecutrix or her parents to report with promptitude the gruesome offence of gang-rape, is a tall order.

42. There might have been circumstances, where the first informant and the prosecutrix would have straightaway reported or *dehors* any strengthening or prompting circumstances, they could have still reported due to individual characteristics of personality, or inexplicable and myriad factors. But, if the informant and the prosecutrix hesitated in straightaway reporting suffering gang-rape, and, did it a day later, when supported by members of the society, may be activists or even a political party, it does not mean that the prosecutrix changed her case from assault to gang-rape. The prosecutrix is a 20 year old small town girl, coming from a modest background, which we have already

explained. She would have felt devastated to face the gruesome crime while still a college student and an unmarried woman. The parents too would have been shocked out of their wits. The fact that the parents and the prosecutrix went to the police station, but made a complaint about assault alone – not rape – does not predicate falsehood on the totality of evidence and circumstances. It is the result of a tug between a outraged conscience and hurt soul, on one hand, and the thoughts of practical sagacity, that would have dictated a cautious course.

43. The reason given out for not reporting rape earlier and in the first instance by the prosecutrix was shock and fear. The first informant, who is the father of the prosecutrix, has given a different explanation. A varying explanation, though not essentially different, would show that a day's time was required for the prosecutrix's family, including herself, to reconcile, resolve and report. It is not a case where the offence has been reported weeks or months later. A day's time for the prosecutrix and her parents to firm up and report to the police that indeed a young woman was the victim of gang-rape, is the result of an inhibitive behaviour, in the circumstances, that in no manner suggest falsehood for the prosecution.

44. Appreciation of evidence in a criminal case requires an understanding of things as they happen for an average person. We cannot overlook the fact and must take judicial notice of it too that there is extreme reluctance on the Police's part to promptly register particular kinds of offences, including some heinous ones. One of the 'reluctant categories', unfortunately, is rape, particularly gang-rape. There is a general hesitation amongst officers of the Police at the lower rungs, that is to say, at the station level, to register crimes promptly that portray a bad law and order situation. A gang-rape invites public outrage and is often seen that the Police try to downplay or ignore the crime. In

this case, there is something telltale, though not essential to dwell upon, which would make us think that the FIR came a day later, not because the prosecutrix or the first informant necessarily hesitated, but because the Police were initially reluctant to register the gruesome crime.

45. If by the contents of the NCR, the only fact brought to the notice of the Police were a simple assault, perhaps they would not have sent the prosecutrix after the examination of her external injuries at C.H.C. Charkhari to the District Hospital for an internal examination. It appears that facts were brought to the notice of the Police at the Station, including the S.H.O., who was in double mind to register the gruesome crime. Once, the internal examination did not reveal any ostensible injury in consequence of the ravishment, the Police thought of drawing curtains on the matter with an N.C.R. The intervention of local leaders of the Ruling Party and the Hindu Yuva Vahini was apparently not a prompt to the informant or the prosecutrix to falsely report gang-rape. Possibly, it could not be. No one at the prompt of a political party, particularly a young woman of 20 years in a small town, like Charkhari, would come up with a case of gang-rape, placing herself at the receiving end of the offence. This is not a case, where a highly influential man was being charged. The appellants are like the prosecutrix, persons not from the influential strata of society. All, except one, were not even known to the prosecutrix. There is no reason, therefore, why at the instance of some activists or a political party, the prosecutrix would implicate men of ordinary pursuits, exposing herself to the social frown of a small-town society. What really appears to have happened is that the intervention of some influential men of the society enabled the first informant and the prosecutrix, not only to forcefully place their charges before the Police for all that the prosecutrix had suffered,

but at the same time, brought sufficient pressure on the Police to register, what was already within their knowledge.

46. In our considered opinion, therefore, there is nothing to blemish the prosecutrix's version or the prosecution on ground that an earlier N.C.R. merely reported assault. Whatever has come by for this change, is logical and inspires confidence.

2. If the uncorroborated testimony of the prosecutrix can lead to conviction.

47. In this case, like many others, where a young woman is ravished, the presence of an eye-witness, except the victim herself, is a rare phenomenon. In the nature of things, a crime of this kind happens, unlike homicide, assault or robbery, away from the eyes of any possible witness. In a few cases where there is an eye-witness account, the witness is more often than not a feeble and non-threatening person to the offender or offenders, who can be ignored. This too is a rare occurrence. Amongst the rare of most cases, where an eye-witness account is forthcoming, the witness's presence is lurking and unknown to the offender or offenders. Therefore, what is left for an eye-witness account is that of the victim herself, which has been placed by the law at par with the testimony of an injured witness. The testimony of the prosecutrix is invariably to be accepted without corroboration unless there is some such inherent flaw or contradiction that the truth of it becomes difficult to accept. If, therefore, the testimony of the prosecutrix inspires confidence with the Court, it may be accepted without corroboration. After all, a victim or a prosecutrix's testimony in a case of rape is not an accomplice's testimony, which may always require corroboration by a rule of prudence.

48. Undoubtedly, in the present case, the testimony of the prosecutrix about the crime is the sole eye-witness account. The testimony of others, is hearsay and circumstantial. In her

examination-in-chief at the trial recorded on 10.07.2015, the prosecutrix has said:

> "घटना 11 जनवरी 2015 की है। शाम को 7 बजे अपने पापा के लिये गुटका लेने घर के पास ही जा रही थी। वहां पर गोलू @ इरफान मिला, उसके साथ एक व्यक्ति और था जिसका नाम भी इरफान था। इन दोनो व्यक्ति ने मुझे पकड़ा और घसीटकर गफ्फार चच्चा की दुकान के पीछे खण्डहर मे ले गये। जब मुझे पकड़कर दोनो लोग खण्डहर ले जा रहे थे तब इरफान (दूसरे) ने मेरा मुंह बन्द कर दिया। खण्डहर मे दो लोग और पहले से बैठे थे, एक का नाम शानू ले रहे थे दूसरे का नाम नही बता सकती, मुंह बांधे था, मै पहचान सकती हूँ। शानू ने मेरे दोनो हाथ पकड़े व दूसरा जो मुंह बांधे था अपना चेहरा ढके था। ने मुझे जबरदस्ती मार मार कर शराब पिलायी। जब मुझे पूरी तरह से नशे मे कर दिया तो चारों ने बारी–2 से मेरे साथ बलात्कार किया। फिर मुझे चारों लोग मुझे वही खण्डहर मे छोड़कर चले गये। इसके बाद खण्डहर मे कोई नही आया साक्षी ने हाजिर अदालत मुलजिम जो हिरासत मे है, कहा कि यह इरफान है। हाजिर अदालत मुल्जिम रीतेश को देखकर कहा कि यह भी मोके पर था इसे शानू – शानू कह रहे थे, हाजिर अदालत कल्लू को देखकर कहा कि यह भी घटना के समय मौजूद था जो मुंह मे बांधे था। हाजिर अदालत गोलू @ इरफान को देखकर कहा कि यह भी मौके पर था। होश मे आने पर मैने अपने पिताजी को और किसी अभियुक्त का नाम नही बताया था। मै पूरी रात खण्डहर मे नशे की हालत मे पड़ी रही। होश मे आने पर मै चिल्ला रही थी तो पास मे से गुजरने वाले किसी व्यक्ति ने मेरे घर बताया तो मम्मी पापा आये और मुझे ले गये। फिर घर से उसी दिन पापा मुझे थाने ले गये और पापा ने वहां F.I.R. लिखायी। F.I.R. के काफी दिन बाद पुलिस ने मेरा बयान लिया था। मेरी डाक्टरी पहले चरखारी मे हुयी थी फिर महोबा मे हुयी थी। गवाह ने कागज सं० 9क देखकर कहा कि शशिप्रभा नाम की महिला कांसटेविल ने लिखा था और कहा था कि इस पर हस्ताक्षर बना दो, मैने दस्तखत बना दिये थे। इस पर प्रदर्श क–4 डाला गया।"

49. In her cross-examination, generally, the prosecutrix has not wavered from the facts that she was ravished by four men and that she was abducted within minutes after she stepped out of her home on 11.01.2015 at 7.00 p.m. to buy *gutkha* for her father. She has maintained consistency about the place she was taken to by the appellants to realize their evil intent, and, generally, the manner of occurrence. There is a consistent story about the prosecutrix being forced to imbibe alcohol and then ravished through the night by four men while she was under the influence of liquor. The circumstances of her recovery the following morning from the specified scene of crime, that is to say, the ruins behind Gaffar's shop, by none other than her parents, who had come there upon information by a passerby, supports the prosecution by circumstances. The recovery of liquor bottles, cigarette butts, the prosecutrix's footwear, water bottle, are all consistent with the

prosecutrix's version, which inspires confidence. This is, therefore, not a case where there might be some such inconsistency or flaw in the prosecutrix's account of the happening that the Court may seek corroboration from an eye-witness; and, failing that, feel disinclined to act on the prosecutrix's uncorroborated testimony. The prosecutrix's testimony is all the more worthy of acceptance because she is a young woman of 20 years, student of a senior class, on the verge of graduation. She possibly cannot be said to suffer from the handicap of her mental faculties being feeble on account of young age, or the resultant non-understanding of what befell her.

50. As to the principle that the prosecutrix's uncorroborated testimony, if consistent, and disclosing details of the incident as well as participation of the accused, can be accepted, we may refer with profit to **Lok Mal alias Loku v. State of U.P., (2025) 4 SCC 470**. In **Lok Mal alias Loku**, it was held by the Supreme Court:

> "**12.** Though learned counsel for the appellant, submitted before this Court that the oral evidence is unacceptable being the testimony of interested witnesses, we are unable to accept the submissions of the learned counsel for the simple reason that the evidence of the prosecutrix is wholly trustworthy, unshaken and inspires confidence. Admittedly, the prosecutrix was a major girl studying in first part of BA at the time of the incident. Though she was subjected to detailed cross-examination, she stood firm and unshaken disclosing the incident in detail regarding the presence and participation of the accused in ravishing her."

51. Here also, the prosecutrix is a student of the final year of BA, like the victim in Lokmal, a major, who has withstood searching cross-examination on behalf of the appellants, to discredit her and come out with a consistent version of the occurrence, unscathed by the cross-examination.

52. In **State of Uttar Pradesh v. Chhotey Lal, (2011) 2 SCC 550**, it was observed by the Supreme Court:

> "**22.** In the backdrop of the above legal position, with which we are in respectful agreement, the evidence of the prosecutrix needs to be analysed and examined carefully. But, before we do that, we state, as has been repeatedly stated by this Court, that a woman who is a victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of the prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that the court may look for some corroboration so as to satisfy its conscience and rule out any false accusations.
>
> **23.** In *State of Maharashtra* v. *Chandraprakash Kewalchand Jain* [(1990) 1 SCC 550 : 1990 SCC (Cri) 210] this Court at SCC p. 559 of the Report said: (SCC para 16)
>
> > "*16.* A prosecutrix of a sex offence cannot be put on a 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."

24. In *State of Punjab* v. *Gurmit Singh* [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] this Court made the following weighty observations at pp. 394-96 and p. 403: (SCC paras 8 & 21)

"*8*. … The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix … The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case … Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury … Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.…

***

21. … The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires

> confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend *assurance* to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."
>
> (emphasis in original)

25. In *Vijay* v. *State of M.P.* [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , decided recently, this Court referred to the above two decisions of this Court in *Chandraprakash Kewalchand Jain* [(1990) 1 SCC 550 : 1990 SCC (Cri) 210] and *Gurmit Singh* [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] and also few other decisions and observed as follows: (*Vijay case* [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , SCC p. 198, para 14)

> "*14*. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

26. The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of women's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge.

> **27.** This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court. The observations made in *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat* [(1983) 3 SCC 217 : 1983 SCC (Cri) 728] deserve special mention as, in our view, these must be kept in mind invariably while dealing with a rape case. This Court observed as follows: (SCC p. 224, para 9)
>
> > "*9*. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyse the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot, therefore, be identical.""

53. There is, thus, on principle no fetter on the Court accepting the prosecutrix's testimony, uncorroborated by that of another. The testimony, we have already remarked, is consistent and dependable and one that inspires confidence. It is, therefore, held that the uncorroborated testimony of the prosecutrix alone in this case can be accepted in support of the prosecution.

3. Whether non-holding of Test Identification Parade in a case where accused is not known to the prosecutrix, who identifies him for the first time in the dock, vitiates conviction.

54. This is a case where one of the appellants was known to the prosecutrix, but not the others. Whatever acquaintance, she claims about the other appellants, is one from the scene of crime. As would be seen presently, the evidence shows that the crime scene was not well illuminated. It was a dark hour of a wintry night, where the fog would have made visibility worse. A person known beforehand, even an acquaintance, could have been identified by the prosecutrix, the violence of the crime notwithstanding, but not an utter stranger. To add to it is the fact that besides the few moments that occupied the time that she was whisked away to the scene of crime and then made to imbibe alcohol forcibly after an assault, her faculties of cognition would have been overtaken by alcohol, which the prosecutrix says, kept her under a stupor through the night. There would, thus, be hardly any chance of identifying any of the strangers, who were the perpetrators, well enough for the prosecutrix to identify them dependably for the first time in the dock, when she saw them. This is a case, where no Test Identification Parade (TIP) was held before the prosecutrix confronted the appellants in the dock. It was during trial, admittedly, that the prosecutrix saw the appellants, the next time after the occurrence. There was no TIP held with the necessary precaution to ensure that the prosecutrix, in fact, recognized those of the appellants, who were strangers to her.

55. Going by the prosecutrix's testimony, there was one appellant alone, she knew beforehand. He was Irfan @ Golu son of Habib. This acquaintance came about because the prosecutrix had a shop selling clothes, located in the Nazarbad market. She would open and close shop and run the business. Close to the shop, Irfan @ Golu's brother had a gas-cylinder shop, where Irfan @ Golu would frequent. The prosecutrix had watched him there, and according to her own saying, was sufficiently acquainted with

him for the said reason. In this regard, the prosecutrix's testimony, recorded during her cross-examination dated 24.09.2015, may be referred to. It reads:

> "घटना के पहले मेरी नजरवाग मार्केट मे कपड़े की दुकान थी। दुकान खोलने बंद करने व चलाने हेतु मै जाती थी। मैने यह दुकान चार महीने चलाई है। मेरी इस दुकान के पास अभियुक्त इरफान उर्फ गोलू की कम्प्यूटर व इंटरनेट की दुकान नही थी। घटना के पहले मे इसको अपनी दुकान के पास देखती रहती थी। मेरे बगल मे इसके भाई की गैस सिलेण्डर की दुकान सलेण्डर है। वहां आता जाता था इसलिये मै जानती थी।"

56. So far as the appellant, Irfan son of Shahzade is concerned, the prosecutrix in her testimony dated 24.09.2015 has stated thus:

> "मैं घटना के पहले से इरफान पुत्र शहजादे को नहीं जानती थी।"

57. In her testimony dated 28.10.2015, it is said about Irfan son of Shahzade by the prosecutrix:

> "मेरे पापा के पता कराने पर दूसरे इरफान s/o शहजादे को जानकारी हुई थी। मुझे मालूम है कि मेरे पिताजी घटना में शामिल इरफान S/o शहजादे के बारे में रिपोर्ट दर्ज कराने के पहले पता कर आये थे । मेरी तहरीर प्रदर्श क–1 में इरफान S/o शहजादे का नाम नहीं लिखा है। इरफान S/o शहजादे का प्रदर्श क–1 में नाम न होने की मैं वजहा नहीं बता सकता हूॅ। रिपोर्ट लिखने के बाद महिला पुलिस कर्मी ने मेरे घर आकर पहली बार ब्यान लिये थे कितने दिन बाद लिये थे मैं नहीं बता सकती। जब मेरा धारा 161 सी.आर.पी.सी. का ब्यान प्रदर्श क – 4 महिला कास्टेबल द्वारा अंकित किया गया था उससे पहले ही मुझे इरफान S/o शहजादे के नाम की जानकारी हो गई थी।"

58. So far as the appellant, Manvendra Singh @ Kallu is concerned, the prosecutrix has stated in her cross-examination dated 03.11.2015:

> "मैं चरखारी जीजी आई. सी. मे पढती रही हूँ। मैं कक्षा आठ से वारह तक वहा पढी हूँ मैं 2005 से 2009 तक मै जी.जी.आई.सी. में पढ़ी हूँ। जी.जीआई.सी. के सामने इलाहाबाद बैंक है। इसी इलाहाबाद बैंक में एकाउण्ट था। बैंक में पढाई के दौरान मेरा आना जाना होता था। मुझे इस बात की जानकारी नही है कि कल्लू उसी बैंक में अस्थाई रूप से आपरेटर के पद पर कार्य करता था। मैने कल्लू को बैंक में जाने पर एक आद बार देखा है मैं कल्लू को एक आद बार बैंक में देखा था। मैं उसका नाम नही जानती थी। मेरी कभी इससे बातचीत नही हुई। मैने जब मजिस्ट्रेट साहब को ब्यान दिया था तब कल्लू का नाम नही बताया था। जहा घटना हुई थी वहा अन्धेरा था बिजली का कोई प्रबन्ध नही था इन लोगो ने मोबाइल के सहारे रोशनी किये थे। मुल्जिम कल्लू को मैने घटना स्थल पर करीब आधे घण्टे तक देखा। घटना करने के बाद आधे घण्टे में चला गया। जब कल्लू घटना कर रहा था तब वह अपना मुंह नाक के नीचे का भाग मफलर से बांधे था। उसकी आँखे और सर दिखाई दे रहा था। घटना के दौरान इसने मुझसे कोई बात चीत नही किया । मुझे अभी भी जानकारी नही है कि मुल्जिम कहा का रहने वाला है और उसके पिता का क्या नाम है। जब मुल्जिम अरेस्ट हुआ था तब मुझे थाने पर नही दिखाया था बल्कि थाने वालो ने मुझे बताया था कि तुम्हारे साथ घटना करने वाला मानवेन्द्र उर्फ

कल्लू भी है। मै जेल मे कभी भी कल्लू की शिनाख्त करने नही गई हूँ। मैने घटना के बाद कभी भी पुलिस को कल्लू का नाम नही बताया। मैने अपनी एफ. आई. आर. में मुल्जिम कल्लू का कोई हुलिया नही लिखाया था। यह कहना गलत है कि मुल्जिम कल्लू ने मेरे साथ कोई घटना न की हो और ये पुलिस के कहने पर झूठी गवाही दे रही हूँ।"

59. It appears that the prosecutrix was confounded about the appellant, Ritesh's name, whom she considered to be Shanu, a fact that she has disclosed in her cross-examination dated 03.11.2015 at the instance of the acquitted man, Shanu son of Qasim. She spoke about this confusion relating to Ritesh being Shanu, thus, in her cross-examination:

"हाजिर अदालत अभियुक्त शानू मौके पर घटना में शामिल नही था। हाजिर अदालत अभियुक्त रीतेश को अन्य लोग शानू शानू कह रहे थे इसी आधार पर मैने अपने पिता को शानू नाम बता दिया था। इसी आधार पर मैने दरोगा जी को 161 के ब्यान में अभि शानू का नाम बताया था एवं इसी आधार पर मै जज साहब को 164 सीआरपीसी के ब्यानो में भी शानू का नाम बता दिया था। अभियुक्त सानू ने मेरे मारपीट और बलात्कार की कोई घटना नही की है।"

60. Regarding Ritesh to be Shanu, the prosecutrix has said in her cross-examination dated 24.09.2015:

"शानू अभियुक्त को मैने घटना के समय जाना था पहले से नही जानती थी"

61. She has further on said in her cross-examination on the same day:

"रीतेश S/O भवानीदीन मेरे मुहल्ले अमरगंज में मेरे मकान से तीन–चार मकान छोड़कर नही रहता है। रीतेश किस मोहल्ले में रहता है मुझे पता नही है। घटना के करीब एक माह बाद होमगार्ड रश्मि चौरसिया ने मेरा ब्यान लिया था या नही मुझे याद नही है। यदि होमगार्ड रश्मि चौरसिया ने कागज सं. 22क पर मेरे ब्यान में बलात्कार करने वालो मे रीतेश का नाम लिखा हो तो मैं इसकी वजह नही बता सकती क्योंकि मैने पूरी विवेचना के दौरान विवेचक को व मजिस्ट्रेट के सामने बलात्कार करने वालो मे रीतेश का नाम नही बताया था। कागज सं. 22 क को देखकर कहा कि इस पर मेरे हस्ताक्षर है। यह कागज इन्सपेक्टर रज़्ज़ाक ने मेरे हस्ताक्षर एक कमरे पर बनवाये थे उस समय इस कागज पर कुछ लिखा नही था। मुझे यह भी नही पता कि रीतेश उपरोक्त किस जाती का है। मुझे यह भी नही पता कि रीतेश बैंक मे कर्मचारी है।"

62. The aforesaid stand of the prosecutrix in the cross-examination places matters beyond pale of doubt that out of the four appellants, she did not know Irfan son of Shahzade, Ritesh @ Shanu or the one whom she called Shanu and Manvendra @ Kallu. As already remarked, she saw them at the time of occurrence and then identified each of them in the dock. During

this period of time, again as already remarked, no TIP was held. There was, thus, no early authentication of the fact if the prosecutrix could identify the three appellants, Irfan son of Shahzade, Ritesh @ Shanu, Shanu and Manvendra @ Kallu. So far as the appellant, Irfan @ Golu is concerned, he was a prior acquaintance and about his identify, there is no cavil.

63. The law about a first time identification of unknown assailants in the dock without an intervening Test Identification Parade is fairly well-settled and has been summarized recently by the Supreme Court in **P. Sasikumar v. State of T.N., (2024) 8 SCC 600**. In **P. Sasikumar** (*supra*), a case under Section 302 IPC, where the assailants were not known beforehand to the witnesses, it was observed by the Supreme Court:

> "**19.** The incident is of about 7.00 p.m. on 13-11-2014 and both of them were arrested at around 10 p.m. on 15-11-2014. The case of the prosecution is that while they were being arrested, they received injuries as they tried to escape and consequently, they were taken to the hospital for treatment. It was in the hospital, that PW 1 i.e. father of the deceased and the complainant and PW 5 were taken by the investigating officer who are said to have identified the two accused as the one who had committed the crime. No explanation whatsoever has been given by the prosecution as to why TIP was not conducted in this case before a Magistrate as it ought to have been done.
>
> **20.** In fact, the High Court has recorded this flaw in the investigation at more than one place in its judgment. It has again observed that the investigating officer (PW 24) was before the Court and in spite of being questioned as to what the reasons were for not holding TIP in this case, no satisfactory reply was given by him.
>
> **21.** It is well settled that TIP is only a part of police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence is only dock identification that is identification made by witness in court during trial. This identification has been made in court by PW 1 and PW 5. The High Court rightly dismisses the identification made by PW 1 for the reason that the appellant i.e. Accused 2 was a stranger to PW 1 and PW 1 had seen the appellant for the first time

when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW 1 made for the first time in the court was not proper.

22. However, the High Court has believed the testimony of PW 5 who has identified Accused 2 under similar circumstances! The appellant was also stranger to PW 5 and PW 5 had also seen the accused i.e. the present appellant for the first time on that fateful day i.e. on 13-11-2014 while he was wearing a green-coloured monkey cap. The only reason assigned for believing the testimony of PW 5 is that he is after all an independent witness and has no grudge to falsely implicate the appellant. This is the entire reasoning.

23. We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of the appellant. In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (see : *Kunjumon* v. *State of Kerala* [*Kunjumon* v. *State of Kerala*, (2012) 13 SCC 750 : (2012) 4 SCC (Cri) 406]).

24. After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused. The prosecution has not been able to prove the identity of the present appellant i.e. A-2 beyond a reasonable doubt.

25. The relevance of a TIP, is well-settled. It depends on the facts of a case. In a given case, TIP may not be necessary. The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. It would all depend upon the facts of the case. It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in *Rajesh* v. *State of Haryana* [*Rajesh* v. *State of Haryana*, (2021) 1 SCC 118 : (2021) 1 SCC (Cri) 327] and therefore TIP may not be necessary. It is the task of the investigating team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution as we are afraid it will be in the present case.

26. The relevance of TIP has been explained by this Court in a number of cases (see : *Ravi Kapur* v. *State of Rajasthan* [*Ravi Kapur* v. *State of Rajasthan*, (2012) 9 SCC 284, para 35 : (2012) 4 SCC

> (Civ) 660 : (2012) 3 SCC (Cri) 1107], *Malkhansingh* v. *State of M.P.* [*Malkhansingh* v. *State of M.P.*, (2003) 5 SCC 746, para 16 : 2003 SCC (Cri) 1247])."

(emphasis by Court)

64. It is almost impossible for the prosecutrix to have identified the appellant, Manvendra @ Kallu, who admittedly had his face covered by a scarf during the entire episode. The other appellants too, i.e. Ritesh @ Shanu and Irfan @ Shahzade, who were admittedly not known to the prosecutrix beforehand, we have already noticed, had slender chances of identification in the dock because of various factors, that we have noted, such as poor visibility, the brief contact between these appellants and the prosecutrix not being in a fully conscious state. After all, she was, as she says, semiconscious due to the effect of liquor. Her evidence cannot, therefore, be considered as regards identity of the appellants to be of that sterling quality, which may be depended upon, on the basis of a dock identification alone, without a TIP being held.

65. Here, reference may be made to the remarks of the Supreme Court in **Devinder Singh and others v. State of H.P., (2003) 11 SCC 488**, also a case of gang-rape by multiple offenders, where the prosecutrix had a fleeting glimpse of the offenders by torch light. In **Devinder Singh** (*supra*), it was observed by the Supreme Court:

> "**21.** In the course of her deposition though the prosecutrix stated that she had seen their faces in the torchlight after they had raped her, and had narrated the manner in which they discovered the torch and the battery cells, more or less in the same manner as in the first information report, from her deposition it appears that the torch was lighted only for a short duration. In the course of her cross-examination she admitted that for want of light she could not give particulars of the persons who put her on the cot or the person who raped her first. Reading of the deposition of this witness leaves no room for doubt that while the appellants

> committed the offence, there was no light in the room. In view of these circumstances even if it is accepted that the prosecutrix had a fleeting glimpse of the appellants when they lighted the torch in her room, in the absence of any other evidence to show that the prosecutrix had occasion to see the appellants earlier, or to know them, it was incumbent on the prosecution to hold a test identification parade. This is not a case where an occurrence took place in broad daylight and the prosecutrix had ample opportunity of noticing the features of the appellants. This apart, her naming some of the accused persons in the first information report and not naming them in the course of deposition casts a serious doubt on the veracity of this witness. Further, she named two other persons, and not two of the accused, in her report, and failed to name the accused whom she claimed to know from before as stated in her deposition."

(emphasis by Court)

66. All that we can accept the prosecutrix's evidence for is that there were four men involved, who committed the crime, but we cannot accept it for the identity of all four of them in the absence of a TIP being done before trial. We are of opinion that the identity of only one of the perpetrators is established and he is appellant, Irfan @ Golu. We are, therefore, of opinion that this was a case, where a TIP ought have been held in order to bring home the guilt against the three appellants, who are strangers to the prosecutrix, to wit, Irfan son of Shahzade, Ritesh @ Shanu and Shanu and Manvendra @ Kallu. The identification of these three appellants, being very doubtful in the absence of a TIP, they would be entitled to its benefit.

4. If a single person can be convicted of the offence of gang-rape, where factum of the offence being committed by one or more persons, constituting a group or acting in furtherance of a common intention, is established, but the multiple accused put on trial are acquitted for lack of identification.

67. This question is involved in the present case inevitably because we find on the evidence of the prosecutrix that she is dependable and consistent about the fact that she was ravished by four men, but on account of various factors, that we have

already adverted to, her testimony about the identification of the appellants, except one, is doubtful. The one, who has been held by us to be unmistakably identified by the prosecutrix, is Irfan @ Golu, but for the other appellants, we have held that their identification is not free from doubt, of which they must receive benefit. On this state of evidence and our findings, the question is if the sole appellant, Irfan @ Golu can be convicted of the offence of gang-rape. The law seems to be fairly well settled that he can be.

68. The principle that an offence, requiring the participation of a group of offenders, where the factum of a group perpetrating the offence was established, but the guilt could be brought home against a solitary accused, could still lead to conviction of the solitary man for the offence involving multiple participation, has come to be well-acknowledged in cases of dacoity. Dacoity requires the participation of five or more persons and there are instances, where the requisite numbers of accused are arraigned and put on their trial, but the evidence leads to conviction of one alone. The question in such cases that in yesteryears drew judicial attention was if the solitary man found guilty, could be convicted of dacoity, where others, constituting the requisite number, were acquitted. This question arose in the context of a charge of dacoity, dacoity with murder and gang-rape as well, gang-rape being punishable, at the relevant time, under Section 376(2)(g) IPC, before the Supreme Court in **Manoj Giri v. State of Chhattisgarh, (2013) 5 SCC 798**. The facts in **Manoj Giri** (*supra*) figure in paragraph No.2 of the report, which read:

> "**2.** According to the prosecution, on the fateful night of 25-1-2004 at about 9 p.m., the prosecutrix (PW 1) was returning with her husband, namely, Ganesh Sahu (PW 2) on the bicycle from Village Gatauri along with her father-in-law, Domara Sahu (since deceased) on other bicycle from Village Mohtarat after taking her treatment. It was a lonely road and as they were passing by Koshtha pond at Village Mohtarat, someone focused a

> torchlight on them and then hurled abuses and stopped them. Then two more persons reached there and caught the cycle of Ganesh Sahu and stopped him. Two other persons stopped the cycle of Domara Sahu. One person inflicted iron rod-blow to Ganesh Sahu and another slapped Domara Sahu. They took the prosecutrix, her husband and Domara Sahu towards the field and threatened that they would be killed if they cried out. Ganesh Sahu was beaten senseless and his hands and legs were tied up with a lungi. Domara Sahu was also beaten senseless. Those persons threatened the prosecutrix and took off her sari and undergarments and then raped her one by one. One of them had tied her legs and raped her, another untied her while raping her. Subsequently, after tying her up, they sat for some time and then ran away. Somehow she untied herself and untied her husband and they reached the house of one Raj Kumar Suryavanshi, who gave them shelter. She narrated the incident to Raj Kumar Suryavanshi, who sent Ashok Kumar (PW 13) to lodge the FIR at about 2.00 a.m. Domara Sahu who had been carried to local hospital, died at about 4.35 a.m."

69. The event in the Trial Court and non-challenge to the acquittal of four of the five accused by the State, is described thus in the report in **Manoj Giri**:

> "**11.** The trial court considered the evidence and came to the conclusion that the accused were properly identified by the prosecutrix and with regard to whom there was sufficient evidence available for conviction held them guilty under Sections 395, 396, 397, 398 and 376(2)(*g*) IPC. As regards the other accused, the trial court came to the conclusion that the evidence against them was insufficient and contradictory and after the detailed discussion came to the conclusion that it was not possible to convict them mainly on the ground for want of identification. They were thus acquitted.
>
> **12.** The State did not file any appeal against the acquittal of the other accused. The appellant Manoj Giri, however, filed an appeal to the High Court. Before us, this appeal has been filed against the said judgment."

70. It was in the context of these facts that about the solitary conviction of Manoj Giri on the charge of dacoity with murder, where others were acquitted for lack of identification, it was held by the Supreme Court:

"**15.** With regard to the appellant's conviction under Section 396 IPC for the murder of Domara Sahu in the case of dacoity, it was contended by the learned counsel for the appellant that since the other four accused who have been similarly charged were acquitted of the offence of dacoity, it would not be legal and proper to convict the appellant of the said charge. The argument is based on the presupposition that a conviction for dacoity with murder can be maintained only when five or more persons are convicted. Section 396 IPC reads as follows:

> "**396. *Dacoity with murder*.**—If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, everyone of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

This contention cannot be upheld in view of the observations made by this Court in *Raj Kumar* v. *State of Uttaranchal* [*Raj Kumar* v. *State of Uttaranchal*, (2008) 11 SCC 709 : (2008) 3 SCC (Cri) 888] which read as follows: (SCC p. 715, para 21)

> "*21.* It is thus clear that for recording conviction of an offence of robbery, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the *factum* of five or more persons is either not disputed or is clearly established, but the court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons—or even one—can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity."
>
> (emphasis in original)

16. The observations in *Raj Kumar case* [*Raj Kumar* v. *State of Uttaranchal*, (2008) 11 SCC 709 : (2008) 3 SCC (Cri) 888] squarely apply to this case. Domara Sahu was killed in the assault by the five accused. The evidence against the other four was not sufficient to convict them. There is no doubt, the murder was committed during the conjoint commission of dacoity. If properly convicted each one of them were liable to be punished with death vide Section 396 IPC. Since that has not happened the conviction of five persons—or even one—can stand. We have, therefore, no hesitation in

> maintaining the conviction of the appellant for the incident in which there was a gang rape, dacoity and a wanton murder of the hapless father-in-law."

71. The principle in **Manoj Giri**, applicable to a case of dacoity and dacoity with murder, where the factum of participation by the requisite number of men in the crime, was well established, but the others were acquitted for lack of identification, permitting conviction of the solitary man found guilty of the offence that could be committed by a group alone, would squarely apply to a case of gang-rape, provided the factum of participation of multiple offenders, is established, but a solitary perpetrator's identity could alone be established. The question received the attention of a Bench of the Andhra Pradesh High Court in **Kuruva Sreenivasulu v. SHO, Ullindakonda P.S., 2023 Supreme (AP) 47**, where two men were accused of robbery and gang-rape, but the identity of one of them alone could be established by the prosecution. It was in this context held in **Kuruva Sreenivasulu** (*supra*):

> "12) The argument of the learned Counsel for Accused No. 1 that, if any benefit is given to Accused No.2, Accused No. 1 cannot be convicted for an offence of gang rape, is ill-founded.
>
> Merely because one of the accused is acquitted due to lack of proper evidence, it does not mean that the incident in question was committed only by one person. It is to be read as if it was committed by a known and one unknown person."

72. A similar issue, though not identical, arose before a Bench of the Delhi High Court in **Praveen v. State of NCT of Delhi, 2025 SC OnLine Del 5583**, where a charge of gang-rape on a woman under 16 years of age, amongst others, was brought against two men, one of whom absconded and could not be brought to trial. His complicity on evidence was established and so also the case of gang-rape, involving two men, but one alone could be convicted. It was urged before their Lordships of the Division Bench in **Praveen** (*supra*) that the other accused having

absconded, the solitary man put on trial could not be convicted of the offence of gang-rape. Repelling the appellant's contention in **Praveen**, Rajneesh Kumar Gupta, J., speaking for the Bench, held:

> "**20.** One of the arguments of the Appellant is also that as the alleged coaccused Kalu has not been arrested and only the Appellant has been convicted for the alleged offences, therefore, it is not the case of a gang rape. For the offence to be a gang rape, it must be that the Prosecutrix has been sexually assaulted by more than one person.
>
> **20.1** This argument is without any merit, as one offender can be convicted for gang rape, if the other offender managed to escape and could not be apprehended. On this aspect, it is relevant here to mention the judgment of *Kailash Lal Singh Khangar* v. *State of Madhya Pradesh*, ILR 1996 MP 446. The relevant paras of the said judgment are as follows:
>
> > "*12. In such circumstances, when two persons are said to have committed rape upon a minor girl of aged 13 years at the times of the incident, it comes within the category of gang rape and there is no reason to discredit any of the prosecution witness in this incident.*
> >
> > *13. Appellant had stated in his examination under Section 313, Criminal Procedure Code that he has been falsely implicated at the instance of one Bhagwansingh. But no evidence in defence has been led on this point.*
> >
> > *14. The trial Court rightly came to the conclusion that the appellant was found guilty of committing rape upon Kumari Mathi, a minor girl of 13 years of age, which has been proved by her statement and medical evidence. The appellant was immediately arrested on the spot by the witnesses, reaching on the cries of the prosecutrix. The other-co-accused Lalu Thakur had managed to escape and could not be apprehended.*
> >
> > *Therefore, in such a situation, it was a case of a gangrape and the appellant was certainly guilty. The trial Court had rightly convicted the appellant under Section 376, Penal Code, 1860.*"

73. Given this position of the law, we are of opinion that there is no impediment in holding the appellant, Irfan @ Golu alone, whose identity has been well established as one of the

perpetrators, guilty of the offence of gang-rape. This is so because the involvement of four offenders is also well established, but their identity is the subject of a reasonable doubt that must enure to their benefit.

4. Whether the absence of any injury on the prosecutrix's private part in a case of gang-rape, can or must lead to the inference of non-complicity/ falsehood of the charge.

74. A point was emphatically made on behalf of the appellants that in the absence of an injury being sustained by the prosecutrix to her private part, a case of rape, much less gang-rape, cannot be accepted. Reliance has been placed on **Lilia alias Ram Swaroop** (*supra*), where acquitting the accused of the offence of rape under Section 376 IPC, their Lordships of the Supreme Court held:

> "**4.** We have gone through the evidence in the matter as also the reasons recorded by the courts below. Admittedly the prosecutrix was a married woman. She has given a story that as she was on her way to deliver lunch to Madan Lal (PW 4) she had been waylaid by the appellant and he had then thrown her on the ground and raped her and that she had resisted and had got cut injuries as the glass bangles that she was wearing had broken during the commission of rape. The story projected by Madan Lal which is said to be corroborative of her statement is, however, difficult to believe. He says that he had seen the rape being committed for about fifteen minutes from a vantage point a short distance away but he had not made any attempt to rescue his sister-in-law. He further stated that one Inder Singh who was with him was also an eyewitness.
>
> **5.** Admittedly, Inder Singh who could be said to be an independent witness, has not been examined. Some corroboration could have been found in the medical evidence if it had supported the prosecution story. The doctor however found no injury on the person of the prosecutrix though she was examined within two days of the incident. In the light of the fact that the story projected by the prosecution is on the face of it unacceptable and rather far-fetched and does not find corroboration from the medical evidence as well, on a consideration of the cumulative effect of all the circumstances, we are of the opinion that a case of rape has not been proved beyond reasonable doubt."

75. Injury to the private parts of a rape victim is not always necessary as evidence to establish the offence of rape, including gang-rape.

76. The absence of injury to the prosecutrix's private parts can primarily be the result of non-employment of force in perpetration of the crime. This can come about on account of various factors, particularly, the victim being put in fear to an extent that she did not resist the act. The other possibility could be that the victim being unconscious or semiconscious due to the deleterious effect of an intoxicating substance, like alcohol or any other drug did not offer resistence. In the present case, the testimony of the prosecutrix shows that she did resist until time when she was whisked away to the scene of crime and forced to imbibe alcohol. The external injuries that the prosecutrix sustained were mostly the result of assault and force used to make the prosecutrix imbibe alcohol. Some of the external injuries could be the result of the hard ground etc., where the prosecutrix lay and suffered the offence.

77. The fact, that the prosecutrix did not sustain any injury to her private parts, is clearly attributable to the fact that she was semiconscious and under the stupefying effect of the alcohol that she was forced to imbibe by the offenders. The resultant non-resistance from a semiconscious prosecutrix would exclude the possibility of injury to her private parts. In **Vijay alias Chinee v. State of M.P., (2010) 8 SCC 191**, also a case of gang-rape, it was observed by the Supreme Court:

> "***Injury on the person of the prosecutrix***
>
> **25.** In *Gurcharan Singh* v. *State of Haryana* [(1972) 2 SCC 749 : 1972 SCC (Cri) 793 : AIR 1972 SC 2661] this Court has held that : (SCC p. 753, para 8) the absence of injury or mark of violence on the private part on the person of the prosecutrix is of no consequence when the prosecutrix is minor and would merely suggest want of violent resistance on the part of the prosecutrix. Further absence of

> violence or stiff resistance in the present case may as well suggest helpless surrender to the inevitable due to sheer timidity. In any event, her consent would not take the case out of the definition of rape.
>
> **26.** In *Devinder Singh* v. *State of H.P.* [(2003) 11 SCC 488 : 2004 SCC (Cri) 185] a similar issue was considered by this Court and the Court took into consideration the relevant evidence wherein rape was alleged to have been committed by five persons. No injury was found on the body of the prosecutrix. There was no matting on the pubic hair with discharge and no injury was found on the genital areas. However, it was found that the prosecutrix was used to sexual intercourse. This Court held that the fact that no injury was found on her body only goes to show that she did not put up resistance."

78. Also reference may be made to a Bench decision of the Gauhati High Court in **J. Lalruatsanga v. State of Mizoram and another, 2020 SCC OnLine Gau 4897**, where in the context of a gang-rape and the absence of injury to the prosecutrix, it has been observed:

> "**33.** In the case of *Lalliram* (supra), the Apex Court in the case of gang rape held that when the allegation is of rape by many persons and several times but no injuries is noticed, it certainly would be an important factor. Although, it is true that injury is not a *sine quo non* for deciding whether rape has been committed but it has to be decided on the factual matrix of each case. If the court finds it difficult to accept the version of the prosecutrix on face value, it may search for evidence direct or circumstantial. In so far as the present case is concerned, the evidence on record would go to show that the accused-persons threatened the prosecutrix with a knife telling her that her throat would be cut if she resisted. Under such circumstance, the prosecutrix apparently out of fear may have surrendered to them. Apart from the underwear and the boxer shorts of the prosecutrix being tom, the evidence on record does not show that the accused-persons applied force unlike the case in *Lalliram* (supra), wherein the prosecutrix who was said to be four months pregnant at the time of occurrence was caught hold of by her bunch of hair and dragged for a considerable distance. As may be noticed, the facts in the present case are not similar. The evidence on record does not show use of forceful violence and, therefore, the absence of injury from the person of the prosecutrix cannot be the ground to disbelieve

her testimony, which are also corroborated by the other prosecution witnesses.

34. In the case of *Joseph S/o Kooveli Poulo* (supra), the Apex Court held that the charge under section 376, IPC was mainly fastened upon the appellant only on the basis of 'last seen together' theory. The factum of rape of the deceased was sought to be proved from the report on examination of vaginal smear, collected and said to confirm the presence of semen and sparmatoza indicating that the alleged victim had sexual intercourse before her death. Although, the accused-appellant was found to be potent but no stain of blood or semen was found on his dhodi and further no injury was found on the vagina/private part of the victim. It was under such circumstance that it was held that rape was not proved. The facts and circumstance in the present case are again not similar to the case under reference. The prosecutrix was forcefully taken to a secluded place by threatening her with a knife, forced to drink liquor and was subjected to rape. It is a settled proposition in law that injury is not always a precondition to prove the charge of rape. As already stated herein above, the prosecutrix was not subjected to brutal force which would have led to her sustaining injuries. Therefore, the absence of injuries by itself cannot be the ground to disbelieve her version when her narrative about the incident appears to be cogent, inspiring the court's confidence and corroborated by the version of other prosecution witnesses. Therefore, the case under reference does not render any assistance to the case of the appellant."

79. J. Lalruatsanga (*supra*) was a case of the prosecutrix not sustaining any injury in the gang-rape due to non-resistence arising from fear. The present case is one where non-injury to the private parts of the prosecutrix is the result of non-resistance to the act of ravishment because she was semiconscious on account of the alcohol that she was forced to have.

80. In the context of a case of gang-rape, where the prosecutrix did not sustain injuries to her private parts, the following remark of the Supreme Court in **Raju alias Umakant v. State of M.P., 2025 SCC OnLine SC 997** may be referred to with profit:

"**28.** Nothing much turns on the evidence of the Doctor, (PW-10) who performed the medical examination on the prosecutrix. Her evidence that no definite opinion could be given, and that no

> other injury other than the one on the lip of 'R' was present, does not mean that sexual assault was not committed on the prosecutrix 'R'. It is also well-settled that where the ocular evidence is clear, it will prevail over the medical evidence. [See *Central Bureau of Investigation* v. *Mohd. Parvez Abdul Kayuum*, (2019) 12 SCC 1 (para 65)]"

81. Here too is a case where the prosecutrix is consistent about the fact that she was ravished by multiple men. She was in a semiconscious state and may not be trusted with her identification of those offenders she knew not beforehand, but that does not mean that her account of suffering the gruesome crime is to be disbelieved altogether, merely because there was no injury to her private parts.

82. In the result, Criminal Appeal Nos.1594 of 2017, 1580 of 2017 and 1282 of 2017 succeed and are **allowed**. The appellants, Irfan son of Shahzade, Ritesh @ Shanu and Manvendra @ Kallu are hereby **acquitted**, granting them the benefit of doubt. They are in jail and shall be released from prison forthwith unless wanted in connection with any other case and subject to fulfilling the requirements under Section 437-A Cr.P.C. equivalent to Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023).

83. Criminal Appeal No.1897 of 2017 preferred by the appellant, Irfan @ Golu is hereby **dismissed** and his conviction and sentence by the Trial Court stand **affirmed**.

84. A copy of this judgment along with trial court record be sent to the Sessions Judge, Mahoba for information and necessary compliance.

(J.J. Munir,J.)

September 19, 2025
Anoop