



2026:DHC:604-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17th December, 2025

Pronounced on : 27th January, 2026

+ W.P.(C) 5290/2001 & CM APPL. 18565/2024

OM PRAKASH

.....Petitioner

Through: Ms. Mansi Sharma and Mr. Rehan
Verma, Advocates.

versus

UOI & ORS.

.....Respondents

Through: Mr. Vikrant N. Goyal, CGSC along
with Mr. Kunal Dixit and Mr. Piyush
Wadhwa, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

J U D G M E N T

Per DINESH MEHTA, J.

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I. Prelude:-

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking quashment of the proceedings of the General Security Force Court (*hereinafter referred to as 'GSFC'*), order dated 19.08.1992 and 20.10.1992 passed and confirmed by the Commandant, 172 Battalion and the Inspector General, BSF, respectively.
2. The petitioner, who joined Border Security Force (*hereinafter referred to as 'BSF'*) as a Constable in August of 1983 was promoted as a Lance Naik on 15.04.1991. While discharging his duties as Lance Naik, he was posted at company headquarters at Mohra in Jammu & Kashmir.
3. As per the petitioner, on 19.07.1991, he developed some pain in his left leg, for which, he contacted the local army hospital and was advised rest for three days, which was extended upto 24.07.1991.
4. On 22.07.1991, he was detailed to go to Forward Defence Line (*hereinafter referred to as 'FDL'*) Ghoretal alongwith four other personnel namely, Nk J.D. Sharma, Ct. Rajbir Singh, Ct. Padma Naik, and Ct. Ram Rattan.
5. The petitioner claims to have complained of pain in his left leg to the concerned officer, but still he was insisted to proceed to FDL Ghoretal. According to him, he had to stop on various occasions while covering the distance of 13-14 kms. from the Company Headquarters, Mohra Base to FDL Ghoretal. During the journey, two of those four persons, namely Ct. Ram Rattan and Ct. Rajbir Singh accompanied him while Nk J.D. Sharma and Ct. Padma Naik kept moving and left them behind.
6. As per the facts narrated, at around 150 yards away from FDL Ghoretal post, the petitioner stopped near a *nallah* (stream), where Ct.



Jeevan Ram of 'A' Company was taking a bath. The petitioner stopped for some time to take rest and adjusted his bandage. In the meantime, Ct. Ram Rattan and Ct. Rajbir Singh kept moving and went ahead of him. The petitioner again set off for the remaining journey and reached the post at about 1300 hrs, within half an hour of the arrival of Ct. Ram Rattan and Ct. Rajbir Singh.

7. As per the case set up by the respondents, one 'NB' (*hereinafter referred to as 'prosecutrix'*), a local resident claimed to have meted with an untoward incident, rather an act committed by some person, which incident was firstly informed to her brother-in-law 'KM' (elder brother of her husband) and then to the Sarpanch i.e. Abdul Rahim Sheikh, whereafter in a bid to inquire about the person involved the Sarpanch, firstly, contacted Ct. Jeevan Ram, who was still at the *nallah*. Jeevan Ram guided them towards the FDL Ghoretal. On an inquiry being made and after the victim being called, the prosecutrix identified the petitioner as the person having committed the act. A fact-finding exercise was conducted by one SI Prakash Chand.

8. Various officers of the respondent/BSF collected the information and recorded the statements of the relevant persons, including Sarpanch and the victim between 22nd and 24th of July, 1991 on the spot or in the village Mayan; the higher officer(s) and the Company Commandant were informed accordingly. It is an admitted case of the parties that a preliminary inquiry was conducted, whereafter the competent authority of the respondent/BSF decided to proceed against the petitioner under Rule 45 of Border Security Force Rules, 1969 (*hereinafter referred to as 'BSF Rules'*). Consequently, a charge-sheet dated 19.10.1991 came to be issued; for the following charges:

"in that he



at Mayan Village on 23.07.1991 while he was going to Ghoretal Post after performing patrol duty used criminal force to the prosecutrix Ms. N w/o Sh. ARM, R/o Mayan Village, intent to outrage her modesty.”

9. As the offence alleged against the petitioner could not be dealt with summarily, the competent authority/Commandant proceeded to Record the Evidence (*hereinafter referred to as 'ROE'*) as per Section 46 of Border Security Force Act, 1968, read with Rule 45 and 48 of BSF Rules, 1969. The statements of following persons were recorded, while giving the petitioner a right to cross-examine them -

- (i) Prosecution witness No.1 – Nk. J.D. Sharma;
- (ii) Prosecution witness No.2 – Abdul Rahim Sheikh, Sarpanch of village Mayan;
- (iii) Prosecution witness No.3 – Ms. N (victim);
- (iv) Prosecution witness No.4 – Ct. Ram Rattan;
- (v) Prosecution witness No.5 – Ct. Rajbir Singh.

10. On the basis of the ROE, the Commandant decided to refer the case for trial by the GSFC and a charge-sheet dated 11.05.1992 under his signature came to be issued, though it borne the signature of Inspector General, BSF inscribed on the charge-sheet. It is pertinent to note that an offence under Section 376 of Ranbir Penal Code (*pari-materia* to Section 376 of Indian Penal Code) was alleged. The charge framed against the petitioner reads thus:

*“in that he,
on 23.07.1991 between 1200 – 1330 hrs while on way from Mohura base to Ghoretal FDL near Lari Bal, committed rape on Smt. N,
..... and thereby committed an offence punishable u/s 376 of Ranbir Penal Code.”*

11. The GSFC was convened while appointing Sh. A.K. Patel, IPS, Inspector General, BSF Kashmir Frontier to be a Convening Officer. By



way of order dated 20.07.1992, the said Convening Officer constituted a court to conduct inquiry to get assessment and convene the court, for the purpose of trying the accused person (petitioner herein). The Court comprised of the following Presiding Officer and Members:

- (i) Sh. K.S. Vizayam, Commandant 172 Bn., Presiding Officer;
- (ii) Sh. L.S.J. Negi, Member;
- (iii) Sh. P.S. Tomar, Member;
- (iv) Sh. G.S. Yadav, Member;
- (v) Sh. Ajaib Singh, Member;

Waiting Members – Sh. J.S.S. Walia and Sh. B.K. Jha

Law Officer – Sh. G.S. Wadhwa

Prosecutor – Sh. D.N. Arya

12. The proceedings of the GSFC commenced on 31.07.1992 and following persons appeared for prosecution to prove charge against the petitioner:

- (i) Nk. J.D. Sharma, PW-1
- (ii) Ct. Ram Rattan, PW-2
- (iii) Subedar Harbans Singh, PW-3
- (iv) Sarpanch Abdul Rahim Sheikh, PW-4
- (v) HC Mohd. Kamal-uddin, PW-5
- (vi) SI Prakash Chand, PW-6
- (vii) Ct. Rajbir Singh, PW-7
- (viii) Complainant Ms. N, PW-8

13. Ct. Jeevan Ram, appeared as defence witness (DW-1).

14. As per the practice prevalent in the BSF, the Law Officer Sh. G.S. Wadhwa gave his opinion/finding on the evidence on 19.08.1992, which is summarised as under:



(a) that the accused Lance Naik Om Prakash on 23.07.1991 between 1200 hours and 1300 hours while on the way from Mohra Base to FDL Ghoretal, near Lari Bal committed rape on Ms. N – while discussing the evidence, he had dealt with the evidence of the relevant prosecution’s witnesses and has concluded/advised as under:

“...if in the light of above discussion and other evidence on record, you come to the conclusion that the accused had not committed any offence, you should acquit him of this charge, otherwise, you should consider the next issue of this charge.”

(b) The second issue for determination which said Law Officer formulated was as under:

“That the said rape was done under circumstance falling in other six clauses of section 375 ranbir penal code punishable under section 376 of the ranbir penal code.”

On the above issue, the Law Officer opined as under:

that the record of the case is before the court and in case you entertain any doubt as regards any facts having been stated in the evidence, you may refer to it and that in case the court had a reasonable doubt, it must resolve it in favour of the accused. A reasonable doubt is much as a prudent man may honestly and consciously entertain.

15. After considering the opinion sent by the Law Officer on 19.08.1992, the court recorded following finding on the very same day i.e. 19.08.1992:

“the court find that the accused Lance Naik Om Prakash of 13 Bn. is guilty of the charge”.

Having found so, sentence was pronounced on 19.08.1992 itself and the accused was ordered to suffer rigorous imprisonment for three years and was dismissed from the service. Thereafter, the finding and the sentence awarded to the petitioner/accused came to be confirmed by the Inspector General, Frontier Headquarter, BSF, Kashmir on 20.10.1992.



II. Submissions on behalf of the petitioner:-

16. Having navigated the court through the factual matrix of the case, Ms. Mansi Sharma, learned counsel for the petitioner, prayed that while dealing with the case in hand, the Court may keep one fact in mind that the petitioner at the relevant time was posted in Kashmir, which at the relevant time was otherwise a disturbed area and the instances of conflict between the armed forces and the local residents and the incidents involving the residents getting misbehaved with and the army people being falsely implicated were very common.

17. Having said so, she at the outset pointed out that first charge-sheet, which was issued to the petitioner on 19.10.1991 alleged an offence under Section 354 of Ranbir Penal Code (*hereinafter referred to as 'RPC'*) (*pari-materia* to Section 354 of IPC). She pointed out that the charge as contained in the charge-sheet dated 19.10.1991 was only to the effect of having used criminal force on the victim/prosecutrix with an intent to outrage her modesty, whereafter recording of evidence (sort of preliminary enquiry) took place and in light of the evidence led during ROE, another charge-sheet dated 11.05.1992 came to be issued, this time with a graver allegation that on 23.07.1991 between 1200 hrs and 1330 hrs while on the way from Mohra Base to FDL Ghoretal near Lari Bal, the accused had committed rape on the victim and thereby committed an offence punishable under Section 376 of RPC (*pari-materia* to Section 376 IPC).

18. She highlighted that the respondents did not initially provide copies of the statements recorded during ROE and before GSFC only, in spite of the fact that an application to this effect had been filed seeking production of all relevant documents and the same were provided only after the final order at the conclusion of GSFC proceedings. She added that despite demanding



copies of the statements recorded at the time of discreet inquiry, and preliminary inquiry on the basis whereof the first charge-sheet dated 19.10.1991 for the offence under Section 354 of RPC, were never provided to the petitioner.

19. She argued that withholding of the relevant documents including the statements prior to initiation of ROE and GSFC is not just co-incidental, it is a clear attempt on the part of the respondents to keep all the relevant material from the reach of this Court inasmuch as the first allegation levelled against the petitioner, which too was false, was only in relation to an offence of attempting to outrage the modesty of the complainant, punishable under Section 354 of RPC.

20. She further argued that the facts and evidence, which she would be dilating upon subsequently, will make it clear as to how the sheer public pressure has led to a rather simple allegation of outraging the modesty came to be disproportionately expanded to be an allegation of rape, so as to give a pseudo-satisfaction to the residents of an otherwise disturbed area who were against the very presence of armed forces. She argued that a personnel from the BSF has been penalised with rigorous imprisonment and extreme consequence of dismissal.

21. Learned counsel for the petitioner submitted that another reason for which the petitioner seems to have been implicated was, because when his purported misbehaviour was reported, a preliminary inquiry was conducted and the petitioner was proposed to be prosecuted for offence under Section 354 of RPC. Finding himself trapped in such embarrassing situation, he had gone to his residence in order to get away from the environment for some time, which had become hostile to him and when the petitioner reached home, he found that his daughter was ill. Therefore, the petitioner could not



report back to the duties in time, due to which, his superior officers got annoyed and in order to ensure that he is scooped out of service, a conspiracy was hatched.

22. She emphasised that it was one of the two reasons, for which the initial charge under Section 354 of RPC was later on changed to a charge under Section 376 of RPC and during ROE, the witnesses were tutored to depose so as to make out a case of rape of the victim rather than a case of outraging her modesty.

23. Learned counsel for the petitioner argued that the initial charge-sheet was issued on 19.10.1991 and the ROE was convened on 19.10.1991 and in spite of the fact that the evidence had been recorded between 14.11.1991 to 06.12.1991, a charge-sheet under Section 376 IPC and decision to hold GSFC was taken as late as on 15.06.1992 and 31.07.1992, respectively. She argued that if the time taken in the proceedings of GSFC, which were completed within less than 15 days is compared with the time that was taken to decide holding of GSFC (a period of 7 months), it can be easily inferred that the respondents had proceeded against the petitioner in order to either teach him a lesson or to make him a prey for the sake of appeasement of the local people.

24. Learned counsel for the petitioner firstly pointed out that the place of alleged incident was very close to a 'nallah', where the petitioner and another two accompanying BSF personnel had met Constable (written in the proceeding as Ct.) Ct. Jeevan Ram (DW-1) and halted for some 5-10 minutes and argued that had the story been true, then even if the petitioner had tried to outrage her modesty, the victim would have called for help or shouted and at least Ct. Jeevan Ram, who was not more than 50 yards away could have heard the same and intervened even if he had not seen the



incident.

25. Ms. Mansi Sharma, learned counsel further argued that even as per the cross-examination of the prosecutrix (PW-8), there was a house at a distance of 10-15 yards and various other houses were present at about 100-150 yards and if prosecutrix had raised an alarm, some of the occupants would have definitely heard the same. She also argued that when the houses were so close to the place of incident, firstly, any man of sanity or some prudence could not even have dared to misbehave with a lady let alone rape her.

26. She also argued that even as per the prosecutrix, the incident took place at tri-junction near *nallah*, which was a part of public way and hence, in bright day light between 1200 hours and 1330 hours, had the alleged offence been committed, any passer-by would have seen the act and caught hold of the petitioner. She emphatically contended that the allegation of the prosecutrix was apparently improbable.

27. Highlighting that as per the deposition of PW-8 (when she told the incident to her brother-in-law and Sarpanch) “one man in Army uniform has committed rape on her and ran away after doing the act”, learned counsel argued that there is enough evidence on record even as per prosecution’s witness that the petitioner was limping and going very slowly (as he was having a severe pain in his foot and had his leg bandaged) hence, if any act, as alleged was done, firstly, the petitioner could not have run and secondly, his reference or identification would naturally have been made by saying – “the one, who was limping”.

28. Having pointed out such discrepancies, Ms. Mansi, learned counsel for the petitioner, argued that these discrepancies cannot be treated to be discrepancies alone, as they are improvements or major variations in the



version which raise doubt about the trustworthiness of the witness and speaks volumes about her reliability.

29. Learned counsel also argued that as per the testimony of the prosecutrix and other witnesses, the first person to whom she had narrated the incident was KM (her brother-in-law), whereas the prosecution did not bring him in the witness box. Learned counsel argued that the fact that her brother-in-law had not been brought during ROE so also during the GSFC cannot be taken to be a normal lapse; she argued that it is fatal to the prosecution case. She contended that had he been brought in for leading evidence, the petitioner or his defence counsel would have asked him questions, which would have falsified the entire story.

30. Learned counsel argued that though the incident took place on 23.07.1991 and preliminary confrontation or the fact-finding exercise was done on 24.07.1991 but the clothes of the petitioner and the victim were recovered as late as on 27.07.1991 and 26.07.1991, respectively – two/three days after the incident. She also argued that even recovery is neither proved nor can it be said to be a valid recovery, because the same has not been done after following the procedure provided in law.

31. It was argued by Ms. Mansi Sharma that the entire case of the prosecution and the evidence that has been recorded and deposition made by the witnesses is motivated. In this regard, she submitted that the testimony of Nk. JD Sharma (PW-1) is completely unreliable because as per him, SI Prakash Chand and Ct. Kamal-uddin told him that one of the BSF parties, who came towards Ghoretal had raped a girl of the village. She pointed out that it is only PW-1, who said that the village people and Ct. Kamal-uddin told that one BSF man had raped, otherwise even during ROE, everyone had told that he had misbehaved. She emphasized that the expression



“misbehaved” and “rape” are not only different, but the level of severity of the latter is so much that no one would use these word interchangeably. If a person has committed rape, everyone would use such expression and not the expression ‘misbehaved’.

32. In relation to testimony of Subedar Harbans Singh (PW-3), learned counsel for the petitioner submitted that Subedar Harbans Singh was the person who firstly inquired about the incident and pointed out that this witness who had the occasion of firstly examining the petitioner and the victim does not say that oil was found spilled on her clothes though he does say that oil was present on petitioner’s cloth. She submitted that interestingly, this witness says that the four lower buttons of the shirt of the petitioner were broken, whereas none of the witnesses and even prosecutrix ever said that the buttons of the petitioner's shirt got broken during the act or were found broken after the incident.

33. Learned counsel for the petitioner further underscored that the victim was not even taken to the place of the incident. She argued that when the place, where the incident allegedly took place was an open area and not a room or house, in absence of identification of the place of incident, the entire case against the petitioner has vitiated.

34. In relation to the testimony of the witnesses, Ms. Mansi Sharma, learned counsel emphatically submitted that if the complainant’s testimony (PW-8) made during GSFC is compared with her deposition during ROE, there are major discrepancies and argued that that such discrepancies not only prove that her allegation was false but also render her testimony or story to be unreliable. In a bid to highlight that there is a marked improvement in the statements of the prosecutrix, if the statement given during ROE is compared with the statement given at the time of GSFC, she



pointed out the following discrepancies:

A. Discrepancies in the prosecutrix's statement:-

- (i) during ROE, the prosecutrix had stated that the petitioner had closed her mouth with the help of his hand, whereas during her examination-in-chief before GSFC, prosecutrix deposed that the petitioner pointed rifle towards her and threatened her not to tell it to anyone.
- (ii) during ROE, the prosecutrix had said that the petitioner had removed her *salwar* while during the GSFC, she told that the petitioner had removed her *kameez* and *salwar* both.
- (iii) during the ROE, the prosecutrix did not say anything about biting on the lower lip but when she appeared in the GSFC, she improved her version and stated that the petitioner had bitten her lower lip and scratched her right cheek.
- (iv) she underscored that the statements of prosecutrix during ROE were short and concise while her deposition in GSFC was full of embellishments, which indicates that she was tutored.
- (v) during ROE, the prosecutrix had told that the petitioner had given a rupee 20 note and threatened her not to tell anyone about the incident, whereas this fact was not narrated during GSFC.
- (vi) in her deposition in the GSFC, prosecutrix had stated that there was external injury on her private part and bleeding, whereas no such assertion was made during ROE.
- (vii) though in the ROE but not in her deposition before the GSFC, the prosecutrix had made reference of oil, which had



purportedly spilled over her clothes and on the petitioner's clothes.

35. Learned counsel for the petitioner then argued that the distance between the place of incident and FDL Ghoretal is so short that it can be covered in half an hour, as is evident from various testimonies, including statement of PW-1, who said that Kamal-uddin and 3-4 other persons left for the village from the FDL Ghoretal and came back in half an hour. Therefore, she argued that the distance between two points can be covered within 15 minutes. She submitted that even as per the prosecution's witnesses, the petitioner reached FDL Ghoretal at about 1300 hours whereas the other two persons, namely Ram Rattan and Rajbir Singh had reached FDL Ghoretal at about 1230 hours. She argued that bearing this fact in mind that the petitioner even with problem in his foot could cover the distance within half an hour, which a normal man would have covered in 15 minutes, the version of the prosecutrix that within the available time (less than 15 minutes), the petitioner had performed the entire act is impossible, that too, when it is the prosecutrix's own case that the total act took about an hour.

36. In relation to credibility of PW-2, namely Ct. Ram Rattan, learned counsel for the petitioner submitted that in response to the question asked, the said witness had told that the prosecutrix was wearing a *firan*, *salwar* and she had wrapped a blue *chaddar* around her and that general condition of *firan* and *salwar* and *chaddar* was good. Learned counsel argued that firstly, as per this witness, the condition of *salwar* was good and, therefore, the testimony of other witness that her *salwar* and *kameez* were torn is incorrect or doubtful.

37. Further, she added here that though some of the witnesses have deposed that her *kameez* and *salwar* were torn but exclaimed that when the



prosecutrix was clad in a *chaddar*, how could a person see her *salwar* and *kameez*, which were naturally under the cover of the *chaddar*.

III. Submissions on behalf of Respondents:-

38. Learned counsel for the respondents, on the other hand, submitted that the GSFC had conducted the proceedings in accordance with law, after following due process and procedure and what has been argued by learned counsel for the petitioner is to ask this Court to undertake fact-finding exercise or to re-appreciate the evidence which is outside the scope of writ jurisdiction.

39. He submitted that the High Court in the matters of disciplinary proceedings cannot dissect and dilate on the evidence in the manner and to the extent, to which learned counsel for the petitioner has asked it to. He argued that it is needless to submit that the strictness of proof as required in disciplinary proceedings is not as stringent as is in criminal law.

40. He argued that not only the procedural part has been followed, even the conclusion drawn by the GSFC is infallible. He added that if the evidence on record, including the testimony of the prosecutrix (PW-8) is taken into consideration, it is apparent that the sexual assault had been committed upon the prosecutrix.

41. Without prejudice to above, Mr. Vikrant N. Goyal, learned CGSC, argued that the prosecutrix had remained consistent in her stand that the petitioner had committed sexual assault on her and that not only the prosecutrix (PW-8), even other prosecution witnesses, including the Sarpanch (PW-4) had led sufficient evidence to infer that a wrong has been done upon her.

42. In this regard, he submitted that immediately on coming to know of the incident, respondents came into action and had conducted preliminary



enquiry/investigation and concluded that a sexual assault had been committed on the prosecutrix.

43. He added that apart from the oral testimony of the prosecutrix, other evidence, such as availability of oil stain on the pants of the accused, on *salwar* of the victim so also on the ground clearly linked the chain of evidence, which, if gone into carefully, fingers towards the petitioner's guilt.

44. He argued that in the case of a rape, documentary or other direct corroborative evidence is not possible and therefore, the Court has to give credence to the oral testimony of the witness and believe it, unless the defence is able to prove that the evidence led by the prosecution witnesses has been impeached or that the accused has been falsely implicated.

45. Learned CGSC took the Court to Rule 43, 44, 45(2), 51 and 59 of the BSF Rules and explained in detail, the process of investigating a complaint in relation to a civil offence and the manner in which the Disciplinary Enquiry is to be conducted.

46. Learned counsel for the respondent relied upon following two judgments; **Union of India and Ors. vs. Major A. Hussain (IC-14827)** reported in (1998) 1 SCC 537 more particularly, para 12 and **Union of India vs. OP Bishnoi** reported in 2000 SCC OnLine 369.

IV. Rejoinder Arguments:-

47. Ms. Mansi Sharma, learned counsel for the petitioner, in rejoinder submitted that the charge has been framed by a Commandant, as is evident from the charge sheet dated 15.06.1992 and argued that the same is clearly contrary to Rule 45 of the BSF Rules. She vehemently argued that regardless of her other arguments, if the basic contention that a charge of Section 354 could not have been changed to a charge under Section 376 is considered the petitioner is entitled to be acquitted. Learned counsel also argued that the



charge, having been framed once, can be altered only by the IG, BSF before the commencement of GSFC or by the Court during the trial, if the facts of the case so warrant. As against the mandate of law, the Commandant, 131 Battalion BSF has amended the charge even before the GSFC was constituted or convened and therefore this entire proceedings are vitiated.

48. Ms. Sharma, learned counsel for the petitioner argued that the judgment in the case of *OP Bishnoi (supra)* is not applicable, as in that case the petitioner had prayed for another counsel and it was in that background the Division Bench held that it was simply an irregularity, not fatal to the prosecution case.

49. Learned counsel invited Court's attention towards the application, which the petitioner had moved being CM APPL. 18565/2024 and argued that inspite of the direction given by this Court vide order dated 10.10.2025, the respondents have not produced the record including statements recorded during preparation of the preliminary report and even statement of the prosecutrix which were recorded immediately on or after the incident. She argued that the incident was of year 1991 and the order of punishment and sentence was passed 19.08.1992. She argued that the respondents have come with a fake plea rather a refuge that said record being old is not available with them. She argued with all vehemence yet humility that such plea is hard to believe.

50. While pointing out that on earlier date(s) of hearing, the Officer of the respondents used to come (to the Court) with the entire record. She stated that since the present writ petition is pending, the respondents could not have weeded out or destroyed the record as stated and argued that an adverse inference be drawn against the respondents for withholding the documents from the Court, more particularly when it is a specific case of the petitioner



(as is evident from first charge sheet dated 19.10.1991) that at the first instance the respondents' case was that, the petitioner had used criminal force with an intent to outrage prosecutrix modesty.

51. She added that if the relevant record is produced, it would bring to fore that at the initial stage the competent office and all other persons, concerned including the victim had alleged a case of outraging the modesty and it was only in the changed circumstances, the act of the petitioner has been expanded out of proportion to make it a case of rape.

52. She submitted that pursuant to petitioner's application aforesaid, an order was passed by the Court on the 03.04.2024 and on various occasions the respondents took time to produce the record as is evident from the proceedings of 24.10.2024. In response to said application, Mr. Paramvir Singh, learned Officer-in-charge on instructions submits that record prior to conducting of ROE is not available with the department. At this juncture, Ms. Sharma expressed her astonishment that prior to today, the respondents never said that such record is not available with them.

53. Learned counsel for the petitioner invited Court's attention towards question No.7 put to witness No.2, Abdul Rahim Sheikh (Sarpanch) during ROE and highlighted that the petitioner has been trapped in a conspiracy hatched by the sarpanch of the village who himself was a listed terrorist. She added that the complainant was the sarpanch's stooge rather than a victim and that is why her husband and brother-in-law did not come forward at all.

54. Court's attention was also drawn towards question No.8 put to him to demonstrate that PW2, who claims to have identified the petitioner as an accused, was not even sure as to which part of the clothes (whether pant or shirt), he had seen the spilled oil.



V. Court's consideration:-

55. Heard learned counsel for the parties and carefully sifted through the record.

(a). Scope of interference:-

56. Before advertng to the other submissions and contentions raised at the bar, the first question which we propose to ask ourselves is, what is the scope of interference and appreciation of evidence in the case like the one in hand.

57. It is undisputed that the petitioner was tried by GSFC for the offence under section 376 of Ranbir Penal Code, which is *pari-materia* to section 376 of the Indian Penal Code. The consequence of the conviction of the petitioner has led to three years of imprisonment coupled with dismissal of service. We are mindful of the proposition that however severe may the punishment be, the scope of interference by the High Court under article 226/227 of the Constitution of India is very limited, when it comes to disciplinary matters.

58. But we cannot, however, remain oblivious of the fact that the consequence of holding the petitioner guilty by GSFC under provisions of the BSF Act 1968 are two-fold – he has been punished with the sentence of three years and has been visited with dismissal from the service.

59. According to us, the proceedings under section 48 of the BSF Act by the GSFC is a double-edged sword which leads not only to penal consequence so also civil consequence to a BSF personnel. Hence, it cannot be compared with the case simpliciter of dismissal from service.

60. A perusal of Chapter IV along with Chapter VIII of the BSF Act and rules in relation thereto, leaves no manner for doubt that the GSFC



constituted under Section 65 of the BSF Act is a court for all practical purposes. The only difference, is that since the offence has been committed while the petitioner was on duty, it has been tried by the GSFC, else, it would have been tried by a competent court.

61. On perusal of the provisions of the Act, we find that all procedures, including leading of evidence, cross-examination, framing of charges, etc., are some way or the other akin to the Code of Criminal Procedure, 1973. But, no provision of appeal has been provided under the Act.

62. Rule 149 of the BSF Rules provides that the GSFC is not required to record or give reasons for the conclusion or finding. As such, even if the members of the GSFC might have carried out appraisal of the evidence on the basis of the principles and judgments laid down for appreciation of evidence, but it will always remain in the realm of speculation. But at the same time, while an inquiry officer is supposed to give reasoning for the finding arrived at, if it is a case of disciplinary proceedings, may be based on preponderance of probabilities.

63. The dichotomy is, without recording a reason for the findings, a person can not only be convicted but also dismissed from service.

64. Though a remedy has been provided under Section 117 of the Act of 1968 but the same is by the Central Government, the Director General or any prescribed officer, who may or may not be conversant with the law and principles of evidence and its appreciation. As such, a person governed by the order passed under the provisions of the Act of 1968 is left with no other remedy before a forum where the member are well versed with law or adjudicatory persons. Hence, a member of BSF services is left with no other option but to invoke a High Courts' power under Article 226 of the Constitution of India for the remedies both in relation to the sentence



awarded to him and its consequential effect on his services.

65. The requirement of appreciation of evidence becomes all the more necessary, when we find that as per Rule 149 of the BSF Rules, the GSFC is not required to record its reasons. In absence of the reasons recorded by the GSFC, it is very difficult and impossible for any person looking at the proceedings, as to what persuaded the GSFC to take a view which it has taken.

66. As a sequel of the above discussion, we are of the firm opinion that the petition cannot be thrown outrightly by observing that the High Court's jurisdiction under Article 226 of the Constitution of India prohibits it from entering into the arena of appreciation of evidence, as has been held by Hon'ble the Supreme Court in the case of **B.S. Hari v. Union and India and Ors.** reported in (2023) 13 SCC 779, Hon'ble the Supreme Court has even held that in an appropriate case, the High Court can even record evidence, and in case the finding is perverse or does not appeal muster, the test of prudence, it can re-appreciate the evidence and set aside findings in an appropriate case.

VI. Doubts about the prosecution story:-

- 67.(i) The offence alleged against the petitioner is that of commission of rape upon the prosecutrix. If the statements of the witnesses are taken into account including statements of PW1, PW2, PW6 and PW7, it is apparent that until the ROE was instituted, everybody was of the view that somebody had done some mischief (and not rape) and later on it was found that it was the petitioner, who was guilty of such act.
- (ii) It is clear from the fact that all the witnesses in unison said that when the Sarpanch and 3-4 villagers reached Ghoretal FDL at about 3pm, they were of the view that some mischief had been done with the lady



of the village. The same fact can be seen from the statement of Harbans Singh (PW-3) who said that he received a wireless message from SI Prakash Chand that somebody has done mischief with the lady of the village.

- (iii) First chargesheet was issued on 19.10.1991 for ROE, the allegation was for the offence under section 354 of RPC (IPC), whereafter another chargesheet was issued on 19.05.1992 alleging rape punishable under Sections 376 of RPC (IPC).
- (iv) While keeping the aspect as to whether the petitioner was really involved or not, will be discussed in the later part of the judgment, we have strong reasons to believe that initially the lady had complained of some mischief or misbehaviour, which could have fallen within the ambit of section 354 of the RPC (IPC). But for the reasons unknown, the same came to be a case of rape punishable under section 376 of RPC (IPC).

VII. Procedural Lacunae:-

68. There were a few procedural lapses, due to which the trial has vitiated.

(a). The lacunae before GSFC:-

The major lacunae which go to the root of the matter are:

- (i) initially a charge sheet was issued against the petitioner on 19.10.1991 with an allegation that the petitioner had used criminal force with an intent to outrage the prosecutrix' modesty. However, on 11.05.1992, it was changed to, "the petitioner had committed rape on prosecutrix". Even a simple look at both the charge sheets pricks anybody's judicial mind and prudence. It needs no deliberation that contours of outraging



the modesty under section 354 of IPC and commission of rape under section 376 of IPC are entirely different not in terms of meaning only but also in the use degree of force and even in the act itself. And, they have different factual foundation, which even a common man can decipher right from the narration of the incident or in giving the statement.

- (ii) though learned counsel for the respondents had tried to defend such situation by contending that initial charge sheet though in the name of charge sheet, was issued only after the fact-finding enquiry or preliminary enquiry having been conducted. And when on the basis of such charge sheet, when recording of evidence took place, it transpired that an offence of rape had been committed by the petitioner. According to us, this explanation rather an excuse given by the respondents, who are having battery of law officers cannot persuade mind to swallow it.
- (iii) neither in the reply nor pursuant to Court's order, the Respondents have produced any material, statement etc. recorded prior or material collected to issuance of charge sheet dated 19.10.1991 (before ROE). It is noteworthy that the petitioner has moved an application being CM. APPL. 18565/2024, clearly asserting therein that the petitioner was not alleged of the offence under section 376 of RPC (Section 376 IPC) at the initial stage. A prayer has therefore been made that the respondents be directed to produce relevant record prior to 19.10.1991 and inspite of the fact that the Coordinate Bench of this court had issued the direction on 03.04.2024 and again reiterated on 24.10.2024, the respondents have neither placed nor have produced for perusal of this Court the record relating to fact finding or preliminary enquiry and the statements which the officers of the respondents had recorded.



(iv) we therefore, have strong reasons to believe that the allegation, which initially related to an attempt to outrage the modesty has been inflated out of proportion to look like a case of rape punishable under section 376 of RPC (Section 376 IPC).

(b). Lacunae during GSFC:-

69. (a) Though the prosecutrix, both, in ROE and in Court proceedings, did not depose that her clothes were torn by the accused-petitioner, but, the GSFC prompted and asked a direct question and made her to say that *kameez* was torn with the help of teeth and hand, whereas the *salwar* was torn with his hands. According to us, putting such leading question, that too by the Court, was improper.

(b) When some (one-two) witnesses except the prosecutrix had told the factum of the clothes being found torn, the Court ought to have recorded her statement as deposed, rather than prodding her to say that how the clothes were torn. Such question even by the Public Prosecutor is not permissible, what to talk of the Court. Such procedural lacuna has created an evidence against the petitioner, which was fatal to his defence, because but for the torn clothes, there was no incriminating evidence to corroborate.

VIII. Summary of evidence:-

Before dilating upon testimony of the prosecution witnesses, a summary of the depositions made by all of the witnesses will be apt.

(i). First witness (PW-1)

70. First witness of the prosecution, namely Nk. J.D. Sharma, who narrated the incident in line with as per the prosecution case. He accepted the fact that on 23.07.1991, when he started for Ghoretal post at about 0600



hours, the petitioner was having some trouble in his foot and resultantly, it was not possible for him to walk further, for which he deputed Ct. Rajbir Singh and Ct. Ram Rattan to give the petitioner company and asked them to keep walking slowly, while he, along with Ct. Padma Naik walked briskly and reached the FDL Ghoretal at about 1200 hours, where he found Ct. Kamal-uddin and told him that three personnel were coming slowly as the petitioner was having some problem in his foot. He further deposed that at 1230 hours, Ct. Rajbir Singh and Ct. Ram Rattan arrived at FDL Ghoretal and on being asked they told that as they were famished, they left the petitioner at Lari Bal, near Koni Hill, who would be coming slowly at his own and unequivocally admitted that at about 1300 hours, the petitioner also reached Ghoretal FDL. Then he supported the prosecution story in detail and remained un-impeached even when he was cross examined by the defence counsel.

(ii). Second witness (PW-2)

71. On 04.08.1992, the second prosecution witness namely Ct. Ram Rattan was examined, who too had accepted the factum of the petitioner having pain in his foot. He, however, made an addition that the petitioner reported to CHM about the problem in his foot but was directed to go to Ghoretal FDL as it was Company Commander's order. He deposed that he and Ct. Rajbir Singh left the petitioner near the Nallah at Koni Hill and reached Ghoretal FDL at about 1230 hours. He nevertheless stated that after about 15 minutes or so, the petitioner also reached Ghoretal post, whereafter he deposed that at around 1500 hours, HC Kamal-uddin made a fall-in of all personnel and asked five of them "*aapne raste main koi harkatbaji to nahi ki?*". He went on to depose that around 1600-1630 hours, all of five personnel were taken to some place between Ghoretal FDL and Koni Hill



where about 50 villagers and a woman was present. The woman spoke to HC Kamal-uddin in local language, who informed SI Prakash Chand that the woman was pointing towards a person standing at No.2 from the right side of the line, who being the petitioner/accused. During his cross-examination, he said that the woman was speaking Kashmiri, which was being interpreted by Ct. Kamal-uddin, who is a Kashmiri belonging to Bandipur.

72. Pursuant to a question posed by the court, PW2 specifically stated that the woman was wearing a *firen* and *salwar* and had wrapped a sky blue *chaddar* around her body and had covered her head with it and that the general condition of *firen*, *salwar* and *chaddar* was good.

(iii). Third witness (PW-3)

73. Thereafter, statement of third witness of prosecution Subedar Harbans Singh was recorded, though he was not examined during ROE. Said Harbans Singh, who was officiating as Company Commander of the company deployed at Mohra Base deposed that he had passed an order for five of the personnel to go to FDL Ghoretal post on 23rd July, 1991. He also stated that about 1600 hours on said day, SI Prakash Chand contacted him on the wireless set and intimated that the party had reached the Ghoretal post, but some unpleasant incident had taken place, for which he was making necessary investigation and he would inform him in detail in due course of time. He also deposed that at about 2000 hours, he received a telephonic call from Lt. Col. of Army, who was the Camp Comdt. of 79 Mount. Bde that Lance Naik Om Prakash had committed a rape on a lady namely Ms. N for which, he should meet the Commander personally in his office at 0800 hours the next day.

74. PW-3 went on to depose that on 24th July, 1991 the Commander ordered him to go to Ghoretal FDL to investigate the matter and when he



reached Koni Hill at about 1530 hours along with SI Prakash Chand, he saw a gathering of 150-200 villagers, including Sarpanch Abdul Rahim Sheikh and the victim's father HL, while the victim Ms. N kept sitting at a distance of 30-40 yards from the crowd and that father of the victim and Sarpanch led him towards the place of occurrence, which was about 200 yards downhill near a tri-junction leading to Lari Bal of village Mayan and towards Ghoretal FDL. He deposed that on the right side of the track, there is a big boulder of approximately 5 feet in height and 4 feet in width near which, a patch of about 3 inch in dia was present along and small growth of grass on the ground.

75. PW-3 claims to have met the victim, whose lower lip was injured. He goes on to depose that when he went to the village, the atmosphere was tensed and charged and the villagers had been asking him as to what punishment the accused would be awarded and also raised slogans against the BSF and before the situation could become out of control, he had asked the Company Commander to take stock of the situation. He also deposed that as the villagers were very agitated, the Company Commander in order to pacify assured them that the accused would be dealt with as per the law of the land. He further testified that on 26th July, 1991, he went to the house of the father of the victim and recorded victim's statement where she handed over the clothes, which she had worn on 23.07.1991.

76. He also deposed that on 27.07.1991, the statement of accused was recorded and he had produced his clothes, which he had worn on the date of incident. He stated that though the accused had put a signature on the belt portion of the trouser but did not put his signatures on the shirt. He claimed to have observed a mustard oil stain on the trouser, which was encircled in blue ink. During his examination-in-chief itself, he deposed that medical



examination of the accused could not be conducted because there was no civil or BSF doctor near the Company or FDL location and also because, one could not be moved to Baramulla after 1800 hours due to imposition of curfew.

77. During the course of his examination-in-chief, the shirt, trouser and victim's clothes were observed by the court and a finding recorded that on the trouser of the accused, there was an oil stain which was encircled in blue ink and that the *kameez* (shirt) of the victim, which was having green colour background with yellow, blue and white flowers printed on it, was torn from the front portion and the *kameez* was dirty and lower portion was soiled. The *salwar* of the victim was also examined by the court, which was with green background with yellow, blue and white flowers printed on it, matching with the *kameez* and that the white '*narah*' was intact. No oil stains were, however, observed by the court on the clothes of the victim.

78. During his cross-examination, PW-3 stated that a Company Commander is supposed to know the problems of the individuals however, the accused never informed him that he was unwell. He accepted the fact that on 24th July 1991, when he went to Koni hill to investigate the matter, Kamal-uddin, who was in his company, did not accompany him. During his cross examination, he admitted the existence of a house located at a distance of about 10-15 yards and accepted that on 24th July 1991, since there was no inmate of the house, the door was closed from outside. And that few houses were located at a distance of about 150-200 yards, but that he did not visit them, though located near the place of incident, as the civilians belonging to those houses had already gathered. Pursuant to a question posed by the court, he responded that the place of incident had a big boulder, which was well concealed for committing an act of this nature.



(iv). Fourth witness (PW-4)

79. The fourth witness being Sarpanch Abdul Rahim Sheikh came in the witness box to depose that about 1300-1400 hours, the victim along with her brother-in-law KM, approached him weeping; with her clothes torn, her lower lip was injured and she had a scratch mark on her right cheek with hair dishevelled and complained that one BSF Jawan caught hold of her and committed rape and had bitten her on her lower lip. He further stated that the victim had stated that the Jawan put her on the ground and closed her mouth with his hand and kept his rifle on her chest and with one hand tore off her clothes and committed rape on her. After committing the act, he removed his hand from her mouth and bit her lower lip with his teeth and as a result of biting her lip, she shrieked loudly. This witness deposed that the victim along with her brother-in-law took him to the place of incident, which had a big boulder admeasuring about 6 feet in height and 8-10 feet in width alongwith some other stones around it. He stated that said big boulder provided a good cover from the passers-by.

80. According to PW-3, when he reached at Ghoretal post at about 1500 hours, he found that a Sikh gentleman, being the Post Commander was scolding a Jawan and asking him the reason of his reaching the FDL so late. And when he narrated the Commander, the story about committal of rape on the victim, he noticed some oil spilled on the right side of the trouser of the Jawan, who was being scolded by the Post Commander. He could connect that it must be this Jawan, who had committed rape on the victim because of the oil-stain on his pant.

81. He also stated that the accused alongwith 3-4 Jawans came to him and requested him to pardon him and that the Post Commander was also standing there at the distance of about 5-6 yards. He also narrated how the



victim had identified the accused by clarifying that five BSF personnel were lined up and Ms. N walked from left to right and identified the person, who was number two from the right side to be the accused.

82. According to him, on 24.07.1991 at about 1100-1200 hours, the Company Commander, came to Mayan to whom the place of incident was shown with brother-in-law of the victim. During cross-examination, when he was asked some question about the version given in the ROE, he explained that as the statement was recorded on the road-side near Bijhama and since some firing had also taken place on that day coupled with the shortage of time at his disposal and were other villagers sitting nearby, he felt hesitant to give a statement in detail, when he was confronted with, in his statement during ROE, when he only stated that Ms. N had come to him weeping and told that one man of BSF caught her on the way while she was going to Darmian Baikh from village.

(v). Fifth witness (PW-5)

83. Head Constable Mohd. Kamal-uddin appeared in the witness box as fifth prosecution witness and deposed that about 1300 hours Ct. Rajbir Singh and Ct. Ram Rattan had arrived at the BOP, whereas the accused had arrived about 1330 hours. According to said witness also, the Sarpanch had told him that as per statement of the victim, she was carrying some mustard oil in a container, which was spilled on her clothes and also on the clothes of the offender, when the sarpanch had approached him in order to complain of a rape on the lady of the Mayan village.

84. He deposed that during identification parade, the victim had identified the accused, who was number two from the right side of the line. He also deposed that the *kameez* of the victim was torn from the front side and there were some scratch marks on the right cheek and a cut on the lower lip



having blood spot. He too was cross-examined by the defence counsel, during which, he clearly deposed that when the accused took a turn from the right side, his attention was drawn towards his trousers but he found no oil stain on his trouser.

(vi). Sixth witness (PW-6)

85. The sixth witness was SI Prakash Chand. It is noteworthy that his statement too was not recorded in ROE. His testimony only deposes about the information of rape and identification parade that was conducted pursuant to his direction. He deposed that when the victim came for identification, she found that her *Kameez* was torn at two places from the front side and there were some bruises on her cheek, the lower lip was swollen and there was a cut mark on it. At about 2100 hours, he informed Company Commander on wireless about the case and that the victim had identified the accused.

(vii). Seventh witness (PW-7)

86. Prosecution witness No.7 was Ct. Rajbir Singh, who deposed that the petitioner had told Nk. J.D. Sharma about his pain in his foot, when they reached near a village after crossing Sheela Bridge. He accepted the fact that at that stage Nk. J.D. Sharma told him and Ct. Rajbir Singh that he (JD Sharma) was proceeding ahead with Ct. Padma Naik and that in case the petitioner was in a position to walk bring him along and in case he could not, then let him come at his own.

87. PW-7 also deposed to have reached with the accused at Lari Bal near Koni Hill at a *nallah* where some Jawan of 'A' Company were having bath and that the accused adjusted the bandage tied on his leg and told both of them (Rajbir and Ram Rattan) to proceed to Ghoretal and he would manage to reach there on his own. He stated to have reached at around 1230-1300



hours and that the petitioner-accused reached the Ghoretal FDL at about 1330 hours. Nothing substantial had come out of the cross-examination of this witness.

(viii). Eighth witness (PW-8)

88. The 8th witness of the prosecution was the victim herself i.e. Smt. NB, who deposed, that while she had bought 1 kg of mustard oil from Hiri Village and was going towards Darmian Baikh, on the way near Lari Bal, a person wearing khaki uniform confronted her and pointed out his rifle towards her and threatened not to raise any voice otherwise he would kill her and then put her on ground and mounted on her, removed her *kameez* and *salwar* and committed rape and during such process also bitten her lower lip and scratched her right cheek and fled away. She also told that she went home weeping and met her brother-in-law and narrated the incident to him, who then called Sarpanch of village Mayan and narrated the entire story to him as well. She deposed to have identified the accused during identification parade which was held at 1700 hours on the fateful day. During her cross-examination, she accepted that the place where the incident had taken place is a common route and people keep walking up and down on the route and that there were houses around such spot and had she raised alarm, the inmates of the nearby houses could hear her voice.

89. During her cross-examination also, the prosecutrix reiterated that she firstly met her elder brother-in-law and narrated the story. During her cross-examination she stated when confronted that during her ROE, she had told that the accused met her, caught her hand forcibly and at that time oil spread away, some on her clothes and some on his clothes and then he raped her? She stated that both these statements are correct. She also stated that there was external injury on her private part alongwith some bleeding on it and



that after commission of rape she fell semi-conscious and was naked for about an hour and after regaining consciousness automatically, she put her clothes and left for her home. She also stated that the accused had taken about half an hour's time during his heinous act. She also stated that she could not cry firstly because her mouth was shut and also because the accused had threatened her not to cry.

90. She further stated that during this process, mustard oil was spilled on the clothes of the accused, so also on her clothes and the ground and, no oil was left in the container, which was 1 kg. She had deposed that during the course of identification parade, there was no person in uniform who spoke Kashmiri language. She further stated that there was no bleeding on her right lip and the cheek when she reached home. On question being posed, she stated that she did not narrate the incident to her husband lest he would beat her up. During her cross-examination, she reiterated that after finishing the act the accused had put Rs.20/- in her pocket and threatened her not to tell the incident to anybody and that the accused had threatened her in Hindi/Hindustani language.

91. The testimony of the last prosecution witness (PW-8) was recorded on 10.08.1992 at about 1000 hours, after appointing Naik Abdul Rahman of 121 Bn. of BSF to be an interpreter. The testimony of victim (PW-8) continued up to 1810 hours on 10.08.1992 when the court was adjourned until 1000 hours on 11.08.1992 and resumed the hearing at 1000 hours on 11.08.1992. At 1145 hours of 11.08.1992, the court was adjourned until 1500 hours of 13.08.1992 when all the members were presented as per the proceedings of GSFC. The record reveals that the Law Officer G.S. Wadhwa submitted his report on 19.08.1992 and the court recorded its finding on the very same day i.e. 19.08.1992 whereby accused Lance Naik Om Prakash



was held guilty of the charge and was sentenced to suffer rigorous imprisonment for three years and dismissal from service. The said finding and sentence awarded by GSFC and signed by the Presiding Officer and Law Officer was placed before the Inspector General, Frontier, BSF Kashmir, who confirmed the same on 20.10.1992.

IX. Discrepancies in the evidence of various prosecution witnesses:

PW-1 (J.D. Sharma)

92. This witness admitted that the petitioner was having a problem in his foot and reached at FDL Ghoretal, at 1300 hours while he alongwith Ct. Padma naik reached there at 1200 hrs and Ct. Rajbir Singh and Ct. Ram Rattan arrived at 1230 hours. On perusal of his statement before GSFC, we find that he had deposed that when the petitioner reached FDL Ghoretal, he was looking perturbed and was having some oil spilled on his trouser. This important piece of evidence is however conspicuously absent in his statement during ROE. It is to be further noted that during ROE, Nk. J.D. Sharma had used the expression “misbehaved” whereas during his deposition before GSFC, he stated that a civilian approached them and went near SI Prakash Chand and Ct. Kamal-uddin and told them that one of the BSF parties had “raped” a girl of his village.

93. Another important aspect about the testimony of PW-1 is that in the statement before the GSFC, he (PW-1) said that he saw some oil spilled on his trousers, whereas during ROE he had stated not only that he did not see the oil but also that the petitioner had changed the uniform. It will not be out of place to reproduce Question no.5 and corresponding answer, which reads as under:



“Q. No.5 : Did oil was on my uniform at that time?
Ans. – No. Because you have changed the uniform.”

94. Another embellishment which we find in testimony of this witness is that during GSFC he deposed that the *salwar* and *kameez* of the prosecutrix were torn, whereas interestingly the prosecutrix herself neither in her ROE nor during the proceedings before GSFC had ever told that both her *salwar* and *kameez* got torn during the act.

95. Another noteworthy thing which is noted in the testimony of PW-1 is, that he stated the *salwar* and *kameez* of the prosecutrix to be found torn, whereas the other witness(PW-2) had told that when the prosecutrix had approached them with the villagers she was clad in a blue *chaddar*. One would wonder that how could Nk. J.D. Sharma (PW-1) see the condition of *salwar* and *kameez* of a village woman (in the year 1992), when she was clad in a *chaddar*.

Harabans Singh PW-3

96. Harbans Singh (PW-3) though appeared as third witness for prosecution in GSFC but his statement was not recorded in ROE. Such fact has been noticed by the GSFC even while beginning to record his statement. PW-3, who was officiating company commander at the relevant time deposed that he had passed an order on 22.07.1991 directing the petitioner and other four personnel to go to FDL Ghoretal on the next day and that at about 1600 hours on 23.07.1991, SI Prakash Chand had contacted him on wireless and admitted that though the party had reached but some unpleasant incident had taken place for which he was making investigation.

97. It is pertinent that this witness, who was the commander stated that he was only informed about some unpleasant incident and not about the rape. It was only at about 2000 hours he received a telephone call that too from Lt.



Colonel of the Army that a boy out of your party had committed a rape. In his statement before the GSFC, PW-3 stated that he visited the place of occurrence, which was on the right side of the track near a boulder of about 5 feet height and 4 feet width and had found a patch of oil about 3 inches diameter. He also deposed that when he saw the woman, he found that her lower lip was injured whereas during his cross-examination, he denied the factum of having seen the injured, prosecutrix.

98. An important aspect, which can be gathered from the testimony of this witness is that though he went to the place of incident on 26.07.1991 and 27.07.1991 to record statement, but the clothes of the victim were recovered on 27.07.1991. One would naturally wonder that why did Harbans Singh, being the senior most officer of the battalion did not seize the clothes of the accused and victim and why they came to be seized belatedly, on 26.07.1991 and 27.07.1991 respectively, whereas the incident had taken place on 23.07.1991.

99. Another question which crops up and perturbs us is, that why the medical examination of the prosecutrix was not conducted. Though there is no justification for belated seizure of the clothes, but so far as medical examination is concerned, this witness had given a lame excuse that after 1800 hrs, it was not possible to take the prosecutrix to the nearest hospital, which was at Baramulla because of the curfew being imposed.

100. According to us, when this witness had reached the village at about 1530 hours, the first thing, which he ought to have done was to get the victim medically examined and if not on that day, at least on the next day. Having not done so, there has been a grave lapse on the part of the respondents and prosecution, which has a serious bearing not only on the prosecution's story, but also on the petitioner's conviction.



101. It is strange that why did he not call any doctor from nearby BSF post or from any other nearby Army hospital/Army camp. The reason for which the accusation was expanded out of proportion can be inferred from the following part of his testimony :

“...At this stage I found the atmosphere was charged and tense. The villagers asked me as to what punishment the accused will be awarded? They also started raising splogans against the ASF, Before the situation could become out of control, I requested Coy ComdrA Coy through incharge Koni hill post to come down to take stock of the situation, After about 14 hrs, the Coy Comir came down to Koni hill. The villagers were very agitated. They asked him also as to what action he would be taking against the accused? He, however, assured them that the accused will be dealt with as per the law of the land. The villagers, were thus pacified.”

102. Another important aspect which we have noticed while going through the testimony of this witness is, that when the clothes were exhibited and opened before the court, the court observed that the shirt's four lower buttons were missing while two upper buttons were intact. We deem it apt to underscore that the fact that four lower buttons were missing had not been stated by any one of the witnesses – some told that the shirt was having stain of oil apart from the trousers while others said that the shirt was in good condition.

103. Had this fact (that four lower buttons were missing) been correct, then it was such an apparent and noticeable thing that everyone, who met the petitioner immediately after the incident would notice it and if the buttons were missing or got broken during the alleged act, then search of the buttons ought to have been made. We are therefore of the opinion that either the shirt's buttons were broken subsequently with the reasons or intentions unknown or else the shirt is not the one, which was worn by the accused at the time of committing offence. There is serious lapse or lacunae in the recovery of the shirt.



104. Given the fact that there was no signature of the petitioner on the shirt whereas the signatures were obtained while recovering the pant, the doubt expressed in preceding paragraph gets strengthened.

105. Credibility of this witness (PW – 3), who was the company commander or the fact that he being motivated can be gathered from his version in the cross-examination. As he has deposed that on 22.07.1991, the petitioner-accused had never informed him that he was unwell. Firstly, because most of the witnesses out of the four personnel, who accompanied the petitioner had unequivocally told that the petitioner was having a pain in his foot and he was limping. Secondly, the fact that the petitioner had informed the commandant Harbans Singh about the problem in the foot, but he insisted to proceed. Regardless of such testimony, such assertion on the part of PW-3 shows that he was hell bent to prove the case against the petitioner and to implicate him and in this process, he even lied during GSFC proceedings.

106. Another interesting thing is that in his statement-in-chief, he said that the lower lip of the prosecutrix was injured while during cross-examination, he clearly admitted that he did not feel any necessity to ask the villagers to show him the victim. During his cross-examination, Harbans Singh accepted the existence of a house approximately about 10-15 yards away from the place of incident, but still he did not make any effort to record statement of the occupant of the house. Such approach of PW-3 is beyond anybody's comprehension.

107. The explanation given by him that when he went there on 24.07.1991, there was no inmate and the doors of the house were closed from outside shows his unprofessional if not careless approach as he did not even try to find, who the inmate of this house was?. It has also come on record that



according to PW-3, there were other houses about 150-200 yards away from the place of incident, but statement of none of the inmates was recorded by this witness.

108. In relation to a question put to him that why he did not record the statement of the inmates, his answer was equally unprofessional – he said that since all the residents located near the place of incident were present in the crowd, he did not try to record their statements. In relation to court's question, this witness told that since the incident took place near a big boulder, it was a safe and well-conceived place for commission of the act as the persons walking up and down from Mayan to Lari Bal could not see anything at this point. We wonder that no other witness and even the victim did not say that there was a big boulder behind which the accused has took her, how could PW-3 infer and create this hypothesis.

PW-4 (Abdul Rahim Sheikh)

109. This witness who happened to be sarpanch of the area appears to be more enthusiastic than the victim herself; inasmuch as he stated that the petitioner-accused had kept his rifle on her chest, closed her mouth with one hand and tore off her clothes with the other. He also stated that the victim shrieked loudly and that the accused left her and ran away. While observing that even the victim did not say that she shrieked or even tried to raise an alarm because as per her version, her mouth was closed and she had been threatened by the accused, she could not shriek.

110. Similarly, the tearing of her clothes from the second hand is also an imagination of the *sarpanch* himself, as the prosecutrix did not say so neither in her testimony given during the GSFC nor during the ROE. He goes on to add that when he reached at the FDL Ghoretal to complain about the incident, the Post-Commander was already scolding the accused and



asking him the reason of his reaching late at the FDL. It is to be noted that as per all other witnesses, the petitioner had reached the FDL post at 1300 hours (and latest by 1330 hours), whereas Abdul Rahim Sheikh, the Sarpanch reached at that point at about 1500 hours. Therefore, his version that when he reached the FDL Ghoretal post, the Company Commander was scolding the *Jawan* (petitioner) for reaching late to the post. It looks improbable that the Company commander would keep the petitioner scolding for two hours. Such part of the testimony shows over implication rather over enthusiasm and raises a doubt about his motives, let alone credibility.

111. It is interesting that when the following part of his statement in ROE was read to him highlighting that he had only told that the victim had come to him weeping and told that one man of the BSF had caught her on way while she was going to Dar Miyan Baikh, he told that since the statements were recorded on roadside and firing was taking place and also because some villagers were standing at the place where the statements were being recorded, he might not have stated about the rape. This part of the cross-examination needs a special mention as it unravels his conduct. Hence, it is being reproduced hereunder:-

“A portion of my statement at the ROE reads as under:-

“On dt-23 July 91, I was at DarmainBaikh. At about 1330 hrs Ms. N w/o ARM w/o Village M came to me weeping and told that one man of the BSF caught me on the way while she was going to Darmian Bekh from village, her brother-in-law namely Karim Mir s/o Ahmed Mir vill Miyan was also with me”.

The witness explains that when he had made a statement at the ROE before the recording officer, at that time the statement was recorded somewhere on the road side near Bijhama and on that day some firing had also taken place and as such the Recording Officer had a short time at his disposal. Moreover, while making the statement, there were some other villagers also sitting nearby and somehow he was hesitant to give the statement in detail whereas today before the Court he has narrated



everything that he had been told by N.”

PW-5 (Kamal-uddin)

112. Kamal-uddin appeared in the dock as 5th prosecution witness and supported the prosecution story. The only point to be highlighted in his testimony is, where he says that during the identification parade the oil in the trousers of the accused could not be noticed as he was not wearing the one which he was wearing at the time when *Sarpanch* came to report the matter. On analysis of the testimony of all the witnesses, we find that he is the sole witness who said that the petitioner had changed his trousers. If that be so, the question arises is, when the petitioner had been identified as the prime suspect of the offense and was called for identification parade, how could he be allowed to change his trousers?

PW-6 & PW-7

113. We have not found any major discrepancy or thing worth pointing out from their statements. One of these witnesses(PW-6) asserted that at the time of identification parade, he noticed that victim’s shirt was torn from the front side at two places and her lower lip was swollen and injured. And if his testimony is compared with the testimony of Ct. Rajbir Singh (PW-7), we find that pursuant to a question posed by the Court, Ct. Rajbir Singh responded that since the victim had covered herself with a sky blue *chaddar*, he could not observe as to whether her *kameez* was torn or not. Hence, there is apparent contradiction in the statement of these witnesses when it comes to the condition of victim’s clothes.



Discrepancies in the testimony of the prosecutrix, if compared with her statement during ROE vis-à-vis GSFC

114. It is noteworthy that during her statement in ROE, the prosecutrix had given detailed narration of the incident that had purportedly happened with her, stating that when she was going to Dar Miyan Baikh, with one kg of mustard oil, the petitioner caught her hand forcibly, due to which the oil spread on her clothes, so also on petitioner's clothes, and then he committed sexual assault upon her after opening her *salwar*. She went on to assert that he put one hand on her mouth, so as to stop her from crying, whereas during her deposition in GSFC, she expanded this statement rather changed it to say that the petitioner pointed his rifle towards her and threatened her not to raise voice lest he would kill her and then removed her *kameez* and *salwar* and raped her. This time, she further stated that the accused had bitten her lower lip and scratched her cheek which she did not tell during ROE.

- (a) She had also not stated the fact of threatening her with the aid of rifle and rather said that he had forcibly closed her mouth from his hand.
- (b) In her ROE she stated that the petitioner had opened her *salwar* (only) whereas during the proceedings before GSFC she stated that the petitioner had removed both her *kameez* and *salwar*; though there was no allegation of biting the lip and of scratching the cheek during ROE but in the proceedings before the GSFC, she levelled such allegation.
- (c) During ROE she had stated that while he caught her hand forcibly some oil spread on her clothes so also on the petitioner but during GSFC proceedings she did not aver that oil was spilled on their clothes.
- (d) Considering that the prosecutrix was a matured lady of 35 years having five children, it cannot be said that these were minor omissions particularly when the other witnesses had linked the oil purportedly



found on the pant of the petitioner so also on *salwar/kameez* of the victim and the spot of three inch diameter of the oil found on the place of incident.

115. According to us the best person to depose about spilling of mustard oil was the prosecutrix and when she did not whisper about the spilling of mustard oil and its presence on the clothes, the factum of existence of oil on the clothes cannot be taken to be circumstantial or additional evidence to support the prosecution. The additional fact, which she had disclosed in ROE that after finishing the act, the petitioner had put a Rs.20/- note in her pocket and asked not to disclose this fact to anybody has not been deposed before the GSFC.

116. This, in our view can be taken to be a minor omission so far as comparison of two testimonial statements is concerned but it belies the very story of the prosecutrix version when she said that while thrusting a Rs.20 note in her pocket, the petitioner threatened her not to tell the incident to anybody. Because, according to the prosecutrix herself nobody from the village including herself knew Hindi or English. If she did not know Hindi, her assertion that the petitioner threatened her while putting a Rs. 20 note turns out to be a lie because even if threatened, how did she understand the same? Though there are other improvements in her statement in relation to the act etc but they are having no significance according to us.

117. Instead of pinpointing other discrepancies, omissions, improvements or embellishments, we deem it apposite to reproduce both the versions one after another, for the purpose of easy comparison and to show how she has improved her version.

“ROE (Statement of prosecutrix)

i) Prosecution witness No.3:- N, w/o ARM R/o village Mayan having been



duly affirmed states that I N w/o ARM R/o Mayan married with ARM in the year 1977. I am the mother of four children.

On Dt. 23rd July, 91, I was going to Dar Miyan Bekh from my village having one kg of mustard oil. While I was on my way this person met me and caught my hand forcibly at that time the oil spread away some on my cloths and some on his cloths. He then forcibly put me on the ground, he opened my salwar and raped me. He put his one hand on my mouth so that I cannot cry.

After finishing he put Rs.20/- in my pocket and threatened that do not say anybody, he then left for BOP. I then went to my Bekh. There I met with sarpanch, Abdul Rahim Sheikh and told all the story.

After som time I along with sarpanch and other persons of the village went near Post. There I identified the man who has misbehaved with me.

ii) Questions by the accused:-

Q.No1 Which place was that where I hold your hand?

Ans:- Near Lari Ball.

Question No. 2:- Is that genl way?

Ans. Yes It was genl way.

Q. No. 3:- What I did with you.

Ans. You hold me, you put your hand on my mouth and raped me. My cloth were broken during this.

Q.No. 4:- When I raped you did you make noise?

Ans:- No because you have shuted my mouth with your hand and gun kept near me. I afraid so cannot cry.

Q No. 5 While you were doing identification prade, anybody was with you who were speaking kashmiri.

Ans. No.

Q. No. 6:- You told that I have given you 20/- have you told this to sarpanch?

Ans. Yes I have told the sarpanch about the money and have handed Rs.20/- to sarpanch.

iii) The above statement has been red over to the witness No. 3 in the language he understand (kashmiri) and he signs it as correct.

TESTIMONY OF PROSECUTRIX (EIGHTH WITNESS IN COURT)

Smt. N w/o ARM (Muslim), aged about 35 years, r/o village-Mayan, Teh-Uri, Distt- Baramulla having been duly affirmed is examined by the Prosecutor.

I am a mother of five children, I live in village Mayan. My husband is a farmer, I am an illiterate women.

About a year ago, I had bought one Kg of Mustard oil from Hiri village and



was going towards Darian Bekh. On the way near Laribal, one person, who was putting on Khaki uniform, confronted me. He had one white stripe also on his right arm sleeve. He was also carrying a rifle in his hand and a bag on his back/shoulders. He pointed out his rifle towards me and threatened me not to raise the voice otherwise he will kill me. He then put me on the ground and mounted on me. He also removed my Kameez and Salwar.

I recognize and identify that person as the accused now sitting before the Court,

After that he penetrated his male organ from which a man urinates. The place in which the accused made penetration is called 'chuat' (Vagina) in kashmiri language and he had ejaculated also.

During the process, the accused had also bitten my lower lip and scratched my right cheek with his hand. After that he fled away the spot. After putting on my clothes, I came to my house weeping. On my way back to home, I first met my brother-in-law (elder brother of my husband) and narrated the incident to him and he then called the Sarpanch of village Mayan and I narrated the whole incident to him also. My father and my brother-in-law alongwith 20 odd villagers took me to a place near Ghoretal post where an identification parade was carried out. About 7-8 BSF personnel were present there. I identified the person who had committed rape on me. He was standing amongst other BSF persons. He is now sitting in the court as accused. The identification was done at about 1700 hrs on that day.

I can identify my clothes if shown to me which I had worn on that day.

I am now shown Kameez (exhibit 'N') and 'Salwar (exhibit "O") before the Court.

The witness says that these are the same clothes which she was wearing on that day.

Cross examined by the Defence Counsel

I was married about 5-6 years ago.

When I was bringing the mustard oil, the time was between 1100 hrs-1300 hrs.

The distance between the shop from where I had bought the oil, to Mayan village is about 2-3 miles.

It is incorrect to say that while I was going to Darnia Baikh with the oil, my brother-in-law was accompanying me.

It is correct to say that I had given my statement on 2/3 occasions earlier about the incident but I do not know the exact dates and months.

The place where the incident had taken place, there is a common route near it and people do keep walking up and down on that route.

It is correct to say that there are houses around the place of incident and in



the event of raising alarm at that place, the inmates of the houses can hear the voice.

The BSF post is much away from the place of incident.

I did not go to the Police station because nobody took me there.

When I went home after the incident, my husband was not present there as he was working as a porter at some other place.

I had made a statement at the ROE about 10-11 months ago recorded by a BSF officer, I was read over my statement and I had put my thumb impression at the end of my statement,

A portion of my statement recorded at the ROE reads as under-

"I then went to my Bekh. There I met with Sarpanch Abdul Rahim Sheikh and told all the story."

The witness explains that she first met the elder brother of her husband and narrated him the story about the incident. Whatever she has stated today before the Court is correct.

The said portion of the statement has been sidelined in red ink at page 9 of the manuscript ROE and is placed between inverted commas.

A portion of my statement at the ROE reads as under

"On my way, This person met me and caught my hand oil spread away some on my clothes forcely at that time the and som on his clothes. He then forcely put me on the ground, he opened my salwar and raped me. He put his one hand on my mouth so that I cannot cry."

The witness explains that whatever she had stated during the ROE is also correct and whatever she has deposed today before the court is also correct. At the time of ROE she was shy and hesitant to give her statement being a woman. However, today she has deposed frankly about what all had happened with her on that day.

When I had been raped, there was external injury on my private parts. However, them was a slight bleeding. Even though the bleeding took place after the sexual Intercourse by the accused, but when I had put on my clothes, no blood stain was formed on my Salvar.

When the accused mounted on me and performed the sexual intercourse, at that time I was semi-unconscious.

After the intercourse, I lay semi-unconscious and naked for about an hour and on regaining consciousness on my own, I put on my clothes and left the place for home.

From the time my clothes were removed by the accused and till performing the sexual intercourse, the accused had thus taken about half an hour in this process.

As far as I know, nobody had passed through the place of incidence during



the time I was raped.

During the rape, I could not cry because, to the first instance, the accused had shut my mouth with his hand and secondly he had also threatened me not to cry.

He had put one hand on my mouth whereas he had kept the rifle by his side.

When I was going with mustard oil in a container, at that time, the accused was hiding himself behind the boulder and he suddenly came out and caught hold of me, put me on the ground and during the process, most of the mustard oil was spilled on the clothes of the accused, some oil was spilt on my clothes and some oil also spilled on the ground, However, no oil was left in the container and I took the container empty to my home.

I purchased one Kg of mustard oil at the rate of Rs.50/- from the shop of my father.

I had neither any watch with me at that time nor do I know how to read time from a watch being an illiterate. However, it is my sheer guess that it took us about two hours to reach the place where I was taken to identify the accused.

The people with whom I had gone to identify the accused, there were no other women among them except me.

At the time of identification parade, there was no person in uniform who was speaking in kashmiri language.

At the time of identification parade, the sun had not set.

At the time of identification parade, I was putting on the same clothes which I had worn at the time of the Incident.

At the time of identification parade I had covered my head with a blue colour cloth, After the identification parade, when I came back home, I had put on new clothes and clothes worn during the incident were given by me to my father on the same day. However, I did not hand over the blue cloth with which I had covered my head and it was intact.

Before I was raped, I was wearing a pair of shoes and even after the rape when I went home, at that time also I had my shoes on.

After committal of the rape on me, when I went straight to my home, I did not come across anybody enroute.

From the place of incident and to my house, in between there is no other dwelling house on the way.

When I went to my home, I had started weeping right from the place of the incident.

There was no blending on my lower lip and the cheek.

There is a small Dispensary in village Bijhama which is looked after by a Compounder and it takes about half a day to reach there from my house.



I had gone to the Dispensary, the next day from where I got a tube of ointment for application on my face and the lip.

My brother-in-law (elder brother of my husband) had accompanied me to the Dispensary.

On the day of the incident, my husband was away to his place of work and he returned home the next day in the evening.

When my husband returned home the next day, I did not narrate the Incident to him, lest he beats me up.

I did not tell the Compounder about the committale of the rape on me,

There was no female are in the Dispensary.

I do not know whether or not there is any Hospital in Uri.

There is a Hospital at Baramulla, I did not go to Baramulla hospital for treatment because one has to pay money there.

It is correct to say that there is a Police Station at Bijhama. I did not go there to report the matter because they take money. Moreover, after the identification parade, the BSF had told us that they would take action against the accused.

A portion of my statement at the ROE reads as under:-

"After finishing he put Rs.20/-in my pocket and threatened that don't, say anybody he then left for BOP",

The witness explains that it is correct that after raping her, the accused had put Rs.20/- in her pocket and he also threatened her not to tell anybody about it. However, while deposing, she had forgotten to state this fact before the Court today.

I had given that Twenty Rupee Note to the Sarpanch.

The accused threatened me in Hindi/Hindustani language.

Re-examination by the Prosecutor

When I went home weeping, on the way I did not weep loudly but had been sobbing.

Questioned by the Court

The Kameez was torn by the accused with the help of his hand and teeth whereas the salvar was torn with his hands.

No question suggested by the Prosecutor through the Court question

Questions suggested by the Defence Counsel through the court

It is Incorrect to say that the Kameez is torn due to being old. It was very much torn by the accused only with his hands and teeth.

The witness does not desire her statement to be read over to her.



Provisions of BSF rule 89 and 90 are complied.”

X. ANALYSIS

118. On overall analysis of the factual matrix and evidence, which we have scanned, we are of the view that the prosecution has not been able to prove its case beyond all reasonable doubts and there are a host of lacunae in the investigation, as noted above, which cannot be ignored when it comes to trial of the petitioner for the offence under Section 376 of the RPC (*pari materia* to Section 376 of IPC).

119. The fact that initially a charge sheet was issued to him under section 354 of RPC coupled with the facts that the statements of various witnesses give a clear indication or makes anyone to think that whether the victim's allegation of outraging modesty has been inflated to be a case of rape or whether right from the inception, prosecutrix's case was that of rape.

120. The testimony of the prosecutrix, even if taken to be correct, then also the fact that the respondent initially alleged misbehaviour or use of force for outraging her modesty cannot be ignored outrightly.

121. Without recording a finding as to whether the act of offence of rape as alleged by the prosecutor was possible in the available short time or not and her ignorance about limping of the petitioner and the possibility as to whether he would finish the alleged act within half an hour and reach the post with the problem in his foot was possible or not, we are of the view that had any act been committed by the petitioner, first thing which anybody would notice or would tell about the purported assailant was that he was limping.

122. Absence of a mention of petitioner's limping in everybody's testimony is also a striking feature. In face of the assertion made by almost



all the witnesses that the petitioner had severe pain in his foot, the trustworthiness of the prosecutrix (PW-8) and sarpanch (PW-4) who have remained conspicuously silent about condition of his foot raises a doubt about their truthfulness.

123. That apart, most intriguing part in the entire story is, that as per the case set up and proved to some extent that there was a container filled with one litre of mustard oil with the prosecutrix and that during the offence alleged, some oil spilled over the clothes of the prosecutrix while some got spilled over the pants of the petitioner and remaining got spilled on the earth, which caused a spot of 3 inch diameter; we wonder if the quantity of 1 litre mustard oil got spilled over as stated, how could the stains be so small or insignificant ? and if most of the oil got spilled over the land or the ground, how could the spot be of that small size (3 inch diameter)?.

124. We also find that during the examination of the shirt seized and recovered from the petitioner, which was alleged to have been worn by him on the fateful day, it was found that 4 of its buttons were absent. Surprisingly, such fact of 4 lower buttons absence has not been stated by anybody. Had the shirt with 4 lower buttons broken been worn by the petitioner at the time of incident while reaching the FDL Ghoretal, everybody would have noticed the same.

125. Apart from such fact, we also find that there is no unanimity of opinion as to whether when the witnesses who had seen the prosecutrix after the incident was clad in a *chaddar* and/or whether her clothes were found torn. Though some of the witnesses have deposed that they found *kameez* of the prosecutrix to be torn, but we have our own doubt that condition of torn shirt or *salwar* of a woman whether clad with a *chaddar* or not, can be noticed by a bystander. In other words, one wonders that how could anybody



pierce through the *chaddar* and observe that the *kameez* was torn, more particularly, when it is nobody's case that when she came for complaining or during identification, she removed her *chaddar* to demonstrate that her *kameez* was torn.

126. The possibility that the petitioner has been framed by some unscrupulous person or group in which the prosecutrix and sarpanch, etc., were used cannot be ruled out, more particularly, in view of the answer which was given by the sarpanch (PW-4) in response to Question No.7 posed by the defence counsel. Absence of prosecutrix's husband and brother-in-law during entire process of investigation and prosecution even for once (despite the fact that her brother-in-law was the first person to be informed about the incident) is also something unusual.

127. Another noteworthy aspect in his testimony before the GSFC is that he had told that general condition of *firan*, *salwar* and *chadar* was good.

XI. CONCLUSION

128. These significant findings, which we have highlighted hereinabove and the discrepancies which we have noticed and indicated in earlier part of the judgment, take us to a conclusion that the prosecution has failed to prove its case beyond all reasonable doubts. The petitioner's conviction for the offence under section 376 of RPC according to us is, clearly unsustainable in the eyes of law and the same is liable to be quashed and set aside; which we hereby do.

129. Since cause for petitioner's dismissal is, his conviction for the offence under Section 376 RPC as held by the GSFC and the same has been set aside, as a natural corollary, the order of dismissal recorded by the GSFC is quashed and set aside.



XII. RELIEFS/DIRECTIONS

130. The petition is, therefore, allowed with a cost of Rs.20,000/- to be paid by the respondent to the petitioner.

- (i) Resultantly, the order dated 19.08.1992 passed by GSFC impugned in the present petition, as confirmed by the Central Government by order dated 20.10.1992 are hereby quashed and set aside. The petitioner shall be deemed to have continued in service, as if he was never dismissed.
- (ii) While holding his dismissal to be illegal and deeming him in service, we hereby clarify that consequent to the setting aside of the impugned order, though the petitioner shall be deemed to be in service, but he shall not be entitled for any salary or monetary benefits for the period interregnum.
- (iii) His services for the period interregnum, i.e., from 19.08.1992, the date of dismissal up to the date of attaining the age of superannuation, shall be reckoned and his last salary after the annual increment, etc., shall be calculated by the respondents, as on the date of his attaining the age of superannuation.
- (iv) The petitioner shall, however, be entitled for pension from such date (attaining the age of superannuation). The petitioner shall be paid arrears of pension from the date of attaining the age of superannuation until today. The same shall be calculated and paid to the petitioner latest by 30th June, 2026.
- (v) The petitioner shall start getting his pension from 1st April 2026.

131. We would place on record our appreciation for Ms. Mansi Sharma,



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learned counsel for the petitioner who has put in her best for a case, and has spared huge time for the hearing which continued for 3 days (post lunch), that too for a case, which has been entrusted to her through legal aid. The service she has rendered to the petitioner is invaluable and needs commendation.

132. Pending application also stands disposed of.

**DINESH MEHTA
(JUDGE)**

**VIMAL KUMAR YADAV
(JUDGE)**

JANUARY 27, 2026/ck