



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

% Reserved on: 11.11.2025
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+ **CRL.A.1020/2018**

IRSHAD

.....Appellant

Through: Mr. Ajay Garg, Mr Uday Garg, Ms. Anusha Garg, Ms. Vanshika Gupta, Ms. Bhavya Gaba and Mr. Soumil Singh Rawat, Advocates.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with SI Pardeep PS Mehrauli, Delhi.
Mr. Laksh Khanna, Advocate (DHCLSC) for victim.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal seeks to impugn the judgment of conviction dated 02.06.2018 and order on sentence dated 08.06.2018 rendered by the Trial Court in the context of trial held in relation to the FIR 353/16 under Sections 376/452/506/394/323 IPC registered at PS Mehrauli, Delhi. On completion of the trial, the appellant came to be convicted and sentenced to undergo:

Section	Sentence
376 IPC	Rigorous Imprisonment (RI) for a period of twelve years



	and fine of Rs.5000/- and in default of payment of fine, RI for one month.
452 IPC	RI for seven years and fine of Rs.5000/- and in default of payment of fine, RI for one month.
506 IPC	RI for two years and fine of Rs.2000/- and in default of payment of fine, RI for one month.
394 IPC	RI for ten years and fine of Rs.5000/- and in default of payment of fine, RI for one month.
323 IPC	Simple Imprisonment (SI) for one year and fine of Rs.1000/- and in default of payment of fine, SI for one month.

2. It was also ordered that all the sentences should run concurrently. Benefit of Section 438 Cr.P.C. was also given.

3. The sentence of the appellant was suspended by this Court vide order dated 03.06.2021.

4. The facts in nutshell are that the investigation commenced with registration of DD No.25A on 05.02.2016 at 11.30 AM wherein information about a quarrel was recorded. A perusal of record would reveal that the said DD came to be lodged at the instance of the husband of the prosecutrix, which was marked as PW-13/A.

5. The statement of prosecutrix was recorded by the IO, W/SI *Kamlesh Meena* wherein she alleged that in the morning at about 10.00 AM while she was spreading the washed clothes on the roof for drying and came back to her room, the appellant caught hold of her from behind, whom she identified as the person who used to stare at her and was working in the shoes factory



opposite her house. The said person applied gum on her mouth. The accused committed wrong act with her forcibly and then asked about money and jewelry. As she could not open her mouth, she answered him with gestures. Then accused tried to switch on the immersion rod, however, there was no electricity connection. The accused tried to insert immersion rod into the lower part of her body and further tried to kill her. She handed over a gold chain out of fear, on which the accused threatened the prosecutrix not to disclose the incident. She reiterated that the accused used to work in a shoes factory opposite her house. She informed the incident to her husband who called the police.

6. The prosecutrix was medically examined at AIIMS and MLC was collected. The statement of prosecutrix was also recorded under Section 164 Cr.P.C. and charges for offence punishable under Sections 452/376/506/394/323 IPC were framed, to which the appellant pleaded not guilty and prayed for trial.

7. Learned counsel for the appellant, first and foremost, doubted the credibility and reliability of the testimony of the prosecutrix for not only materially improving upon the allegations, but also being contrary to the other evidence that came on record. Learned counsel vehemently doubted not only the manner in which the identity of the appellant came to be established, but also his arrest and recovery of mobile phone, gold chain and gold rings. The ground of non-examination of material witnesses was also pressed for seeking setting aside of the impugned judgment. Learned counsel also emphasized that the medical examination of the prosecutrix does not make out a case under Section 376 IPC where not only in the history of assault, but also during the medical examination, only an attempt



to rape was mentioned. Lastly, counsel for the appellant submitted that the trial court disregarded the contradictions and fallacy in the prosecution case and rather relied on the admissions in the statement of the appellant to convict him.

8. *Per contra*, learned APP as well as the learned amicus while defending the impugned judgment, pressed for dismissal of the appeal. They submitted that the testimony of the prosecutrix being cogent & credible is sufficient in itself to uphold the conviction. Right from the beginning, the identity of the appellant was known to the prosecutrix since he was employed in the shoes factory opposite her house. It is submitted that adverse inference be drawn against the appellant for refusing to participate in the TIP. The arrest of the appellant and the recovery of the jewellery articles stood duly established not only by the testimony of the official witnesses, but also in the light of the article being identified in the TIP proceedings as well as during the court deposition by the prosecutrix.

9. A perusal of records would show that during her testimony, the prosecutrix deposed that on 05.02.2016 i.e., the day of the incident, she was talking to her sister while she had gone to roof where the bathroom was to soak the clothes. As she had to use the toilet, she disconnected the phone and left it outside. After coming out of the bathroom, she spoke to her husband on call and after speaking to her husband, she went to her room to put the phone. The appellant was hiding behind the door of her room. The appellant caught hold of her from behind. She screamed loudly for help. The appellant was carrying a knife and a gum bottle. The appellant put gum on her mouth. When she asked the appellant as to what he wanted, he asked her where the mobile phone and money were lying. She deposed that the



appellant used to work in the shoes factory opposite her building in front of her house. Though she snatched the gum bottle from his hand, under threat of being attacked by knife, she returned the gum bottle to the appellant. The appellant put gum on her eyes, after which he committed rape upon her on the floor of her room. He caught hold of her hair with his hands. The appellant put the immersion rod near her vagina, however, the same was not inserted into it. The appellant took away the gold chain and ear rings and later she could not find her mobile phone. She went out to seek help and with the help of neighbor i.e., father of 'K', she reached the shop of her husband who then called on 100 number (PCR) which took her to AIIMS Hospital. She stated that the immersion rod and plastic bottle of gum were lying in the room, but the same were not seized in the presence of the IO. Even the bed sheet was seized in the presence of her sister. However, her signatures were taken later on the seizure memo (Ex.PW 1/D). The TIP proceedings of the case property (Ex.PW 1/E) were signed by her. The court posed a question as to what she meant by rape, she elucidated that the accused had committed forcible sexual intercourse with her without her will and consent. She identified the nighty/gown which was seized during medical examination, which was exhibited as Ex. P-7.

10. Cross-examination was conducted by Mr, *Paramjeet Singh*, learned counsel appointed by DLSA. In cross-examination, the prosecutrix was confronted with her previous statement where the factum of appellant carrying knife was not stated. She was also confronted with the factum where she had not mentioned the factum of earrings and only chain was mentioned. She also admitted that the factum of pulling hair by the appellant was also not stated in her earlier statement. She denied telling the



doctor that the appellant had attempted rape on her. She stated that while her husband had made a call to the police, he did not speak to them since he was very upset about the incident, instead he asked a shopkeeper who used to sell *mithai* near his clinic to speak to the police, who did so. She was confronted with her earlier statement where she had not stated of the appellant threatening her to return the gum bottle otherwise he would take out her eyes with the knife. She was also confronted with the earlier statement where it is not stated that the accused asked her to close eyes and put gum on her eyes, however, the earlier statement mentioned gum being put on face only. She admitted that the signatures were not taken on the seizure memo of her nightly gown and exhibits taken by the doctor. She admitted that the day prior to the incident, she had sexual intercourse with her husband. Curiously, a suggestion was given that the appellant was well-known to her as there was relationship between them, which was denied. It was also denied that she falsely implicated the appellant because her neighbors came to know about her love affair with the appellant. She also denied the suggestion that the appellant did not have forcible sexual intercourse with her or did not rob her of any articles.

11. The husband of the prosecutrix was examined as PW -2, who stated that he was running a clinic. On the day of incident at about 11.30 AM, his wife came along with one Mr *Vinod Kumar*. He saw that glue was pasted on her face and she was having problem in breathing and speaking. The prosecutrix told him that one person working as a labour in the shoes factory situated opposite his house committed rape upon her. He claimed to have made a call to the police on 100 number from his clinic. The prosecutrix further told him that the appellant had taken away mobile and jewellery



articles. He identified the immersion rod and bed sheet, one plastic contained containing some dry brown substance. In cross-examination, he admitted that he himself had informed the police about the incident of rape after being told about the same by his wife. The police had noted his number.

12. *Vinod Kumar*, neighbor who had accompanied the prosecutrix was examined as PW-17, who deposed that on the day of incident, the prosecutrix had come to his house crying and asked him to take her to the clinic of her husband. She narrated the incident to her husband in Bengali language, which he did not understand. There was some white sticking substance on the face and hair of the prosecutrix. Her husband made a call to the police and thereafter, he had returned.

The witness was cross-examined by the learned APP. He denied the suggestion that in his presence, prosecutrix told her husband that the person who had raped her was working in a shoes factory and that he had also robbed jewellery and mobile phone. He stated that he had never seen the person who had committed rape upon the prosecutrix. In cross-examination, it was stated that the prosecutrix did not raise any alarm in the *gali* or in the *neighborhood* regarding rape committed upon her.

Medical Examination:

13. The prosecution was medically examined on the very same day when the incident occurred, as is reflected from the testimony of Dr Venus Dalal, examined as PW-9 and Dr Rahul Yadav as PW12. In his testimony, Dr Dalal stated that she had medically examined the prosecutrix in casualty. She had noticed the prosecutrix having marks on her face of chemical thrown, swelling on lips, tongue and gums. One night gown of the



prosecutrix was preserved. The prosecutrix was clinically stable.

14. Dr Rahul Yadav (PW-12), Assistant Professor, Department of Oral and Maxillofacial Surgery, AIIMS, New Delhi, in his deposition stated that he had examined the prosecutrix on the day of the incident and some gum like material was sticking on her eyes and hair. There was also swelling on upper and lower lips. There was also abrasion at the right lower lip 1cm x 1cm in size and on the chin on the right side. The gum sticking on the hair was taken as sample. The prosecutrix was prescribed ointment for local application. The casualty prescription of the prosecutrix is exhibited as Ex.PW 12/A.

In cross-examination, he stated that the medical examination was conducted at about 4.30 PM on 05.02.2016 and that as per his opinion, 'no intervention was required' in the form of Maxillofacial surgery.

FSL:

15. Since the FSL report was not exhibited and was therefore, eschewed from consideration by the trial court. Moreover, the same was also not put to the appellant at the stage of recording his statement under Section 313 Cr.P.C.

Arrest & Recovery:

16. SI Rajiv Singh, who was examined as PW-18, stated in his deposition that on 05.02.2028, he was posted at PS Mehrauli as Sub-Inspector. As an incident of rape was reported, he along with his team tried to search for the appellant and during the course of search, he met one *Rizwan*, who told him that the accused was the resident of his village i.e., Village – Sindholi, District Sitapur, UP. Information was shared with SHO, the investigation of the case was marked to him. The witness stated that the team comprised of



HC *Satender*, CT *Pankaj* and CT *Surender* who along with *Rizwan*, went to the village *Sindholi*, *Sitapur*. *Rizwan* had informed that on 08.02.2016, the appellant was likely to visit his house. The information was shared with the local SHO, who assigned CT *Harmilan* to accompany them. Upon identification by *Rizwan*, the appellant was apprehended from his house. From the search of the appellant, one mobile phone, two SIM cards, one broken yellowish chain and two yellow ear rings were recovered, which were seized vide seizure memo Ex.PW18/A. His arrest memo was exhibited as Ex.PW7/A. On being arrested, personal search memo PW7/B was prepared. The accused was brought to PS *Sindholi*, where DD No.44 was recorded. The attested copy of DD 44 was exhibited as EX.PW18/C. The witness recorded the statements of CT *Harmilan*, CT *Pankaj* and HC *Satender*, whereafter he departed for Delhi along with the appellant and reached Delhi on 09.02.2016 and upon arrival DD entry no.14B was made. The same was exhibited as EX.PW18/D. The witness identified the appellant as the person who had been arrested by PS *Sindholi*.

In cross-examination, he stated that he had not gone inside the house of prosecutrix and was present near her house to search for the appellant. He admitted that no order in writing was given to him to proceed to District *Sitapur*, UP for arresting the appellant. Wife the appellant was present but her statement was not recorded. Her signature was not taken on the arrest memo in the column of witnesses, but only in column 7 where information regarding arrest was conveyed. He stated that they stayed at a *Dharamshala*, however, he did not carry any proof of stay, tickets, conveyance, food etc. He admitted that he had not taken any signature of the wife of the appellant on recovery memo of jewelry and other articles. He also did not take any



photographs of the recovered articles at Sindholi either through camera or through his mobile phone. He admitted that he did not apply for call details of the mobile phone seized from the appellant. He further admitted that after arrest of the appellant from Sindholi, he was not produced before the court for his transit remand and was also not medically examined at hospital there.

17. HC *Satender Kumar*, who was examined as PW-7, deposed that the appellant was identified by *Rizwan* when he was taken into custody. In cross-examination, he admitted that there was overwriting on the date of arrest and the same had been mentioned as 08.09.2016 in the concerned column. However, the date in personal search memo is mentioned as 09.02.2016. He stated that the team comprising of himself, SI *Rajiv*, *Pankaj* and *Rizwan*. He, however, did not mention about Ct *Surender*.

18. *Rizwan* was examined as PW-6, who deposed that he identified the appellant as the person who was working as labour in his factory where slippers were repaired. He further deposed that the appellant was known to him as he belonged to the same village. He admitted that he did not make any statement before the police. He also admitted that he had accompanied the police when the police team went to Sindholi, Sitapur, UP to apprehend the appellant.

In cross-examination, he stated that on the day of the incident, he was at Saket and he could not say if he made any call to the appellant to inquire from him as to why he had not reported for work in the factory. He admitted that he came to know regarding the incident from the owner of the premises where he was running his factory. He denied the suggestion that he did not accompany the police to Sitapur.

Contentions & Contradictions:



19. Coming to the contentions raised by the learned counsel for the appellant, it is noted that as per case of prosecution, immediately after the incident, the prosecutrix had gone to her neighbor i.e., *Vinod Kumar* (PW17), who then took her to her husband. The prosecutrix deposed that she had narrated the incident to her husband in presence of the neighbor but *Vinod Kumar* did not state in his deposition if the prosecutrix informed him about the incidence of rape committed by the appellant. He had stated that she narrated the incident to her husband in Bengali language, which he did not understand.

There is inconsistency as to who had informed the police about the incident. The prosecutrix deposed that though her husband had made a call to the police, he did not speak to them since he was very upset about the incident, instead he asked a shopkeeper who used to sell *mithai* near his clinic to speak to the police. On the other hand, both the husband as well as the neighbor had claimed it was the husband who had informed the police about the incident. In this backdrop, the nature of information given about the incident assumes some significance. Pertinently, DD No.25 recorded at the instance of husband reports only about a ‘quarrel’.

20. The prosecutrix in her statement recorded under Section 161 Cr.P.C. stated that the appellant had committed *galat kaam* with her however, did not categorically state about commission of rape. Most pertinently, in the medical examination carried out at 12.08 PM on 05.02.2016, the history of assault was given as forcible intercourse, however, the details regarding penetration, it was only admitted attempted penetration. The relevant parts in this behalf are extracted hereafter:

“Details regard penetration (by penis, fingers or other objects) – Yes or No



	Attempted Penetration				Completed Penetration					
	By Penis	By finger	By Object	Do not know	By Penis	By finger	By Object	Yes	No	Do Not know
Orifice										
Vagina	✓	X	X		X	X	X			✓
Anus	X	X	X		X	X	X			X
Mouth	X	X	X		X	X	X			X

Other details:

	Yes	No	Do Not know
Oral Sex Performed	X	✓	
Masturbation of Victim by assailant	X	✓	
Masturbation of assailant by Victim	X	✓	
Did Ejaculation occur outside body orifice	X	X	✓
Location of Ejaculations	X	X	✓
Kissing, Licking or sucking of breasts or other body parts?	✓	X	

Use of condom (Yes/No/Don't Know) ...Don't know

If Yes (Status of Condom) ... --

Use of Lubricant (Yes/No/Don't Know) ...--

Penetration by object (Describe Object)

Menstruation at the time of examination (Yes/No)... No

Menstruation at the time of examination (Yes/No) ... No.

Activity of Victim between assault and Examination:

	Yes	No	Do Not know
Bathe		✓	
Douche		✓	
Void Urine		✓	
Defecate		✓	
Use Spermicide		✓	
Any Vagina/Anal/Oral bleeding or discharge after assault?	No		

Body Evidence	Collected/Not Collected (Reasons)
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Oral Swab	Sent
Blood Stains on Body	Not present
Foreign Material on Body	Not present
Seminal Stains on body	Not present
Other Stains	Not present
Head Hair Combing	Sent
Scalp hairs (5-10)	Sent
Nail Scrapings	Sent
Nail Clipping	Sent

Genital and Anal Evidence (Use distil water if necessary)

Genital and Anal Evidence	Collected/Not Collected (Reasons)
Matted Public Hair	Not seen
Combing of Public hair (Shaved/Unshaved)	Sent
Cutting of Public hairs (5-10)	Sent
Vulval Swabs (1) & vulval smear	Sent
Vaginal Swabs (1) & Vaginal smear	Sent
Anal Swab (2)	Sent
Outer (1)	Sent
Inner (1)	Sent
Vaginal Smear (Sperm Detection)	No
Urine sample for drug/specimen	-

Gait	....	Normal
Scalp Examination	....	Normal
Facial/Orbital injuries/Tenderness	....	Facial ordema specifically lips due to chemical
Petechial Hemorrhages in eyes	....	No
Lips/Gums	....	Lips – Ordenators
Ears	....	Normal
Neck, Shoulder, Breasts	....	Normal
Arms, Forearms and Writs	....	Normal
Thighs and Buttocks	....	Normal
Any other Finding	....	Normal

GENITAL EXAMINATION (please mark the diagram on the obverse side)

1. State of sphincters	....	Normal
2. Labia Majora	....	Normal
3. Labia Minora	....	Normal
4. Fourchette and Introitus	....	Normal
5. External Urethral Meatus	....	Normal
6. Hymen (Only if relevant)	....	Not intact (patient married)



- | | | |
|--|------|---------------|
| 7. <i>Anus and Rectum</i> | .... | <i>Normal</i> |
| 8. <i>Findings of speculum Examination</i> | .... |  |
| 9. <i>Any other Finding</i> | .... | <i>No”</i> |

21. In the medical prescription of Dr Venus Dalal (PW-9), the history was noted as attempted sexual assault by one person. The extracted details of MLC would further show that the prosecutrix had confirmed to kissing, licking, sucking of breast and other body parts, however, neither such has been stated in the previous statement nor even in her latter deposition. No external injury was noted on her private parts except face.

22. Though learned counsel for the appellant referred to further medical examination carried out by SR Medical-2 at 5.00 PM, which records alleged history of forcible intercourse, however, concededly, neither the said document is part of MLC, nor the said doctor examined. First categorical allegation of forcible intercourse came on the statement recorded under Section 164 on 08.02.2016 i.e., three days after the incident took place. As noted above, exhibits were seized during the examination and sent to FSL, however, FSL report itself was not exhibited. Additionally, the same was not even put to the appellant at the stage of recording of his statement under Section 313 Cr.P.C. and as such rightly not taken into consideration by the Trial Court. From above, it is clear that the very first information is about quarrel, later converted into an attempt to rape and eventually allegation of rape. Notably, the medical examination records no injury on the private part.

23. Coming back to the contention on the credibility of prosecutrix, it is settled that testimony of a witness can fall in 3 categories, wholly reliable, wholly unreliable, partly reliable and this is established in the Supreme



Court judgement of Mahendra Singh v. State of M.P., where it is noted that:-

“12. It will be apposite to refer to the following observations of this Court in its celebrated judgment in Vadivelu Thevar [Vadivelu Thevar v. State of Madras, 1957 SCR 981 : AIR 1957 SC 614] : (AIR p. 619, paras 11-12)11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

13. It could thus be seen that this Court has found that witnesses are of three types viz. (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is “wholly reliable”, the court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the court finds that the witness is “wholly unreliable”, there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

24. In the present case, the identity of the appellant is not in doubt as he was stated to be working in the factory across the house of the prosecutrix. Rizwan, the owner of factory also admitted to the same. In her first statement, the prosecutrix clearly stated that the offence was committed by the accused. Her statement to the extent that gum like substance was put on her face finds corroboration from the medical report as well as testimony of the neighbor and her husband. However, there are material improvements as



to what offence was committed by him.

25. The testimony prosecutrix would fall in third category. In view of the detailed history of the incident recorded during medical examination, the factum of no injury noted on the private part of the prosecutrix during medical examination, the FSL report being eschewed from consideration, this Court is of the considered opinion that the offence under Section 376 IPC could not be conclusively proved and as such, the conviction under Section 376 is altered to under Section 376/511 IPC.

26. However, since the injuries on face are consistently stated and finds corroboration in the testimony of PW – 17/Vinod Kumar, the prosecutrix' husband and medical record, the conviction under Section 323 of IPC is maintained. Since the prosecutrix has been consistent as to the appellant entering into her room, threatening her and running away with valuables, the conviction under Section 506/452/394 IPC is also maintained.

27. The appellant was shown to be arrested on 08.02.2016. The arrest memo carries overwriting where the date has been changed from 09.02.2016 to 08.02.2016. Surprisingly, though the arrest is stated to have occurred on 08.02.2016, the personal search memo bears the date of 09.02.2016, which shows the recovery of a wallet. The disclosure statement was placed on record as Ex. PW18/B, however, the same does not bear any date. Pursuant to this statement, recovery of mobile phone, two SIM cards, gold chain and ear rings was shown to be effected from the pant worn by the appellant. Even this recovery memo (Ex.PW18/A) has no date and only bears the signatures of police official. Though SI *Rajiv Singh* stated that the appellant's wife *Rubina* was present when the appellant was arrested, there is no explanation as to why *Rizwan* or *Rubina* were not made witnesses at



time of arrest. Moreover, it remains unexplained as to why on being arrested, initially only a wallet was shown to be recovered however, on the next day, the entire recovery was shown to be effected from the pant worn by him. At this stage, it is also deemed apposite to note that in her initial statement, the prosecutrix stated taking away of the earrings.

28. At this stage, a gainful reference be made to the decision in Akhtar Ali v. State of Uttarakhand¹, where Supreme Court while considering effect of omissions, contradictions, lapses in the arrest and seizure process held as under:-

“40. On a plain reading of the evidence of the witness (PW-10), we find many suspicious circumstances surrounding the theory of apprehension and arrest of the accused-appellant No. 1-Akhtar Ali. The so-called source who identified the accused-appellant No. 1-Akhtar Ali could not have had any idea about him because the accused-appellant No. 1-Akhtar Ali was a resident of Bihar and had gone to Ludhiana (Punjab) for the first time, allegedly in order to escape being caught in the crime. The witness (PW-10) admitted that he had not been authorised by anyone to proceed to Ludhiana (Punjab) to arrest the accused-appellant No. 1-Akhtar Ali. There was no note for his departure to Ludhiana in the General Diary maintained at the police station. Moreover, he claimed that local people (including the owner of the shop, in front of whom the accused-appellant No. 1-Akhtar Ali was arrested) refused to witness the process of arrest and search of the accused-appellant No. 1-Akhtar Ali, and thus, only his team members were associated in the process.

43...Moreover, the testimony of Superintendent of Police, Suman Pant (PW-3) would show that the recovery memo of the hair band allegedly prepared by her suffers from serious infirmities. The memo bears no date of preparation, yet it is signed by the police personnel who were allegedly present at the time of recovery, with their signatures bearing the date 28th November 2014. Such discrepancies not only cast grave doubt on the authenticity of the recovery proceedings but also reinforce the inference that the alleged recovery was manipulated to suit the prosecution's narrative.

44. In the backdrop of the aforesaid contradictions, omissions, and

¹ 2025 SCC OnLine SC 1949



investigative lapses, the entire procedure of arrest and search of the person of the accused-appellant No. 1-Akhtar Ali by Yogesh Kumar Chand (PW-10) comes under a grave cloud of doubt. The story which has been projected in the evidence of the witness is something out of fiction and is ex facie unbelievable.”

29. In the aforementioned facts, this court has no hesitation to conclude that the manner of recovery of robbed articles casts shadow of doubt on entire recovery and the same has to be disbelieved. Considering the serious doubts which have been raised as to the manner of recovery of the items, the conviction under Section 411 IPC is set aside.

30. The incident pertains to the year 2016 when the unamended Section 376 IPC provided for minimum sentence of seven years. As per the nominal Roll, the appellant has undergone more than 5 years and 2 months in custody, including remission. Considering that the appellant has faced trial since 2016, has no criminal antecedents, has a wife and 3 children, the sentence for the offences under 376 read with 511 IPC, 394 and 452 IPC is reduced to the period already undergone. The sentence of fine is, however, maintained. In case of non-payment, he will undergo the default sentence.

31. The appeal is partly allowed. The appellant's bail bonds are cancelled and sureties discharged.

32. A copy of this judgment be communicated to the Trial Court as well as concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 18, 2025/pmc