



2026:AHC:213288

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1118 of 1985

Mohd.Anis Khan And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Adil Jamal, K.K.Singh, Rakesh Kumar Singh
Counsel for Respondent(s) : A.G.A.

AFR

Judgment reserved on 05.10.2026.

Judgment delivered on 12.10.2026.

Court No. - 88

HON'BLE ABDUL SHAHID, J.

1. Heard Sri Rakesh Kumar Singh, learned counsel for the appellants and Sri Mohd. Shoeb Khan, learned AGA for the State and perused the record.
2. The present criminal appeal has been preferred against the judgment and order dated 22.4.1985, passed by VII Additional Sessions Judge, Fatehpur in S.T. No. 64 of 1984 (State Vs. Mohd. Anis Khan and others), convicting and sentencing the appellants under Section 147 and 376 IPC for one years and 10 years RI respectively.
3. It is submitted at the threshold that appellant no.1, Mohd. Anis Khan has died during the pendency of the criminal appeal, hence proceedings of present criminal appeal against him is already dismissed as abated on 16.3.2026. Now, the appeal is limited only upto appellant nos. 2,3 and 4, Sirajul, Chhotey Lal and Fakku, respectively.
4. Learned counsel for the appellants has submitted that the FIR has been lodged with six days delay. There is neither any reasonable nor plausible explanation for the delay. He has further submitted that there is no recovery of clothes which were worn by the victims at the time of incident. He has further submitted that there is no corroboration with the ocular evidence with the medical evidence. He further submitted that both

the victims are major and married lady and mother of child and the incident was occurred in the night around 11-11.30 pm. Even, thereafter, husband and father-in-law of the victim (PW-1), who were present at the home, they were not produced as prosecution witnesses. He further submitted that there is enmity between the appellants and the family of the victim. Hence, they had been falsely implicated in the case. Learned counsel for the appellants has further submitted that no injury was found on the body of the victims. The appeal is liable to be allowed.

5. On the other hand, learned AGA has submitted that the victims have supported the prosecution story. The ocular evidence will prevail over the medical evidence. The prosecution has proved its case beyond reasonable doubt. There are neither any contradiction nor any perverse finding has been recorded by the learned trial court. The impugned judgment and order of conviction is liable to be upheld and the appeal is entitled to be dismissed.

6. The genesis of the present case has been narrated on the basis of written complaint Ext. Ka-1, which is submitted by one of the victims on 23.10.1983 and its writer is Virendra Kumar son of Badri Prasad, r/o Qasba Bindki, Fatehpur. The complainant has stated that the incident is of around 11 pm in the night of 17.10.1983, when she was sleeping under thatched hut alongwith her sister-in-law, who is another victim. She has further submitted that her husband and her father-in-law were sleeping at the door. There was Dibbi burning inside the house. In the meantime, Anis son of Ikram alias Nanhey Khan alongwith gun, Sirajul son of Javvad, Chhotey Lal son of Hameed Khan and Fakku son of Chhamman, who are of my co-villagers had entered into my house. On hearing the voice of their foot-steps, myself and my sister-in-law woke up and raised alarm and voices. On it, my husband and my father-in-law were also woke up. Then these persons had holded to myself and my sister-in-law and there were two other persons with them. I am unable to identify them, but could identify them if they will come in front of myself. Both have removed our clothes and completely naked ourselves and thereafter they committed bad act with myself and with my sister-in-law. She has defined all ingredients of rape in the said written complaint. When my father-in-law and husband objected, then they have shown the

gun towards them and stated that you should shut your mouth. On our alarm, Lalla, Sukkhu and several co-villagers came alongwith lighting of torches. When they have extorted, then they have fled away from inside of house towards east side by threatening. These persons had committed bad act with myself and with my sister-in-law. Due to fear of these persons, I could not come to the police station for registration of the report. Today, I have got some courage and came to the police station alongwith my sister-in-law and husband and father-in-law at the police station for registration of the report. My report should be registered and legal proceedings be initiated.

7. In the written complaint, she has stated time of incident around 11.30 pm on 17.10.1983. The check FIR Ext. ka-6 was registered as Case Crime No. 263 of 1983, under Section 376 and 506 IPC. The incident is shown in the check FIR of 17.10.1983 around 11.30 pm in the night and the FIR was registered on 23.10.1983 at 6.40 am in the morning against named accused persons, Anis, Sirajul, Chhotey Lal and Fakku.

8. The torches has been taken in possession and memo of recovery of torches has been prepared which is Ext. Ka-4 on 2.11.1983. The 'Dibbi' and 'lantern' have been taken into possession and memo of recovery has been prepared which is verified as Ext. Ka-3. There is no recovery of any clothes of both the victims and no recovery memo of them has been prepared.

9. The medical examination of sister-in-law (another victim) of the complainant had been conducted and verified as Ext. ka-8 dated 23.10.1983 at 4:20 pm. She was brought by constable. On external examination, no injury was found on the victim. On her internal examination, old teared hymen present, vagina well dilated and easily admits two fingers. No recent injury mark seen. Vaginal smear taken and sent for pathological examination for presence of spermatozoa. It has been concluded that she is used to sexual intercourse and no opinion about rape can be given.

10. In the supplementary report of her sister-in-law, doctor opined that large number of epithelial cells are seen in both slides, and no evidence of spermatozoa in both slides. The age of the girl is above 18 years.

11. The complainant/victim has been medically examined. Her medical examination is verified as Ext. Ka-10 dated 23.10.1983 at 4:45 pm. She was brought by constable. In her external examination, no mark of injury seen. On her internal examination, old teared hymen present, vagina well dilated and easily admits two fingers. (sic). ul size 10 wks. No recent injury mark seen. Vaginal smear taken and sent for pathological examination for presence of spermatozoa. It has been concluded that she is used to sexual intercourse and no opinion about rape can be given.

12. The supplementary report of the complainant/victim has been filed which is verified as Ext. ka-11. Epithelial cells are seen in both slides. No evidence of spermatozoa in both the slides. The age of the girls is above 19 years.

13. Hence, both the victims are major and 18 and 19 years respectively. No injury either external or internal has been found on the body of both the victims as verified by the concerned doctor. It is relevant to mention over here that two victims are Bhabhi and divorcee Nanad respectively; who are deposed as PW-1 and PW-2.

14. PW-1, complainant/victim has been recorded her statement on 3.12.1984. In her examination-in-chief, she has stated that the incident was occurred around 11 to 11- 1/2 pm in the night more than a year ago. When she was sleeping in her house under thatched. My sister-in-law was also sleeping on another cot. The 'dibbi' was burning near to ourselves. At the outside of the house on the door, my mother-in-law, father-in-law and husband were sleeping. After hearing the voice of foot-steps (shoes), my eyes were open. I wake up and saw that Anis, who was having gun, Sirajul, Fakku and Chhotey Lal have entered into my thatched. There were two other persons alongwith them. I do not know of them prior to the incident. The accused Anis has shown the gun to myself and holded myself and has torned my clothes and started doing bad act with myself. He has started forceful sexual intercourse with myself. At the same time, Fakku had forcibly committed sexual intercourse with my sister-in-law. When Anis has completed said bad act with myself, then Sirajul has also committed the same act with myself. When Fakku has completed sexual intercourse with my sister-in-law, then accused Chhotey Lal had also

committed same act with my sister-in-law. Thereafter, accused persons Anis and Sirajul have committed forceful sexual intercourse with my sister-in-law. Fakku and Chhotey Lal after committing sexual intercourse with my sister-in-law had committed sexual intercourse with myself. Hence, with these consequences, all the aforesaid four persons had committed forceful sexual intercourse with myself and with my sister-in-law.

15. She further stated that on raising the voice, her father-in-law and her husband came there, but accused Anis had shown them gun and threatened that you should fled away this place, otherwise, I will kill you. Both the unknown persons had holded my father-in-law and husband and prevented them to reach near ourselves. My father-in-law and my husband has been around 4-5 paces away from ourselves. After raising alarm of myself and my father-in-law, Sukhu and Lala etc. came from outside. They exhorted to the accused persons, then accused persons and his associates fled away towards east side. The accused persons had remain at my house approximately one and one and half hours. Just after incident, we could not went to the police station because, the accused persons and his associates were obstructed all roads of the way. After six days of the incident, when we got opportunity in the morning at 4-5 am then we had gone to the police station. In the way one known person of my father-in-law met and we had narrated entire story to him and got the report written by him. Whatever I had told, he has written down in this report. Thereafter, he has read over to me and after hearing all contents, I had put my thumb impression on it. She has verified said written complaint as Ext. Ka-1 and submitted said report to the Munshi of the concerned police station. After registration of the FIR, myself and my sister-in-law were taken to Sadar Hospital alongwith constable for our medical examination. The Inspector has recorded my statement about incident consecutively.

16. In the cross-examination, she has stated that her marriage took place around 3-4 years ago of the said incident. I was having a child of 15-20 days at the time of incident. My sister-in-law was also having a child of one month with her. The marriage of my sister-in-law took place at Village Rari which is at a distance of 2-3 km away from Jainpur

Chakmada. The name of husband of sister-in-law is Vakeel. Vakeel had divorced my sister-in-law. It is belied to state that due to bad character of my sister-in-law, her in-laws had been ousted from there. The accused Anis is Vice-Pradhan of my village. Accused Chhotey Lal and Fakku are not nephew of Anis, but in relation, they are nephew. All were belong to one family. There is no agricultural field to ourselves in village Jainpur Chakmada. We do the work of labour. It is belied to state that due to bad character of myself and my sister-in-law, the accused Anis after performing panchayat had ordered that both should be evicted from the village. It is also belied to state that no rape has been committed with myself and due to the aforesaid reason, I had falsely implicated Anis and his member of family. My father-in-law was residing separately from my husband. The house of my father-in-law is adjoining to my house towards north side and main door is towards east side. There is no 'kewad' in my door. The accused entered into my house after breaking 'tatiya'. When I wake up, all the four accused with two associates were present. As they came, two accused caught myself, two caught my sister-in-law. The other two unknown persons had holded my father-in-law and my husband.

17. There is contradiction in the statement of this victim as she has stated that two unknown person were also entered into her house and they were very much present at the time of incident.

19. She further stated that both were having Lathi -danda and only accused Anis was having gun. She has further stated that till completion of bad act with ourself, both unknown person had constantly holded my husband and my father-in-law. I do not know name of those two unknown persons till today, who were alongwith accused persons. Both these unknown persons did not touch either to myself or to my sister-in-law. After fled away of the accused persons, my sister-in-law told that she had also recognized both unknown persons. I do not ask about these unknown persons from my husband and father-in-law. They did not told anything about them on their own to ourselves. After fled away of unknown persons, I had asked about unknown persons with my sister-in-law. She told that they are Dularey and Ranjit of Alimabad. I had told this fact to my husband and father-in-law, but in the written complaint, she did not disclose name of both these unknown persons. Whereas, her

sister-in-law, her husband and father-in-law were present at the time of preparation of written complaint as well as at the time of registration of FIR.

20. She has further stated that she told the name of Dularey and Ranjit at the time of registration of report. I had also recorded name of Dulary and Ranjit in my statement which was recorded by the Inspector. The report has been read over to me, then name of Dularey and Ranjit was read over to me. Thereafter I had put my thumb impression on it. When it has been shown and explained Ext. Ka-1 written complaint, then she stated that it may be possible that at the time of writing of said FIR, writer did not write name of Dularey and Ranjit in said report. If the Inspector did not recorded name of Dularey and Ranjit in the said report, I am unable to give any reasonable explanation for it. On the date of incident, on 17th I did not prepare any report by writer. I had got registered report on 6th day of the incident around 6-7 am in the morning. It is belied to state that I had prepared written complaint in the police station with the advise and collusion of police. I had mentioned in my report that we did not visit to the police station due to fear for next six days. We did not mention that accused person had obstructed our ways. I had also narrated to the Inspector that due to fear I did not go to the police station for registration of report. I did not stated about obstruction of ways by the accused persons. We had not went to the police station in the night for registration of report because the accused would met in the way and they will kill us. On the next day of the incident, in the morning, my father-in-law went to the police station to make this complaint that Anis has threatened him to bifurcate his legs and evicted from the village. After three days, accused Anis was arrested by the police. After his arrest, myself, my father-in-law, husband and sister-in-law went to the police station and we had got registered the report Ext. Ka-1. She further stated that it is belied to state that I had lodged the report on the instructions of the police.

21. The statement of this witness is highly improbable and does not inspire confidence. It is stated that on the next day of the incident in the morning. His father-in-law had further went to the police station and tried to lodge the report against Anis, who is also accused in this case, that he is threatening to bifurcate legs and also threatened to evict from the

village. But he did not lodge report of such heinous offence, where his daughter as well as daughter-in-law had been raped by the four accused persons and two unknown persons were also present at the point of such crime. Thereafter, she has also admitted that on third day of incident, Anis was arrested and even thereafter on third day, she went to police station. There is serious contradiction in the statement of the complainant/victim.

22. In the present case, there is inordinate delay in lodging of the FIR which has not been properly explained with cogent and convincing reasons.

23. In his statement, she has further stated that accused Anis on coming started to hold to myself with gun. At the same time, my child was also lying nearby to myself. Anis had torn my clothes and he has also torn my 'dhoti', 'petticoat' and 'blows', where none of these clothes have been produced by the victim. She has stated that she was having her child of 15 days, whereas this type of lady, who was having a child of only 15 days, could not be left alone at the home. She has herself admitted that she did not show those clothes to the police, but she started wearing after sewing it. She further stated that she did not provided these clothes to the police. It is not that I had been only naked by removing my clothes. The clothes of my sister-in-law were not removed, but they were removed after torning it. The clothes of my sister-in-law had been tornd by accused Fakku. I had mentioned about torning of clothes in my report, but how the writer has written it as removing, I could not give any reasonable explanation. I had also mentioned the name of torning of clothes. The accused had committed bad act with me on the cot, not at the ground. At that time, my son was grounded on the floor. Like it, son of my sister-in-law was also grounded and they committed rape with her also. Both children consistently weeping on the ground for about one and one and half hours. The oil lamp burns daily in my chhapper. Anis has committed bad act with me about 15 minutes. Thereafter, Sirajul came and he has also committed sexual intercourse for about same time. At the time of committing said bad act, both accused were lying over myself and I had consistently moving my hand and legs. After these two accused persons, the accused Fakku came to myself. It is not like it that other than these four accused persons, two unknown persons had also committed bad act

with myself. I had not given any such type of statement to the Inspector. After committing said act with myself, there were injury in my vagina and blood was oozed out. But that has not been corroborated by the medical examination of the victim. Whereas, no medical treatment was ever taken by both the victims. Their medical examination was taken place on 23.10.1983 after six days of the incident. It is not natural that if any such type of incident has been committed with the victims and they suffered injury, then it is natural that there must be required medical treatment. It is not of their choice, but it is requirement in normal course.

24. She further stated that there was also blood stained on the cot. I had washed out the said blood because there was no bedding. We had suffered pain in my thigh and waist, but there was no visible injury. It is highly improbable that if this incident has committed by several persons, the injury is bound to have happened.

25. She further stated that at the time of incident, my child was of 15 days and till that time, I used clothes. The clothes which I had taken on my vagina, accused Anis had removed it. I had not shown that clothes to the police. Even at the time of medical examination, I do not have clothes. We did not take any treatment prior to registration of said report. It is belied to state that no sexual intercourse was committed by the accused and due to enmity and collusion to the police, we had lodged false report. She has also admitted that she did not take any medical treatment prior to registration of said report.

26. PW-2, who is also victim of said case. She has stated in her examination-in-chief that the accused Anis, Sirajul, Fakku and Chhotey Lal, who are present in court are known to me. They are residents of my village. It was around 11-12 am in the night, myself and my bhabhi (PW-1, who is another victim) were lying under 'chhapper'. the accused persons came over there and two other persons were also with them, who were Ram Dularey and Ranjit. The accused Anis was having gun, Ram Dularey and Ranjit were having danda. Accused Chhotey Lal and Fakku had holded to myself and Anis and Sirajul holded to my bhabhi. Firstly, Anis and then Sirajul had committed forceful sexual intercourse with my bhabhi. Fakku had committed sexual intercourse with myself and

thereafter Chhotey Lal has committed same act. thereafter, Anis and then Sirajul has consecutively committed sexual intercourse with myself. After leaving myself, Fakku and Chhotey Lal has further consecutively committed forceful rape with my bhabhi. She has further confirmed this statement that on the noise of myself and my bhabhi, my father and my brother came. After their arrival, accused persons had fled away by turning off the oil lamp. Ram Dularey and Ranjit was threatening if you told this incident, then your home will be put on fire and will put the barrel of the gun in you. Ranjit and Ram Dularey were holded my father and brother approximately 5-6 lathi away from ourselves.

27. The narration of said incident which was alleged to be happened in presence of both the victims, who are 'nanad' and 'bhabhi' and both are married. It is highly improbable that all four accused persons had consecutively committed said act with both of them, whereas, father and brother of this victim were also present, and is simultaneously father-in-law and husband of another victim. The possibility of committing of said act by all accused persons at the same time is not appeared to be natural and even thereafter, no FIR has been lodged immediately after the incident. They took further six days to lodge said complaint. The reason stated by the both the victim that the accused persons were obstructed passage and also threatened. It is not appeared to be reasonable and plausible explanation.

28. As per statement of this victim and another victim, several co-villagers as well as members of family, who are none other than husband and father-in-law of first victim and father and brother of second victim, all could not be obstructed by any person for lodging the report within a reasonable time after the incident.

29. It is held by the Hon'ble Supreme Court in **Balku Oram Vs. State of Odisha; 2026 LiveLaw (SC) 802** and relied on judgment in **Ram Das and others Vs. State of Maharashtra; (2007) 2 SCC 170**, if there is delay in lodging of the FIR under section 154 Cr.P.C when not fatal. Mere delay in lodging the FIR is not fatal to the prosecution, if reasonably and satisfactorily explained in light of the surrounding facts and circumstances.

30. It is held by the Supreme Court in **Ravi Kumar Singh Malhotra Vs. State of Madhya Pradesh; 2026 Live Law (SC) 844; 2026 INSC 899** where there is delay in lodging of FIR and delay is inordinate and unexplained delay of five days in lodging the FIR, even after the surviving witness was rescued and had allegedly disclosed the identity of the accused to the I.O, while bodies were already recovered, casts serious doubts on the prosecution case, such unjustified delay in setting the criminal law into motion undermines the credibility of the investigation and opens the door to embellishments.

31. In the present case, there is unreasonably and unsatisfactorily delay has been explained by the prosecution in lodging the FIR.

32. She has further admitted in her cross-examination that when she saw the accused, she firstly neither, raise any alarm nor she could screamed, because the accused has pressed herself. I had not recorded this statement to the Inspector that just after seeing the accused persons in light, I had raised alarm. If inspector has recorded this in my statement, I could not give any reason for it. The accused persons had torned my clothes as well as clothes of my bhabhi. The petticoat and blows were torned by the accused persons. I had not stated this in the statement to the inspector that accused persons had got removed my clothes and clothes of my bhabhi and get ourselves naked. How this statement has been recorded by the inspector, I do not have any reason for it. She has further stated that I had stated this fact to the inspector that Ram Dularey and Ranjit had holded my father and brother 5-6 lathis away from the place of incident. If inspector has not recorded it, I could not give any reason for it. Ram Dularey and Ranjit had holded to my father and brother at the same place, where they were sleeping. Ram Dularey and Ranjit continuously kept holding my father and brother for entire period till bad act was continued with us.

33. There is complete contradiction in the statement and highly unnatural prosecution statement has been given by this witness, who is a matured lady and divorcee and reside at her parental house, where enmity is also admitted with the accused and family of the victim. She has further submitted that my father and brother could not reach to ourselves.

Thereafter, she has stated that when accused persons had went away, then my father and brother came near to us. Prior to it, my father and brother could not came to us. She has stated that she has not recorded this statement to the inspector that Ram Dularey and Ranjit had threatened that if any complaint is made anywhere, we will put fire in the house and barrel of the gun will be inserted. She has further stated that accused persons were total six in number. I had also stated to the inspector that firstly two-two accused has committed said act with myself and with my bhabhi. Thereafter, two-two persons further committed bad act with myself and with my bhabhi. If inspector has not recorded this statement like it, then I am unable to give any reason to it.

34. There is completely improvement version in the statement of this witness. The statement stated by the victim is neither appeared to be natural nor reasonable nor plausible. She has stated that all six persons has not committed sexual intercourse with her. If inspector has recorded like it, then I am unable to give reason to it. She has admitted that blood was oozed out from her private part at the time of said act. There was no visible injury. Hence, victim does not suffer any injury in said incident as stated by her. At the time of incident, my one month child was on the cot. I was married prior to one year of said incident. I did not shown my clothes to the police. There was blood stained on my bedding. I did not shown it to the inspector. It is belied to state that whatever statement I had recorded, there was no incident like it was committed and due to enmity I had falsely implicated the accused persons in the said case. She has stated that I never told name of Ram Dularey and Ranjit due to fear of my family.

35. It is not appeared to be reasonable or correct that if any such type of heinous offence took place with two ladies of same family and she know all the accused persons, but she told only name of four accused and concealed the name of two accused.

36. PW-1 and PW-2, both are the victim of said incident, but their statements are appeared to be contradictory and improvement and in view of facts and circumstances of the case, the story created by the prosecution is not inspiring confidence.

37. It is held by the Hon'ble Supreme Court in **Babu Ram and others Vs. State of Punjab; (2008) 2 SCC (Cri) 727**, that it is the duty of the prosecution to prove its case beyond reasonable doubt. Where prosecution failing to prove beyond reasonable doubt, conviction of appellants set aside. The benefit of doubt must go in favour of the accused.

38. It is also held by the Supreme Court in **Baldev Singh Vs. State of Punjab; (2009) 3 SCC (Cri). 66**, that in the matter of criminal trial, the acquittal is justified where reliability of witness was not found. It is held that if evidence of a witness is not relied upon, conviction and sentence cannot be recorded on its basis. It is further held by the Supreme Court in **Kishan Chand (Deceased) through LR Vs. Gurpal Singh and others; 2010 (3) ACR 3055 (SC)** that deliberate delay in lodging of the FIR/complaint is always fatal.

39. PW-3, Lalla. He stated that he knows the accused persons, who are present in court. He also know both the victim. My house is approximately 25-30 paces away from the house of them. He stated that he was sleeping at the door of his house, it was approximately 11 and 11 1/2 am in the night. I have heard noise from the house of Jumman Shah and I woke up. I reached to the varandha of Jumman by lighting torch and having lathi. The oil lamp was burning in the 'chhapper' of Jumman. I had saw that accused Anis was holded gun on the husband of the victim. Ram Dularey was also holded gun and 'danda' on Jumman. Witness Sukkhu and several co-villages also came on the spot. I have exhorted that you should not worry, we are here. On our exhortation, the accused persons came out and went away. Due to fear of gun, we could not chase the accused person. When we entered into the house, then victim and member of family told us that aforesaid accused persons had committed bad act with both the victim and thereafter I had returned to my house.

40. He is not an eye witness. He did not make any attempt to chase or catch the accused persons. He has also stated that accused Anis were holding gun on the house of the victim, whereas as per victim, Anis has consecutively committed sexual intercourse with both the victim and it is not possible to see from outside of the house. It is full of contradiction and not corroborating his statement with the victim.

41. He has stated in his cross-examination that it is belied to state that due to relationship, I had recorded my false evidence. He has stated that in the night of incident, he alongwith his wife were at the home. In his house, his brother-in-law Waris was also present. Waris did not came due to fear. He stated that I had only saw the accused persons coming out from the varandah and the persons, who were holded gun on Jumman and Mushtak, who are father-in-law and husband and father and brother of victim respectively.

42. As per prosecution story, it was Anis, who was having gun and he was constantly present for around one and half hours and committed sexual intercourse, hence it is not possible for Anis to remain present with the victim as well as with her husband simultaneously. This kind of act is very serious and heinous nature and accused was always in hurry. It is not natural and true that there was six persons and four of them had committed consecutively sexual act with both the victim and duration is more than one and half hours. The story narrated by the prosecution does not inspire confidence in view of facts and circumstances of the case.

43. He further stated that he saw the incident about 4-6 paces away from Mahuwa tree. He has specifically stated that he did not saw anybody of doing bad act with any one, whereas, name of Ram Dularey and Ranjit in the written complaint is not mentioned which was lodged after six days of the incident. He has stated that he neither saw the accused nor the victim in naked condition. Only on saying of the persons, he know that both the victims had been sexually intercoursed by the accused persons. He further stated that he did not saw with her own eyes that any bad act was committed by any one. It is not natural or probable that any person would allow any person to enter into his house in that condition when such bad act has been happened with the female of the family. There is complete contradiction and improvement in the statement of this witness. He is not an eye witness. He himself stated that he is hearsay witness. The evidence recorded by this witness is also not appear to be reliable.

44. **PW-4. Sukkhu.** He claims to be eye witness, but he has specifically stated in his statement that he did not saw the incident on is own eyes and he did not know anything about such incident. He has been declared

hostile and did not support the story of prosecution. He has denied the statement which was recorded under Section 161 Cr.P.C. by the police.

45. **PW-5, Madan Singh** is the Investigating Officer of the case. He has investigated the case and arrested the accused Anis on 24.10.1983. He further recorded the statement of accused Anis on 26.10.1983. He has inspected the place of incident and prepared site plan Ext. Ka-2. He has prepared memo of 'dibbi' and 'lantern' and verified it as Ext. Ka-3. He prepared the memo of torches as Ext. Ka-4 and submitted charge sheet Ext. ka-5.

46. He has stated in his cross-examination that first victim/PW-1 did not told name of Ranjit and Dularey in her statement, whereas the second victim has stated this statement to myself that firstly two accused persons has committed sexual intercourse with her and with her bhabhi and thereafter, further two-two accused had committed sexual intercourse with her and bhabhi. He has stated that second victim has stated that all the accused persons had committed sexual intercourse with her. He has specifically stated that at the time of registration of the report, she did not told about any person, who has threatened to her. He specifically stated that both the victim did not provided any clothes of them which were having blood stained or semen. Both the victims did not provided any clothes like it to me. I neither saw any torn clothes of them nor took it in possession. It is belied to state that constable of my police station had arrested the accused Anis on 20.10.1983 and thereafter, I called complainant/victim and falsely registered the report of this case by way of threatening. It is belied to state that both the victim are professional dancer and singer. It is belied to state that after collecting fabricated evidence, I had submitted false charge sheet.

47. It is held by the Hon'ble Supreme Court in **Krishna Kumar Malik Vs. State of Haryana; 2011 (3) SCC (Cri) 61** that where evidence of prosecution shows several lacunas, her story has not been corroborated by any other evidence, there are various serious contradictions in her statement and actions, from which it can safely be concluded that she was certainly not telling the truth. Her medico-legal report and medical evidence further reveals that she had not received any significant injuries

on other parts of her body and injuries on her private parts were much less as mentioned by her in the FIR, except for a cheek bite. It is not safer to hold him guilty.

48. It is held by the Hon'ble Supreme Court in **Sharad Birdhi Chand Sarda Vs. State of Maharashtra; (1984) 4 SCC 116** that prosecution must stand or fall on its own legs and it can not derive any strength from the weakness of the defence.

49. **PW-6 is constable, Shobaran Singh.** He has stated that he was posted on 23.10.1983 at the police station Bindki as Head Constable. He prepared check FIR and G.D. entry of said case which is Ext. Ka-6 and 7. In his cross-examination he stated that check report is prepared on the basis of Tahriri report. It is belied to state that accused Anis was arrested prior to lodging of the report. The father's name of accused Anis is written as Ikram Ullah Khan. It is belied to state that accused Anis was already present, hence by asking, his father name has been written. It is also belied to state that written report of this incident has been prepared at the police station with consultation after calling the complainant at the police station.

50. The statement of accused under Sections 313 Cr.P.C. had been recorded. They all denied the charges and evidences against them and stated that they have been falsely implicated in the case. The accused Anis has stated that 4-5 days ago of the incident, there was some altercation took place with the complainant, hence he was called at the police station. Thereafter, they had called both the victim at the police station and prepared false and fabricated report and falsely implicated us in said false case. Both the witnesses are professional dancer. All the accused persons belong to same family.

51. Upon hearing learned counsel for the appellants and learned A.G.A. for the State and upon perusal of the entire record, this Court finds that the prosecution case suffers from material contradictions, unexplained delay in lodging the FIR, material improvements in the testimonies of the victims, and lack of reliable corroborative evidence.

52. It is well settled that mere delay in lodging an FIR is not, by itself,

fatal to the prosecution case, particularly in cases involving sexual offences, where the surrounding circumstances may explain the delay. However, where the delay remains unexplained or the explanation offered is not found satisfactory in the light of the evidence on record, it becomes a relevant circumstance while assessing the credibility of the prosecution case.

53. In the present case, the alleged incident took place on the night of 17.10.1983, whereas the FIR was lodged on 23.10.1983 at 6:40 a.m. The explanation furnished by the victims is that they could not approach the police station due to fear of the accused persons and obstruction of their passage. However, PW-1 admitted in her cross-examination that she had approached the police station on the morning following the incident in connection with an alleged threat extended by accused Anis. She further stated that Anis had been arrested on the third day after the incident, yet the present FIR was lodged only thereafter. The prosecution has not furnished any convincing explanation as to why, despite the availability of opportunities to approach the police, the allegations relating to the alleged sexual assault were not reported earlier. The explanation offered by the victims, therefore, does not inspire confidence when examined in the light of their own statements and the surrounding circumstances.

54. A further material circumstance is that the names of Ram Dularey and Ranjit, who were subsequently alleged to have accompanied the principal accused and restrained the family members of the victims, do not find mention in the written complaint, Ext. Ka-1. PW-1 sought to explain this omission by stating that she had disclosed their names to the police. However, the Investigating Officer, PW-5, specifically stated that PW-1 had not disclosed their names in her statement. The explanation offered by PW-1 that the scribe might have omitted their names from the written complaint does not satisfactorily reconcile the discrepancy. The omission assumes significance because these two persons were subsequently attributed an important role in facilitating the alleged offence by restraining the family members of the victims.

55. The testimony of PW-1 also suffers from material inconsistencies concerning the manner in which the incident allegedly occurred. She

stated that the accused persons tore her clothes and those of her sister-in-law, whereas the written complaint refers to the removal of their clothes. She further admitted that the clothes allegedly torn during the incident were neither shown to the police nor handed over to the Investigating Officer. The Investigating Officer also confirmed that neither victim supplied any clothes allegedly bearing bloodstains or semen, and no such articles were taken into possession during the investigation. Although the non-recovery of clothes, by itself, cannot discredit an allegation of sexual assault, the omission assumes relevance when considered cumulatively with the other material inconsistencies appearing in the prosecution evidence.

56. The medical evidence also requires consideration in its proper perspective. The medical examinations of both victims were conducted on 23.10.1983. No external or recent injury was found on either victim. Their medical reports recorded that the hymen was old torn, the vagina was well dilated, and two fingers could be easily admitted. The supplementary pathological reports did not disclose the presence of spermatozoa in the vaginal smears. The doctors opined that both victims were accustomed to sexual intercourse and that no opinion regarding rape could be given on the basis of the examinations.

57. It is well settled that the absence of injuries or medical corroboration is not, by itself, sufficient to reject the testimony of a prosecutrix, nor is the presence of spermatozoa indispensable to establish the offence of rape. Nevertheless, in the present case, the medical evidence does not provide any corroboration to the specific assertion of PW-1 that she had sustained vaginal injuries and experienced bleeding during the alleged occurrence. This circumstance, though not conclusive in isolation, assumes relevance when considered alongside the other deficiencies in the prosecution case.

58. The evidence of PW-2, the other victim, also suffers from material discrepancies. Her account regarding the sequence in which the accused persons allegedly committed sexual intercourse with the two victims differs in material respects from the version narrated by PW-1. Both witnesses attributed specific roles to the accused persons, but their

statements contain inconsistencies concerning the participation of the accompanying persons, the restraint of the family members, the manner in which the victims' clothes were removed or torn, and the threats allegedly extended by the accused persons. PW-2 also made improvements concerning the identity and role of the alleged accompanying persons and the sequence of the alleged acts, which were not consistently reflected in the earlier versions recorded during the investigation.

59. The Court is conscious that discrepancies concerning the sequence of events or other peripheral details may occur in the testimony of witnesses, particularly in cases involving traumatic incidents. However, the discrepancies in the present case cannot all be treated as minor variations. They concern material aspects of the prosecution story and affect the consistency of the accounts given by the two principal witnesses. The prosecution has not satisfactorily explained these discrepancies.

60. It is also noteworthy that PW-1 and PW-2 alleged that the occurrence continued for approximately one to one-and-a-half hours and that several accused persons successively committed sexual intercourse with both victims. According to their statements, the family members were present nearby and were allegedly restrained by the accompanying persons. However, the precise roles attributed to the accused and the accompanying persons, as well as the manner in which the alleged occurrence continued, are not consistently described by the witnesses. These aspects call for careful scrutiny, particularly in view of the delayed reporting and the subsequent improvements in their statements.

61. The evidence of PW-3, Lalla, does not materially corroborate the commission of the alleged offence. He stated that he reached the place of occurrence after hearing the noise and saw certain accused persons coming out of the premises. His knowledge regarding the alleged sexual assault was derived from what was subsequently told to him by the victims and their family members. His testimony, therefore, is not that of an eyewitness to the alleged sexual assault and can, at best, establish the circumstances personally observed by him. It cannot independently establish the commission of the alleged offence.

62. PW-4, Sukkhu, did not support the prosecution case and was declared

hostile. He specifically stated that he had not witnessed the incident and did not know anything about its occurrence. His testimony, therefore, does not furnish any substantive corroboration of the allegations made by PW-1 and PW-2.

63. The testimony of PW-5, the Investigating Officer, further establishes that the names of Ram Dularey and Ranjit were not disclosed by PW-1 in her statement during the investigation. He also confirmed that none of the victim produced the clothes allegedly worn by them at the time of the occurrence. Neither torn nor bloodstained clothes were recovered. Although, these circumstances do not independently establish the falsity of the prosecution case, they lend significance to the material omissions and improvements appearing in the testimonies of the principal witnesses.

64. The defence has also suggested that the appellants were falsely implicated on account of previous enmity. PW-1 admitted the existence of strained relations between the parties and referred to allegations concerning a dispute relating to their residence in the village. The existence of enmity, by itself, is a double-edged weapon and cannot be treated as conclusive proof of false implication. However, in the present case, it assumes relevance when considered together with the unexplained delay in lodging the FIR, the material omissions in the initial complaint, the subsequent improvements in the statements of the victims, and the absence of reliable independent corroboration.

65. The Court is mindful of the settled principle that the testimony of a prosecutrix, if found trustworthy, reliable and of sterling quality, can form the sole basis of conviction without requiring independent corroboration. Equally, the absence of independent eyewitnesses or medical evidence is not, by itself, sufficient to discard an otherwise credible prosecution case. However, where the testimony of the principal witnesses suffers from material inconsistencies and improvements affecting the core of the prosecution story, the Court must assess whether the evidence, taken as a whole, inspires confidence and establishes the guilt of the accused beyond reasonable doubt.

66. In the present case, the cumulative effect of the unexplained delay in lodging the FIR, the omission of the names of the alleged accompanying

persons from the initial complaint, the material discrepancies between the testimonies of PW-1 and PW-2, the improvements made during the trial, and the absence of any eyewitness account corroborating the commission of the alleged sexual assault creates a reasonable doubt regarding the prosecution version. The evidence of PW-3 does not independently establish the alleged offence, while PW-4 has not supported the prosecution case. The medical evidence, though not conclusive either way, does not resolve the material doubts arising from the oral evidence.

67. It is held by the Hon'ble Supreme Court in **Kuldeep Yadav Vs. State of Bihar; 2011(2) SCC (Cri) 632** that credibility of witness is must. If the evidence is contrary to each other, conviction on the basis of their testimonies is unsustainable.

68. It is true and correct that evidence of prosecutrix is having much more value than the injured witness, whereas, it could not be considered as gospel truth. It is settled law that each and every criminal case has to be decided on its fact. The law of precedent is not applicable in criminal cases.

69. In the present case, the detail discussion took place about evidence of the prosecution. The prosecutrix are two married ladies and they are neither of tender age nor minor. They are matured ladies. Both are having child. One is married and resides at her in-laws house and another is daughter of said house and is divorcee. They are having child respectively. PW-1 has stated that she was having a child of fifteen days and PW-2 has stated that she is having child of about one month with them at the time of incident. Both the children have been grounded on the floor by the accused persons. There were alleged to be four accused persons, who have committed consecutive offence of rape with both of them for continuous period of one to one and half hours. Both the child consistently weeping. Whereas, husband and father-in-law of victim no.1 and brother and father of victim no.2, all were present in the said house. The incident as stated had took place within the premises of the house in the night at about 11 to 11.30 pm. None have been arrested. Even the victims know the other two persons, but they did not mention their names in the FIR. The FIR has been registered with six days delay. The entire

evidences and statements deposed by the victims are neither corroborative and consistent with their own evidence nor corroborated with the medical evidence. Both of them did not have any injuries either externally or internally. Both of them have stated that their clothes were removed and thereafter stated that clothes were torned, but none of the clothes have ever been provided by them to the police personnel.

70. It is settled proposition of law that deposition of prosecutrix is on higher pedestal than of injured witness, whereas, the deposition of the prosecutrix is not an absolute undeniable, or unquestionable fact or gospel truth; its genuineness, truthfulness and veracity has to be examined on the touch stone of the believability, credibility and plausibility in view of facts and circumstances of each case.

71. There has been wilful and deliberate delay in registration of the FIR. The enmity between accused persons and family of the victims has been admitted. The enmity is otherwise double edged weapon. The credibility of witnesses/two prosecutrix are not found as truth, plausible and credible.

72. In these circumstances, this Court finds that the prosecution has failed to establish the guilt of the surviving appellants, namely, Sirajul, Chhotey Lal and Fakku, beyond reasonable doubt. The learned trial court appears to have failed to properly appreciate the cumulative effect of the material contradictions, omissions and infirmities in the prosecution evidence.

73. Consequently, the appeal, insofar as it relates to appellant nos. 2, 3 and 4, namely, Sirajul, Chhotey Lal and Fakku, is **allowed**. The judgment and order dated 22.04.1985, passed by the learned VII Additional Sessions Judge, Fatehpur, in Sessions Trial No. 64 of 1984, is set aside. The appellants are acquitted of the charges levelled against them.

74. The appeal against appellant no. 1, Mohd. Anis Khan, already having abated by order dated 16.03.2026, no further order is required in his regard.

75. The criminal appeal stands **allowed**.

76. The surviving appellants are on bail. Their bail bonds stand cancelled

and sureties discharged, subject to compliance with Section 437-A Cr.P.C., as applicable.

77. Let the trial court record be transmitted to the court concerned along with a copy of this judgment for necessary compliance.

(Abdul Shahid,J.)

October 12, 2026

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