

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.579 of 2013**

CNR No. BRHC010664732013

Arising Out of PS. Case No.-33 Year-2010 Thana- BALIYA District- Begusarai

Md. Ainul Haque S/O Late Md. Salamat Resident Of Village Bari Ballia,
Mobin Tola, P.S. Balia, District Begusarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Parithosh Parimal, Advocate Md. Fahimuddin, Advocate
For the Respondents	:	Ms. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 08-10-2026**

In the present appeal, the appellant has challenged the judgment of conviction dated 29.07.2013 and the order of sentence dated 01.08.2013 passed by the learned Additional Sessions Judge-V, Begusarai, in Sessions Trial No.1052 of 2010, arising out of Ballia P.S. Case No.33 of 2010, whereby the appellant has been convicted for the offence punishable under Sections 376/511 and 448 of the Indian Penal Code (for short "I.P.C."). For the offence under Sections 376/511 of the I.P.C., the appellant has been sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.2,000/-, in default of payment of fine, he has further been sentenced to undergo imprisonment for two months. For the offence under Section 448 of the I.P.C., the appellant has been sentenced to



undergo rigorous imprisonment for six months. Both the sentences were directed to run concurrently.

2. The prosecution case, as set out in Complaint Case No.257C of 2010 filed by the complainant before the learned Chief Judicial Magistrate, Begusarai, on 10.02.2010, is that the complainant, who is a widow, resides at her parental village with her children and earns her livelihood by doing the labour work. It is alleged that the appellant used to cast an evil eye upon her and had been warned to desist. On 08.02.2010 at about 10.00 P.M., while the complainant was sleeping in her *khapra posh* (thatched) house, the appellant entered into the house, pressed her mouth and committed rape upon her. On her alarm (*hulla*), the villagers assembled, apprehended the appellant and assaulted him. It is further alleged that the villagers assured her that the matter would be settled in the village *panchayat*, which eventually could not be held as the appellant did not participate therein, and since the local police did not register her case, she filed the complaint in Court.

3. The complaint was forwarded to the police under Section 156(3) of the Code of Criminal Procedure (for short “Cr.P.C.”), whereupon Ballia P.S. Case No.33 of 2010 was registered for the offences under Sections 376, 323, 504 and



511 of the I.P.C. After investigation, charge-sheet was submitted against the appellant under Sections 376, 323, 504 and 511 of the I.P.C. The learned Chief Judicial Magistrate took cognizance of the offences and thereafter, the case was committed to the Court of Sessions. By order dated 17.01.2011, charges were framed against the appellant under Sections 376/511 and 448 of the I.P.C., to which he pleaded not guilty and claimed to be tried.

4. During the course of trial, altogether four witnesses were examined in support of the prosecution case, which are as under:-

P.W.-1	Ram Chandra Poddar (neighbour of the complainant)
P.W.-2	Sabo Devi (declared hostile)
P.W.-3	The complainant / prosecutrix
P.W.-4	Subhankar Kumar (declared hostile)

5. No documentary evidence was exhibited on behalf of the prosecution. Neither the Investigating Officer nor any medical witness was examined. After completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Cr.P.C., in which he denied the allegations and stated that he is innocent and has been falsely implicated. No documentary evidence or oral witness was adduced or examined on behalf of the defence.



6. The learned trial Court after appreciating the evidence and hearing the parties, has passed the impugned judgment of conviction and order of sentence, as stated above.

7. Upon his conviction, the appellant was taken into custody. This appeal was admitted on 16.08.2013 and the appellant was directed to be released on bail, whereupon he has remained on bail. Thereafter *vide* order dated 22.06.2026, passed in compliance of the directions of the Hon'ble Supreme Court in the case of ***Bhola Mahto vs. State of Jharkhand*** reported as ***2026 SCC OnLine SC 430***, the live status of the appellant was directed to be verified, and the Superintendent of Police, Begusarai, by letter dated 06.07.2026, has reported that the appellant is alive. The appeal was thereafter heard on merits.

8. At the outset, the learned counsel for the appellant has submitted that the prosecution case rests upon the solitary testimony of the prosecutrix (P.W.-3), which is neither consistent nor corroborated and not of sterling quality. It has been submitted on behalf of the appellant that although the complaint petition alleged commission of rape, the prosecutrix has deposed to an attempt to commit rape, and has admitted in her cross-examination that her clothes were not torn, there was no mark of injury on her person or on her bed or clothes, and



that she did not go for medical examination.

9. It has been further submitted that P.W.-1 is not an eye-witness to the occurrence and derived his knowledge of the incident from the prosecutrix herself. It has been emphasised by the learned counsel for the appellant that though ten to fifteen villagers are said to have apprehended the appellant, not one of them has been examined during the trial and the two other witnesses examined have not supported the case of the prosecution.

10. It has been pointed out by the learned counsel for the appellant that neither the Investigating Officer nor any doctor has been examined and no document has been exhibited in the course of the trial, and that the delay in lodging the case has not been sufficiently explained. *Lastly*, the learned counsel for the appellant has submitted that the appellant, who is currently aged about 60 years, has had no criminal antecedent, has remained on bail for over thirteen years without any adverse report on record and has already undergone about two and a half months of custody.

11. Learned A.P.P. for the State has supported the impugned judgment and has submitted that the prosecutrix, a widow living alone with her children, had no reason to falsely



implicate the appellant and she has withstood cross-examination and has consistently deposed that the appellant entered her house at night, extinguished the lamp (*dibiya/dhibri*), lay upon her and pressed her mouth. It has been emphasised on behalf of the State that her version stands corroborated by P.W.-1, a neighbour, who reached the spot on her alarm (*hulla*) and found the appellant present there in the presence of other villagers, and therefore the presence of the appellant at the place of occurrence is duly corroborated. It has lastly been submitted that the delay in lodging the F.I.R. stands explained on account of an abortive *panchyati* and that minor discrepancies in the evidence of a rustic and illiterate village woman cannot be a ground to discard her testimony in its entirety.

12. I have considered the submissions of the parties and perused the materials on record.

13. The prosecutrix (P.W.-3) has deposed that on the night of occurrence at about 10:00 P.M. while she was sleeping in her house, the appellant came there and extinguished the *dibiya* and the appellant lay upon her and started to commit rape. It is further deposed that whenever she attempted to shout, her mouth was pressed by the appellant and she nonetheless shouted once, upon which the persons of the vicinity came,



apprehended the appellant and also assaulted him. She has also stated that she went to the local police, but they did not act, whereupon she filed the complaint in the Court. The prosecutrix has identified the appellant who is a co-villager. In paragraph-3 of her cross-examination, she has stated that the house of Ram Chandra Poddar (P.W.-1) is adjacent to her house and thereafter she has stated that she was sleeping in a *tati* house, the door of which was fastened and was removed by the appellant. Under paragraph-5, the prosecutrix has stated that when she woke up she found only the appellant there and the witnesses came about ten minutes later. It has furthermore been deposed by the prosecutrix that it was a dark night, and that her clothes were not torn and there was no mark on her body, or on her bed or on her clothes. Under paragraph-8, the prosecutrix deposed that on her alarm about 15-20 persons assembled, apprehended the appellant and beat him, whereupon the prosecutrix told them that the appellant had attempted to commit rape upon her. The prosecutrix did not go to any doctor for medical examination. It may be noted that in paragraph nos. 10 and 12, the prosecutrix also stated that she did not inform the *Mukhiya* or the *Sarpanch*, and she did not meet the Daroga after the occurrence. She has denied the suggestion of false implication.



14. P.W.-1 Ram Chandra Poddar has deposed that at the time of occurrence he was sleeping at his door when he heard an alarm from the house of the complainant, whereupon he rushed there and found the appellant, who was being ousted from the house of the complainant by other co-villagers and he was told that the appellant had committed rape upon the complainant after entering her house. In his cross-examination, he has stated that his house is adjacent to the house of the complainant, who lives there on rent. This witness has further deposed that about 10-11 persons, including Ram Bilash Choudhary and Sanatan Choudhary, were present at the place of occurrence and that though he did not enter the house of the complainant but he had remained there for about ten minutes. It has further been stated that the *Daroga* came on the next morning and he narrated to him regarding the incident. Pertinently, under paragraph 6 this witness had stated that the complainant had told him that she had been raped.

15. P.W.-2 Sabo Devi and P.W.-4 Subhankar Kumar have not supported the prosecution case and were declared hostile.

16. The first question which falls for consideration is whether the presence of the appellant inside the



house of the prosecutrix on the night of occurrence has been established. On this aspect, the evidence of the prosecutrix is clear, consistent and categorical. The appellant is a co-villager known to her from before, to whom she has attributed an antecedent course of conduct of casting an evil eye upon her, and she has identified him. The argument founded upon the darkness of the room overlooks the fact that the appellant did not flee but was in fact apprehended on the spot by the persons who had gathered on her alarm. P.W.-1, whose house adjoins that of the prosecutrix, is the most natural witness to have reached the spot on hearing the alarm, and he has deposed that he found the appellant present there at the place of occurrence, being ousted from the house of the prosecutrix by the villagers, and that the prosecutrix told him then and there that the appellant had entered her house and committed rape upon her.

17. P.W.-1 has deposed to the presence of the appellant at the house of the prosecutrix at that hour, and to the disclosure made to him immediately after the occurrence, from his own perception, to that extent his evidence is not hearsay but direct evidence of circumstances forming part of the same transaction. *Pertinently*, P.W.-1 has not been cross-examined at all on the point of the presence of the appellant, nor has any



suggestion of enmity or of any motive for false implication been put either to him or to the prosecutrix. The appellant has offered no explanation, in his statement under Section 313 of the Cr.P.C. or otherwise, for his presence inside the dwelling house of a widow at about 10 o'clock in the night.

18. From the materials available on record, this Court is satisfied that the prosecution has established beyond reasonable doubt that the appellant entered the house of the prosecutrix on the night of occurrence and was found there by the other co-villagers who had assembled on alarm being raised by the prosecutrix.

19. So far as the delay in institution of the case is concerned, the occurrence took place in the night of 08.02.2010 and the complaint was filed in the Court on 10.02.2010, i.e., within two days. The prosecutrix has explained that she first approached the local police station, where her case was not registered, and the complaint petition itself recites the attempt to have the matter settled in the village *panchayat*. The Hon'ble Supreme Court in the case of ***State of Punjab vs. Gurmit Singh*** reported as ***(1996) 2 SCC 384***, has held that in cases of sexual offences delay in lodging the F.I.R is not uncommon and is not, by and of itself, a ground to doubt the prosecution case, the



victim and her family being often reluctant to approach the police out of a sense of shame and the fear of social stigma. A delay of two days on the part of a widow, who first sought the intervention of the village elders and of the local police, cannot be said to be unexplained much less fatal to the case of the prosecution.

20. The non-examination of the Investigating Officer and of the villagers who are said to have assembled at the spot has also been pressed into service on behalf of the appellant. In the case of *Takhaji Hiraji vs. Thakore Kubersing Chamansing & Ors.* reported as (2001) 6 SCC 145, the Hon'ble Supreme Court has held that where overwhelming evidence is already available and the examination of other witnesses would only be a repetition or duplication of the evidence already adduced, the non-examination of such other witnesses may not be material, and that if the witnesses already examined are reliable and their testimony is unimpeachable, the Court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. The presence of the appellant at the house of the prosecutrix stands established by the consistent evidence of the prosecutrix and P.W.-1, both of whom are natural witnesses whose testimony on this aspect has gone



unchallenged, and the examination of other villagers on the point would have been a mere repetition. The non-examination of the Investigating Officer, in the absence of any demonstrated prejudice, at least on the question of the presence of the appellant, is not fatal to the prosecution case. The absence of medical and investigative evidence, however, bears upon the further question as to the precise nature of the act committed by the appellant, but certainly not to the extent it relates to the presence of the appellant in the house of a widow late at night.

21. That brings this Court to the crucial question in this appeal, namely, whether the act proved against the appellant amounts to an attempt to commit rape, punishable under Sections 376/511 of the I.P.C., or to an assault or use of criminal force with intent to outrage the modesty of a woman, punishable under Section 354 of the I.P.C. It is settled law that the conviction of an accused can be founded upon the sole testimony of the prosecutrix, provided it inspires confidence. The Hon'ble Supreme Court in the case of ***State of Punjab vs. Gurmit Singh (supra)***, has held as under :-

8. ...*The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone*



to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ...”

22. At the same time, in ***Rai Sandeep @ Deepu vs. State (NCT of Delhi)*** reported as ***(2012) 8 SCC 21***, the Hon’ble Supreme Court has laid down the attributes of a sterling witness upon whose uncorroborated testimony a conviction may safely rest, in the following words:-

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such



a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

23. In the case of ***Santosh Prasad @ Santosh Kumar vs. State of Bihar*** reported as ***(2020) 3 SCC 443***, the Hon’ble Supreme Court, after referring to the aforesaid decision in the case of ***Rai Sandeep @ Deepu (supra)*** and ***Raju vs. State of M.P.*** reported as ***(2008) 15 SCC 133***, reiterated that the



evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable, but that it can never be presumed that her statement should, without exception, be taken as the gospel truth, and held that where her solitary version suffers from material contradictions and is unsupported by medical or other evidence, the benefit of doubt must go to the accused.

24. Tested on the anvil of the above principles, the evidence of the prosecutrix inspires confidence as regards the core of the occurrence, namely, that the appellant entered her house at night, extinguished the lamp, lay upon her and pressed her mouth to stifle her cries. However, on the further question as to what the appellant did, or attempted to do, beyond that, the evidence of the prosecution is neither consistent nor supported by any other material. In the complaint petition, the allegation was of commission of rape. The Investigating Officer himself, after investigation, submitted charge-sheet for an attempt to commit rape, and the learned trial Court framed charge accordingly. In her examination-in-chief, the prosecutrix has stated that the appellant lay upon her and started to commit rape, whereas in paragraph no.8 of her cross-examination she has stated that she told the villagers that the appellant had attempted



to commit rape upon her. The disclosure made to P.W.-1 immediately after the occurrence was, again, of commission of rape. Further the prosecutrix has admitted that her clothes were not torn, there was no mark of injury on her person, no mark on her bed or on her clothes and that she did not go for any medical examination. There is not even a whisper that the appellant undressed himself or her, that any garment was removed or displaced, or that any overt act was done by the appellant towards penetration. The learned trial Court has itself noticed the discrepancy and has sought to explain it on the footing that the prosecutrix, being rustic and illiterate village woman, could not be expected to distinguish between the commission of rape and an attempt to commit it.

25. That observation by the trial Court far from answering the difficulty and the discrepancy, underscores it, since the question is not what description the prosecutrix would give to the act, but whether the evidence establishes the overt act which the law requires for an attempt to commit rape.

26. It would be apposite to notice the provisions as they stood at the time of the occurrence. Section 511 of the I.P.C. makes punishable an attempt to commit an offence punishable with imprisonment for life or imprisonment, the



essential ingredient being that the accused, in such attempt, does any act towards the commission of the offence. The punishment provided is imprisonment of the description provided for the offence, for a term which may extend to one-half of the longest term of imprisonment provided for that offence, or fine, or both. Section 354 of the I.P.C., as it stood after its substitution by the Criminal Law (Amendment) Act, 2013 with effect from 03.02.2013, read as under:-

“354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

27. The occurrence being of February, 2010, it is the provision as it then stood, and not the amended provision prescribing a minimum sentence of one year, which governs the present case, having regard to Article 20(1) of the Constitution of India.

28. The distinction between an attempt to commit rape and an indecent assault punishable under Section 354 of the I.P.C. has been authoritatively drawn by the Hon’ble Supreme Court in the case of *Aman Kumar & Anr. vs. State of Haryana* reported as (2004) 4 SCC 379, wherein while altering



a conviction under Section 376 to one under Section 354 of the I.P.C., it has been held as under:-

“11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect.

xxxx

*14. Modesty can be described as the quality of being modest; and in relation to a woman, “womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct”. It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patteson in R. v. James Lloyd [(1836) 7 C&P 317 : 173 ER 141] in order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. **The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which***



would show that he was just going to have sexual connection with her.”

29. Further, the Hon’ble Supreme Court in the case of ***Tarkeshwar Sahu vs. State of Bihar*** reported as (2006) 8 SCC 560, a case in which the accused had forcibly taken a girl into his *gumti* and was apprehended on her alarm by the neighbours, the Hon’ble Supreme Court set aside the conviction under Sections 376/511 of the I.P.C. and, invoking Section 222 of the Cr.P.C., convicted the accused under Section 354 of the I.P.C., observing as under:-

“22. In the backdrop of settled legal position, when we examine the instant case, the conclusion becomes irresistible that the conviction of the appellant under Sections 376/511 IPC is wholly unsustainable. What to talk about the penetration, there has not been any attempt of penetration to the slightest degree. The appellant had neither undressed himself nor even asked the prosecutrix to undress so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Sections 376/511 IPC is wholly illegal and unsustainable.”

30. It may also be profitable to refer to the decision of the Hon’ble Supreme Court rendered in the case of ***Madan Lal vs. State of Jammu & Kashmir*** reported as (1997) 7 SCC 677, for the contrasting point where the conviction for an attempt to commit rape was upheld on evidence that the accused



had untied the cord of the *salwar* of the prosecutrix, had mounted her and had attempted to commit rape, and the Hon'ble Supreme Court holding that what is necessary to prove is that the accused has gone beyond the stage of preparation. As regards what constitutes an outrage of the modesty of a woman, it has been held by the Hon'ble Supreme Court in ***Rupan Deol Bajaj (Mrs.) & Anr. vs. Kanwar Pal Singh Gill & Anr.*** reported as ***(1995) 6 SCC 194*** that the ultimate test is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. Further, in the case of ***Raju Pandurang Mahale vs. State of Maharashtra & Anr.*** reported as ***(2004) 4 SCC 371***, the Hon'ble Supreme Court has explained that modesty is an attribute which attaches to a woman by reason of her sex, that what the Court must look to is the intention with which the accused acted, and that it is enough if the accused knew that his act was likely to outrage her modesty, even if that was not his sole object.

31. Applying the aforesaid principles to the evidence on record, the act of the appellant in entering, late at night, in the dwelling house of a widow who was sleeping, extinguishing the lamp, lying upon her person and pressing her mouth is an act which is unquestionably capable of shocking the



sense of decency of a woman, and the culpable intention of the appellant is manifest from the act itself and from his antecedent conduct deposed to by the prosecutrix. All the ingredients of the offence under Section 354 of the I.P.C. are, therefore, established. However, in the absence of any evidence that the appellant undressed himself or the prosecutrix, or did any act towards penetration, it cannot be held that he had gone beyond the stage of preparation and had done an act which, if not interrupted, would have resulted in the commission of rape. In the words of the Hon'ble Supreme Court in *Aman Kumar (supra)*, indecent assaults are often magnified into attempts at rape, and materials must exist to show a determination to gratify passion at all events and in spite of all resistance. However, in the present case, no such material has come on record to suggest that the same. Therefore, the conviction of the appellant under Sections 376/511 of the I.P.C. cannot, therefore, be sustained.

32. The question which then arises is whether the appellant can be convicted under Section 354 of the I.P.C. in the absence of a charge under that section. Section 222(2) of the Cr.P.C. provides that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged



with it, and Section 386(b)(ii) of the Cr.P.C. empowers the appellate Court, in an appeal from a conviction, to alter the finding while maintaining or reducing the sentence. The offence under Section 354 of the I.P.C. is a cognate and minor offence *vis-à-vis* an attempt to commit rape, the use of criminal force upon a woman with a sexual intent being the ingredient common to both. In ***Dalbir Singh vs. State of U.P.*** reported as **(2004) 5 SCC 334**, it has been held:-

“17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangaraboina Sreenu [(1997) 5 SCC 348 : 1997 SCC (Cri) 690] was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.”

33. The facts constituting the offence under



Section 354 of the I.P.C. are the very facts which the appellant was called upon to meet at the trial. The prosecutrix and P.W.-1 were cross-examined upon them, and they were put to the appellant in his examination under Section 313 of the Cr.P.C. Therefore, no prejudice can be said to have been occasioned to the appellant, and this is precisely the course adopted by the Hon'ble Supreme Court in the case of *Aman Kumar (supra)* and *Tarkeshwar Sahu (supra)*.

34. So far as the offence under Section 448 of the I.P.C. is concerned, Section 441 of the I.P.C. defines criminal trespass as entry into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, and under Section 442, criminal trespass committed by entering into any building used as a human dwelling is house-trespass, which Section 448 punishes with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. The entry of the appellant into the dwelling house of the prosecutrix at night, after removing the fastened door, with the intention of committing the offence as discussed herein above, squarely attracts Section 448 of the I.P.C., and the conviction



thereunder is accordingly affirmed.

35. Coming to the question of sentence, the offence under Section 354 of the I.P.C., as it stood at the relevant time, was punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both, without any minimum. The appellant was aged about 47 years at the time of trial and is now about sixty years of age. He has no criminal antecedent. He has remained in custody for about two and a half months upon his conviction and has been on bail since 16.08.2013, a period of more than thirteen years, without any adverse report on record regarding misuse of the liberty granted to him. The occurrence is of February, 2010, more than sixteen years ago. Having regard to these circumstances, I am of the view that the ends of justice would be met if the substantive sentence of the appellant, for both the offences, is reduced to the period already undergone by him.

36. At the same time, the victim of the offence cannot be forgotten. Section 357(1)(b) of the Cr.P.C. empowers the Court, when imposing a sentence of fine, to order the whole or any part of the fine recovered to be applied in the payment to any person of compensation for any loss or injury caused by the



offence. In the case of ***Hari Singh vs. Sukhbir Singh & Ors.*** reported as ***(1988) 4 SCC 551***, the Hon'ble Supreme Court has observed as under:-

“10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.”

37. Further in the case of ***Ankush Shivaji Gaikwad vs. State of Maharashtra*** reported as ***(2013) 6 SCC 770***, it has been held that Section 357 of the Cr.P.C. confers a



power coupled with a duty on the Courts to apply their mind to the question of awarding compensation in every criminal case. The prosecutrix is a widow of the labouring class who was subjected to this outrage inside her own home and who has thereafter waited sixteen years for the conclusion of these proceedings. In my considered view, a fine of Rs.25,000/- under Section 354 of the I.P.C., the whole of which shall be paid to the prosecutrix as compensation, would be just, proper and reasonable.

38. For the foregoing reasons and discussions, this appeal is accordingly allowed in part. The conviction of the appellant under Sections 376/511 of the I.P.C. and the sentence awarded thereunder, including the fine of Rs.2,000/-, are set aside. The appellant is instead convicted for the offence punishable under Section 354 of the I.P.C., as it stood prior to its amendment by Act 13 of 2013. The conviction of the appellant under Section 448 of the I.P.C. is affirmed. For both the offences, the substantive sentence of the appellant is reduced to the period already undergone by him. The appellant is further sentenced to pay a fine of Rs.25,000/- for the offence under Section 354 of the I.P.C. and, in default of payment of fine, to undergo simple imprisonment for six months. It is directed that



the entire amount of fine, on its realization, shall be paid to the prosecutrix (P.W.-3) as compensation.

39. The appellant shall deposit the amount of fine before the learned trial Court within eight weeks from today, whereupon the learned trial Court shall cause the same to be disbursed to the prosecutrix after due identification. Any amount of fine already deposited by the appellant in terms of the impugned order of sentence shall be adjusted towards the fine now imposed. Since the appellant is already on bail, his bail bonds shall stand discharged upon deposit of the fine. In the event of failure to deposit the fine within the time aforesaid, the learned trial Court shall take steps in accordance with law for execution of the default sentence.

40. Let the lower Court records be sent back to the learned trial Court forthwith along with a copy of this judgment.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	16.09.2026
Uploading Date	08.10.2026
Transmission Date	08.10.2026

