Raju @ Umakant vs The State Of Madhya Pradesh on 1 May, 2025

Author: Sanjay Karol

Bench: Sanjay Karol

2025 INSC 615 REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(@ SPECIAL LEAVE PETITION (CRL.) NO. 17398/2024)

RAJU @ UMAKANT APPELLANT(s)

VERSUS

THE STATE OF MADHYA PRADESH RESPONDENT(s)

JUDGMENT

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal challenges the judgment and order of the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 2324 of 2006. By the said judgment, the High Court confirmed the conviction and sentence imposed on the appellant by the Special Judge, (SC/ST Prevention of Atrocities) Act, Katni, Madhya Pradesh in Special Sessions Case No. 140 of 2004 and Special Sessions Case No. 136 of 2005. The appellant thus stands convicted for offences punishable under Sections 366, 376(2) 18:09:32 IST Reason:

> (g) and 342 of the Indian Penal Code, 1860 (for short 'IPC') and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short '1989 Act'). For the offence punishable under Section 366 IPC, the appellant has been sentenced to 5 years rigorous imprisonment with a fine of Rs. 2000/-

and, in default of fine, to undergo a sentence of 6 months rigorous imprisonment. For the offences punishable under 376(2)(g) IPC and Section 3(2)(v) of the 1989 Act, the appellant has been sentenced to rigorous imprisonment for life with a fine of Rs. 2000/- and, in default of fine, to undergo rigorous imprisonment for 1 year. For the offence under Section 342 IPC, the appellant has been sentenced to undergo 6 months' rigorous imprisonment with a fine of Rs. 200/- and, in default of fine, to undergo rigorous imprisonment for 2 months. Aggrieved, the appellant is before us.

3. The appellant was Accused No. 1 and one Jalandhar Kol was Accused No. 2. Accused No. 2 was sentenced for the same offences as that of the appellant except that there was no conviction and sentence on Accused No. 2 under the 1989 Act. The other difference was that insofar as Section 376(2)(g) was concerned, Accused No. 2 was sentenced to 10 years rigorous imprisonment with a fine of Rs. 2000/- and, in default of fine, to undergo rigorous imprisonment for 1 year. The Accused No. 2 is not before us.

PROSECUTION CASE: -

4. The prosecution case originated with a missing report No. 11/2004 lodged on 24.06.2004 at 18:30 hrs. at Police Station, Kymore, District Katni, Madhya Pradesh. The complainant – 'S' (PW-2) informed the Police that on the previous night at 10:00 PM, his daughter-the prosecutrix (hereinafter referred to as 'R') went to see the barat at the house of one Fagun Chaudhary along with 'SA' (DW-1). The complainant averred that 'R' did not return home. Description was given and it was also mentioned that 'R' was wearing a green colored Sari and Blouse. Investigation was taken up on the missing report after registration.

5. As per the recovery memo Exhibit P-1, on 28.06.2004 at 11:30 hours, 'R' was recovered from the house of 'LB' (DW-2) mentioned as wife of the appellant (though it has subsequently come on record as part of the evidence of prosecutrix that the appellant Raju and LB were only having a relationship). The recovery memo was witnessed by an independent witness PW-3, 'TP' and other Panch witnesses and was signed by PW-11 Sub-Inspector - J. L. Mishra. The recovery memo stated that: -

> "In the presence of us, aforesaid Panchas R (prosecutrix), Village Jhiriya who was earlier in Raju's house was brought by LB to her house who was recovered by the Kymore Police from LB's house." 'LB' also signed the recovery memo.

6. PW-11 J. L. Mishra on recovery of the prosecutrix 'R', recorded the statement of 'R' as per her narration and registered Case Crime No. 113 of 2004 under Sections 376, 363, 366, 342, 506/34 IPC and Section 3(1-12) of the 1989 Act. Exhibit P-20 is the FIR and was registered on 28.06.2004 at 16:00 hours. In her statement, which resulted in the FIR, 'R' stated that accused Jalandhar abducted 'R' by threatening her and raped her by threatening to kill her and appellant Raju helped Jalandhar in committing the offence and kept Jalandhar in his room in Haristone Kachhgawan. By Exhibit P-2, the prosecutrix 'R' consented to her medical examination by stating that accused Jalandhar committed wrongful act with her. Consent to the same effect was also given by PW-2 'S', the father of 'R'.

7. PW-13 S.K. Pandey has deposed that he was posted as DSP, AJAK, PS Katni, and that case diary pertaining to Case Crime No. 113 of 2004 was received for investigation on 30.06.2004. PW-13 further deposed that prosecutrix along with her father appeared before AJAK Katni and gave Exhibit P-3 on 30.06.2004. In Exhibit P-3, it was mentioned by the father of the prosecutrix that his daughter 'R' went to see the barat of the daughter of Fagun; that while returning from the barat, she has been kidnapped; that the appellant Raju of Village Jhiriya and his servant Jalandhar Kol of

village Barchheka were stalking her; that on not finding 'R', PW-2 kept track by giving information to Kymore Police Station; that PW- 2 came to know that the appellant Raju and Jalandhar have together kidnapped 'R' and kept her confined at various places; that coming to know that police had been informed, Jalandhar fled the place; the prosecutrix 'R' was freed; that the appellant Jalandhar and Raju are goons and prosecutrix 'R' was scared of them; that 'R' was scared when she stated that Raju and Jalandhar forcibly kidnapped 'R' and confined her in the house of the field and committed rape on her; that by threatening her, they confined the prosecutrix in various places under their custody; that because of fear, this could not be stated earlier and hence the application is given today; that Raju and associates are giving threats and hence an investigation was prayed for.

8. During the investigation, on 22.07.2004, 'R' gave Exhibit P-6 to SHO about threats being given by Jalandhar and Raju due to lodging of the report with Police. It is also stated that on 20.07.2004 appellant Raju abused them and even kicked the door of the house. Legal action was prayed for.

9. Raju was arrested on 23.07.2004 and Jalandhar was arrested on 22.05.2005. Charge-sheet has been filed on 31.07.2004 stating that Raju and Jalandhar are accused, and it was stated that a supplementary challan would be filed against Jalandhar separately. Chargesheet was filed for offences punishable under 376(2), 366, 363, 342, 34 and 506 IPC read with Section 3 (1-12), 3 (2) (v) of the 1989 Act. Charges were framed by the Trial Court in Sessions Case No. 140 of 2004 against the accused on 25.05.2005 for offences punishable under Sections 366, 376(2)(g) & 342 IPC and 3(2)(v) of the 1989 Act.

10. At the Trial, the prosecution examined thirteen witnesses and produced several exhibits and the defence examined two witnesses. On appreciation of the evidence, the Trial Court recorded conviction for the appellant and accused Jalandhar and sentenced them. The details have already been set out in Para one above. The High Court confirmed the same. The Accused No.1 is in appeal before us.

11. We have heard Shri Susheel Tomar, learned Counsel for the appellant and Shri Sarthak Raizada, learned Counsel for the State and have perused the records. We have also called for the Trial Court records from the High Court and obtained translation of the Hindi documents. We have carefully examined the Trial Court records also. ANALYSIS AND REASONS: -

12. Learned Counsels have reiterated the respective contentions put forth before the Courts below. We have dealt with the arguments as part of the discussion and hence are not separately setting out the contentions herein.

13. Though at the trial Court and at the High Court stage, a dispute with regard to the age of the prosecutrix was raised, it was found at the trial that the prosecution has failed to prove beyond doubt that the age of the prosecutrix was less than 18 years as on the date of the incident. This finding was confirmed by the High Court. We see no ground to interfere with the said finding.

14. The case revolves around the testimony of the prosecutrix 'R' who was examined as PW-1. She has categorically deposed that, at around 1:00 AM, when she and her friend 'SA' were returning

from the wedding ceremony, they halted to attend calls of nature. Thereafter, when they were proceeding towards their house, the accused persons caught hold of them from behind. According to the prosecutrix, while the appellant Raju caught her, Jalandhar was accompanying him. PW-1 states that at the same time her friend ran away. She further states that while one caught hold of her the other gagged her mouth and were threatening to kill her if she raised a hue and cry. She deposed that the accused had a two-wheeler and they forcefully made her sit on the two-wheeler and took her to the house of the appellant which was in the middle of the fields. She deposed that both the appellants locked her in the room and committed wrongful act with her. She deposed that she was wearing a green colored Sari and further stated that Jalandhar committed wrongful act by inserting his penis into her vagina. Raju also committed wrongful act by putting his penis into her vagina. Thereafter, the accused took her to Dair Salaiya on a Motorcycle. The appellant took her to his house where 'LB', with whom he had a relationship, was there and locked her and after two days her father got her released from there. She further clearly deposed that she had told her parents, brother and sister-in-law about the incident and that appellant Raju stayed with 'LB' and Jalandhar after taking keys from 'LB' took her to another house.

15. PW-1 further deposed that Jalandhar drank alcohol and made her also to drink alcohol. Thereafter, she clearly deposed that Jalandhar committed rape on her. Further, she categorically deposed that appellant Raju also reached the other house in Dair Salaiya and committed wrongful act with her. She stated that Dair Salaiya was a dense colony where she stayed for two days; that she used to have meals at the residence of 'LB', that she had taken bath and washed her clothes and that she did not tell 'LB' about the wrongful act committed by the accused. The prosecutrix denied the suggestion that her father wanted Jalandhar to leave the services under Raju and that Raju didn't remove Jalandhar and, as such, her father filed a false case against Raju. She denied the suggestion that she was in a physical relationship with Jalandhar for four years. She admitted that she was first married in village Pauri. She denied that she went to the house in the field at her free will. PW-1 denied the suggestion that Raju did not commit any forceful act on her.

16. PW-1 stated that during the time she was gagged and lifted, Jalandhar caught hold of her and Raju (appellant) went to take the Motor Bike and both took her in the Motorcycle. She further deposed that the accused lifted up her Petticoat and tore her undergarment. She deposed that appellant-Raju raped first and Jalandhar raped thereafter. She also stated that Raju was drunk, and Jalandhar was not. She stated that there was darkness in the room and that they were unable to see each other and that Jalandhar laid the mat and accused one after the other did wrongful act.

17. We have carefully considered the evidence of PW-1. We are convinced that notwithstanding the minor contradictions, her evidence inspires confidence and that she has clearly spoken about the accused abducting her and also committing rape on her. She has also clearly spoken about the wrongful confinement. Nothing has been elicited in the cross-examination to dilute her testimony. The charges under Section 366, 376(2)(g) and 342 IPC are clearly made out. It is now fairly well settled that the prosecutrix is not an accomplice and that if the evidence of the prosecutrix inspires confidence it can be acted upon without corroboration.

18. Not only does the evidence of 'R' sound natural, it also inspires confidence and we have no manner of doubt whatsoever that on the facts of this case, any need for corroboration can be safely dispensed with. As has been rightly observed, a woman or a girl subjected to sexual assault is not an accomplice but a victim of another person's lust and it will be improper and undesirable to test her evidence with suspicion. All that the law mandates is that the Court should be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of charge levelled by her and if after keeping that aspect in mind if the Court is thereafter satisfied that the evidence is trustworthy, there is nothing that can stop the Court from acting on the sole testimony of the prosecutrix. [See State of Rajasthan v. N.K. the Accused, (2000) 5 SCC 30, Rameshwar v. State of Rajasthan, 1951 SCC 1213, State of Maharashtra Vs. Chandraprakash Kewal Chand Jain, (1990) 1 SCC 550, State of Punjab v. Gurmit Singh, (1996) 2 SCC 384]

19. The variation in the narration in the FIR Exhibit P-20 dated 28.06.2004 and the complaint Exhibit P-3 dated 30.06.2004 and the minor contractions in the evidence do not detract from the clinching testimony of the prosecutrix (PW-1) clearly implicating the appellant and the co-accused. The fact that in the F.I.R. (Exhibit P-20) only rape by accused Jalandhar was clearly mentioned and the role of the appellant was only to help and the further fact that the consent letter given by the prosecutrix and her father only mentioned about rape by Jalandhar also does not enure to the benefit of the appellant. We say so for the following reasons: -

(a) Firstly,- In this case, the aspect of abduction under Section 366 IPC is clearly spoken about and on that there is no contradiction.

(b) Secondly, - PW-2, the father of the prosecutrix, lodged the missing report promptly on the morning of 24.06.2004 and on 28.06.2004 the prosecutrix was recovered from the house of 'LB' after she was brought from the house of Raju-appellant. This is spoken to by PW-1, PW-2, PW-3 'TP' and PW-11, J.L. Mishra.

(c) Thirdly, - Even if PW3 'TP' was treated as hostile, on the aspect of recovery, his evidence is clearly believable as he states that Police recovered the girl in his presence from 'LB's house and that the recovery memo Exhibit P-1 was signed by him and that recovery memo was prepared in his presence. It is well-settled that the evidence of the prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross- examined him. It has been held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof. It has been held that where the evidence of such a witness is consistent with the case of the prosecution, it can be relied upon. [See Selvamani vs. State Rep. by the Inspector of Police, 2024 SCC OnLine SC 837 and Neeraj Dutta vs. State (Government of NCT of Delhi) (2023) 4 SCC 731 (para 87). Hence, there is clear evidence on the aspect of recovery from the confinement made by the accused of the prosecutrix.

(d) Fourthly, in her evidence, the prosecutrix clearly, clinchingly and unwaveringly deposed about the commission of rape by both the appellant and the co-accused Jalandhar.

(e) Fifthly, it is important to note that the charge against the appellant is under Section 376 (2)(g), which reads as under:-

> "376. Punishment for rape.-
>
> (2) Whoever,-
>
> (g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:
>
> Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.
>
> Explanation 1.-Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub- section."

20. It is important to note that in Explanation 1 to 376(2)(g) in the Criminal Law (Amendment) Bill, 1980 (which eventually became Criminal Law (Amendment) Act, 1983), it was proposed that gang rape be defined as rape committed by three or more persons acting in furtherance of their common intention. The Joint Committee of Parliament recommended that in cases of gangrape "even if one commits rape all the other persons involved should be held responsible and be equally punished" and recommended that gangrape should be defined as "rape committed by one or more in a group of persons". [See the Report of the Joint Committee presented on 02.11.1982 on the Criminal Law (Amendment) Bill, 1980.] This recommendation was accepted and the Criminal Law (Amendment) Act, 1983 was enacted with the explanation in the present form as extracted hereinabove.

21. This aspect has also come up for judicial consideration before this Court in Pramod Mahto and Others vs. State of Bihar, (1989) Supp (2) SCC 672 wherein this Court held that the Explanation has been introduced with a view to effectively dealt with the growing menace of gang rape and in such circumstances, it was not necessary that the prosecution should adduce clinching proof of complete act of rape by each one of the accused on the victim or on each one of the victims where there are more than one.

22. Further, in Ashok Kumar vs. State of Haryana, (2003) 2 SCC 143, it was held as under:-

> "8. Charge against the appellant is under Section 376(2)(g) IPC. In order to establish an offence under Section 376(2)(g) IPC, read with Explanation I thereto, the

prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds. It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence." (Emphasis supplied)

23. In view of this, it is very clear that in a case of gang rape under Section 376(2)(g), an act by one is enough to render all in the gang for punishment as long as they have acted in furtherance of the common intention. Further, common intention is implicit in the charge of Section 376(2)(g) itself and all that is needed is evidence to show the existence of common intention.

24. In this case, as is clear from the sequence of events, the abduction of the victim, her wrongful confinement, her testimony about being subjected to sexual assault clearly points to the fact that the ingredients of Section 376(2)(g) are squarely attracted and the appellant herein along with Jalandhar Kol acted in concert and with a common intention to sexually assault the prosecutrix 'R'. Even though the prosecutrix had clearly deposed in the evidence that the appellant also subjected her to sexual assault, we have delved into this aspect only because of the argument of the learned counsel for the appellant that in the FIR and in the consent form, the role of the appellant as a participant in the sexual assault of rape is not specifically mentioned.

(f) Lastly, - The argument that the prosecutrix was in a relationship with the co-accused Jalandhar Kol and the implication that there was consent has only to be stated to be rejected. Section 114A of the Evidence Act, as it stood in 2004, reads as under:-

"114A. Presumption as to absence of consent in certain prosecutions for rape.- In a prosecution for rape under clause

(a) or clause (b) or clause (c) or clause (d) or clause (e) or clause

(g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

> 25. This section came up for consideration before this Court in State of Rajasthan vs. Roshan Khan and Others, (2014) 2 SCC 476 and Mohd. Iqbal and Another vs. State of Jharkhand, (2013) 14 SCC 481. This Court held that in view of Section 114A of the Evidence Act, there is a presumption as to absence of consent in case of gang rape and it will be presumed that the prosecutrix did not give consent as long as the prosecutrix states in evidence before the Court that she did not consent. It has further been held that the presumption is based on the reasoning that nobody can be consenting to several persons simultaneously. In this case, apart from feebly suggesting that the prosecutrix has been having physical relations with the co-accused Jalandhar Kol for the last four years and that she went to the house of Jalandhar Kol out of her free will, there is nothing concrete adduced to rebut the presumption. A reading of the evidence of the prosecutrix makes it amply clear that she was subjected to forcible sexual intercourse against her consent. She has also specifically denied the suggestion that she went with Jalandhar on her free will.
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> 26. We are not inclined to believe 'SA' (DW-1) who has deposed in favour of the defence that the prosecutrix 'R' had told her that while returning from the wedding, she had to go somewhere and then she had gone with Jalandhar Kol and further that Raju was not present.

In her cross-examination itself, she clarified that she did not know what Jalandhar did with the prosecutrix after taking her away nor did she know where they went. DW-1 admitted that her father works for the appellant. She further deposed that she never told anyone where the prosecutrix went or with whom. It should also be pointed out that PW-2, father of the prosecutrix who lodged the missing report had mentioned in the report that DW-1 told him that she did not know where the prosecutrix went. Further, PW-1 'R' herself had deposed that when she was being abducted DW-1 had run away. For all these reasons, we are not prepared to attach any importance to the evidence of DW-1.

27. Equally, the evidence of 'LB' (DW-2) who claims that the prosecutrix rented the house at Rs.200/- per month and paid Rs.200/- as advance is also not sounding true or natural. Her evidence is also contrary to the contents of the recovery memo Exh. P-1 inasmuch as DW-2 denies that she brought the girl from the house of Raju at the time of her recovery. There is also evidence to show that she is acquainted with the appellant and we are inclined to believe that the defence witnesses have been put up only to present a false narrative. The witness also had not produced any receipt given for the amount of Rs.200/- or any rental arrangement or agreement.

28. Nothing much turns on the evidence of the Doctor, (PW-10) who performed the medical examination on the prosecutrix. Her evidence that no definite opinion could be given, and that no other injury other than the one on the lip of 'R' was present, does not mean that sexual assault was not committed on the prosecutrix 'R'. It is also well-settled that where the ocular evidence is clear, it will prevail over the medical evidence. [See Central Bureau of Investigation and Another vs. Mohd. Parvez Abdul Kayuum and Others, (2019) 12 SCC 1 (para 65)]

29. However, we need to comment on one aspect of the matter. The prosecutrix had been subjected to the two-finger test, though the medical examination is of 29.06.2004 and long before the judgments of this Court in Lillu alias Rajesh and Another vs. State of Haryana, (2013) 14 SCC 643 and State of Jharkhand vs. Shailendra Kumar Rai alias Pandav Rai, (2022) 14 SCC 299. We are only re-emphasizing this aspect so that this obnoxious, inhuman and degrading practice is not repeated on victims of sexual assault.

30. In Shailendra Kumar (supra), this Court, after relying on Lillu (supra), held as under:-

> 65. Whether a woman is "habituated to sexual intercourse" or "habitual to sexual intercourse" is irrelevant for the purposes of determining whether the ingredients of Section 375IPC are present in a particular case. The so-called test is based on the incorrect assumption that a sexually active woman cannot be raped. Nothing could be further from the truth — a woman's sexual history is wholly immaterial while adjudicating whether the accused raped her. Further, the probative value of a woman's testimony does not depend upon her sexual history. It is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active.
>
> 66. The legislature explicitly recognised this fact when it enacted the Criminal Law (Amendment) Act, 2013 which inter alia amended the Evidence Act to insert Section 53-A. In terms of Section 53-A of the Evidence Act, evidence of a victim's character or of her previous sexual experience with any person shall not be relevant to the issue of consent or the quality of consent, in prosecutions of sexual offences.

31. This Court further exhorted the Union and State Governments to do the following:

> "69.1. Ensure that the guidelines formulated by the Ministry of Health and Family Welfare are circulated to all government and private hospitals.
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> 69.2. Conduct workshops for health providers to communicate the appropriate procedure to be adopted while examining survivors of sexual assault and rape.
>
> 69.3. Review the curriculum in medical schools with a view to ensuring that the "two-finger test" or per vaginum examination is not prescribed as one of the procedures to be adopted while examining survivors of sexual assault and rape." It was further directed in para 71 that any person who conducts the "two-finger test" or per vaginum examination (while examining a person alleged to have been subjected to a sexual assault) in contravention of the directions of this Court shall be guilty of misconduct.

32. Even though the two-finger test in this case was carried out on 29.06.2004, long before the awareness about its inhumane nature was created, we are only reiterating this aspect so that in future these practices do not recur.

CHARGES UNDER SC/ST ACT – 1989 ACT – NOT MADE OUT.

33. Before we conclude, there is one aspect which the courts below have completely overlooked and which should enure to the benefit of the appellant. The appellant has been convicted under Section 3(2)

(v) of the1989 Act. Section 3(2)(v) of the 1989 Act, at the relevant time, reads as under:-

> "3. (2) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe— ***
>
> (v) commits any offence under the Indian Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;"

34. A careful perusal of the section reveals that when any person not being a member of the Scheduled Caste or Scheduled Tribe commits any offence under IPC, punishable with imprisonment with ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

35. As far as the ingredients of Section 3(2)(v) are concerned, the words "on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe" has come up for consideration before this Court on a few occasions. In Dinesh alias Buddha vs. State of Rajasthan, (2006) 3 SC 771, this Court held as follows:-

> "15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes or the Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not the case of the prosecution that the rape was committed on the victim since she was a member of a Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine."

36. The holding was that the sine qua non for application of Section 3(2)(v) was that the offence must have been committed against a person on the ground that such person is a member of the Scheduled Caste/Scheduled Tribe.

37. To the same effect was the holding in Asharfi vs. State of Uttar Pradesh, (2018) 1 SCC 742 wherein in para 8 and 9, it was held as under:-

> "8. In the present case, unamended Section 3(2)(v) of the SC/ST Prevention of Atrocities Act is applicable as the occurrence was on the night of 8-12-1995/9-12-1995. From the unamended provisions of Section 3(2)(v) of the SC/ST Prevention of Atrocities Act, it is clear that the statute laid stress on the intention of the accused in committing such offence in order to belittle the person as he/she belongs to Scheduled Caste or Scheduled Tribe community.
>
> 9. The evidence and materials on record do not show that the appellant had committed rape on the victim on the ground that she belonged to Scheduled Caste. Section 3(2)(v) of the SC/ST Prevention of Atrocities Act can be pressed into service only if it is proved that the rape has been committed on the ground that PW 3 Phoola Devi belonged to Scheduled Caste community. In the absence of evidence proving intention of the appellant in committing the offence upon ..... only because she belongs to Scheduled Caste community, the conviction of the appellant under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act cannot be sustained."

38. Similar was the holding in Khuman Singh vs. State of Madhya Pradesh, (2020) 18 SCC 763.

39. However, we find that the section was subjected to a closer analysis in Patan Jamal Vali vs. State of Andhra Pradesh, (2021) 16 SCC 225. Speaking for the Court, Justice D.Y. Chandrachud (as the learned Chief Justice then was), after adverting to the three earlier judgments, rightly held that the statute did not utilize the phrase "only on the ground". It was held in Patan Jamal Vali (supra) that reading the expression "only" would be to add a restriction which was not found in the statute. It was held that undoubtedly the statute used the word "on the ground" but the juxtaposition of "the" before "ground" does not invariably mean that the offence ought to have been committed only on that ground. The Court held that to read the provision in that manner would dilute a statutory provision meant to safeguard the Scheduled Castes and Scheduled Tribes against acts of violence which pose a threat to their dignity. It was further held that, as the Section stood in its unamended form, knowledge by itself that the victim belonged to Scheduled Caste or Scheduled Tribe cannot be said to be the basis of the commission of the offence. We respectfully concur with the holding in Patan Jamal Vali (supra).

40. The Court went on to hold in Patan Jamal Vali (supra) as under:

> "59. ... ... As we have emphasised before in the judgment, an intersectional lens enables us to view oppression as a sum of disadvantage resulting from multiple marginalised identities. To deny the protection of Section 3(2)(v) on the premise that the crime was not committed against an SC & ST person solely on the ground of their caste identity is to deny how social inequalities function in a cumulative fashion. It is to render the experiences of the most marginalised invisible. It is to grant impunity to perpetrators who on account of their privileged social status feel entitled to commit atrocities against socially and economically vulnerable communities. This is not to say that there is no requirement to establish a causal link between the harm suffered and the ground, but it is to recognise that how a person was treated or impacted was

a result of interaction of multiple grounds or identities. A true reading of Section 3(2)(v) would entail that conviction under this provision can be sustained as long as caste identity is one of the grounds for the occurrence of the offence. In the view which we ultimately take, a reference of these decisions to a larger Bench in this case is unnecessary. We keep that open and the debate alive for a later date and case." (Emphasis supplied)

41. Earlier, in the same judgment, dealing with the situation where oppression operated at an intersectional fashion, this Court held in "54. The key words are "on the ground that such person is a member of an SC or ST". The expression "on the ground" means "for the reason" or "on the basis of". The above provision (as it stood at the material time prior to its amendment, which will be noticed later) is an example of a statute recognising only a single axis model of oppression. As we have discussed above, such single axis models require a person to prove a discrete experience of oppression suffered on account of a given social characteristic. However, when oppression operates in an intersectional fashion, it becomes difficult to identify, in a disjunctive fashion, which ground was the basis of oppression because often multiple grounds operate in tandem. Larrisa Behrendt, an aboriginal legal scholar from Australia, has poignantly stated the difficulty experienced by women facing sexual assault, who are marginalised on different counts, to identify the source of their oppression:

"When an Aboriginal woman is the victim of a sexual assault, how, as a black woman, does she know whether it is because she is hated as a woman and is perceived as inferior or if she is hated because she is Aboriginal, considered inferior and promiscuous by nature?" [Larissa Behrendt, "Aboriginal Women and the White Lies of the Feminist Movement : Implications for Aboriginal Women in Rights Discourse", 1 Australian Feminist Law Journal 1 (1993), p.

35.]" (Emphasis supplied)

42. Section 3(2)(v) has since been amended (amended on 26.01.2016) and in the amended form it reads as under:-

"3. (2) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe— ***

(v) commits any offence under the Indian Penal Code (45 of 1860_ punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;"

43. The Court notices in Patan Jamal Vali (supra) that the amendment has decreased the threshold of proving that the crime was committed on the basis of the caste identify to a threshold where mere knowledge is sufficient to threshold a conviction. The Court also noticed that presumption in Section 8 which provided that if the

> accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.
>
> 44. Reverting to the facts of this case, we find that there was no evidence to bring the case within the threshold of Patan Jamal Vali (supra). There is no evidence whatsoever to establish the fact that the victims caste identity was one of the grounds for the occurrence of the offence. In the absence of any evidence attracting the offence of Section 3(2)(v), we are constrained to record an acquittal for the appellant from the charge of Section 3(2)(v) of the 1989 Act.

CONCLUSION:

> 45. For the reasons stated above, while maintaining the conviction of the appellant under Sections 366, 342 and 376(2)(g) of the IPC, we set aside the conviction of the appellant under Section 3(2)(v) of the 1989 Act. Coming to the sentence, we are not inclined to disturb the sentence of five years imposed on the appellant for the offence punishable under Section 366 IPC as well as the fine and default sentence imposed on him by the trial Court and affirmed by the High Court. We are also not inclined to disturb the sentence imposed under Section 342 IPC by the trial Court and confirmed by the High Court. However, to bring the sentence on par with that imposed on Jalandhar Kol (A-2) for the offence under Section 376 (2)(g), we modify the sentence of life imprisonment imposed on the appellant to that of rigorous imprisonment for 10 years and fine of Rs.2,000/-

with default sentence of rigorous imprisonment of one year in case of non-payment of fine. All sentences to run concurrently. The accused, who is in custody shall serve out the remaining sentence, as directed.

46. The appeal is partly allowed in the above terms.

.....J. [SANJAY KAROL] .....J. [K. V. VISWANATHAN] New Delhi;

1st May, 2025.