



2026:AHC:22669

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 493 of 1988

Mangey And Another

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Shashi Kant Agarwal
Counsel for Respondent(s)	:	A.G.A.

Court No. - 39
(SN.396)

AFR

HON'BLE ANISH KUMAR GUPTA, J.

Order on Criminal Misc. Recall Application No.2 of 2026

1. Learned counsel for the appellants submits that the non-bailable warrants have already been executed and both the appellants have already been arrested on 17.01.2026 and have been sent to the jail.
2. In view thereof, the instant recall application having become infructuous is disposed of specifically in the view of the fact that the criminal appeal is being heard on merits.

Order on Criminal Appeal

1. Heard Sri Atul Kumar, learned counsel for the appellants and Sri S.K. Ojha, learned A.G.A. for the State.
2. The instant criminal appeal has been filed by the appellants against the judgment and order dated 01.03.1988 passed by the then Additional District and Sessions Judge, Meerut in Sessions Trial No. 563 of 1986 (State vs. Mangey and others), whereby both the appellants herein were convicted for the offense under Section 376 I.P.C. and were directed to undergo seven years rigorous imprisonment.
3. The facts in brief are that on 14.08.1985 at around 6:00 AM in the morning, the informant PW3 herein has submitted a written report, which

was scribed by PW2. On the basis of the said written report, the instant F.I.R. was lodged. The case of the prosecution is that on 13.08.1985 at 6:00 P.M., the wife of the complainant, the prosecutrix was going towards the fields in search of her husband from her house. When she reached about three to four fields away from the village, then both the accused persons came out from the maize field and obstructed the way of the prosecutrix and forcibly taken her into the maize field where they have broken the waist cord of the prosecutrix and thereupon both the accused persons have raped her turn by turn. Hearing her cries, Qasim and Ajba who were also coming from the village reached at the spot and saw that the prosecutrix was lying on the ground and both the accused persons had run away in the jungle. However, they could not be caught on the spot. Thereupon, the prosecutrix returned back to her house and when her husband came back from the fields, she narrated the entire story to her husband. Thereupon, next day morning, the complainant got scribed the written report and submitted the same at the police station on 14.08.1985 at 6:05 AM at Police Station- Ramala. On the basis of such written report, the F.I.R. was registered, the case was investigated and charge-sheet was filed against the appellants herein. On submission of the charge-sheet, the case was committed to the sessions court for trial.

4. In support of its case, the prosecution has examined the prosecutrix as PW1, Jagbir Singh, scribe of the report as PW2, and Israel, the husband of the prosecutrix as PW3. Constable Ram Kishan as PW4 who has registered the F.I.R. and made the relevant GD entries. The Investigation Officer could not be examined as prior to the examination he has died. Thus, the Constable Ram Kishan has proved the F.I.R., GD entries, site-plan, charge-sheet, etc.

5. In 313 Cr.P.C. statements, both the accused persons have denied the charges and claimed trial.

6. After registration of the F.I.R., the medical examination of the prosecutrix was conducted on 14.08.1985 itself. On the internal examination of the prosecutrix, the Medical Officer has observed as under:

"No injury on private part. Hymen torn. Old healed hymen tear the vagina admits two fingers. Uterus normal in shape and size firm mobile in clear os closed. No bleeding or discharge P/V, vaginal semen taken and sent for H.P. Enew."

7. For determination of the age of the prosecutrix, the X-ray was advised. As per the opinion of the Medical Officer, since the prosecutrix used to do sexual intercourse, therefore no definite opinion can be given with regard to rape. X-ray of the prosecutrix was also conducted on 17.08.1985 and according to the X-ray report, epiphysis around the elbow joint, wrist joint, and knee joint are fused. The aforesaid medical report was admitted by the defense, therefore the Medical Officer was not examined to prove the same during the trial.

8. In 313 Cr.P.C. statement, the accused Jan Mohammad has submitted that the prosecutrix had cut the grass from the field of Mangey and when Mangey has objected to her then she has also abused him. In fact, warned them that she will lodge a false report in collusion with the village Pradhan Sakoor.

9. The accused Mangey has also stated that in the morning at 8:00 AM when he reached on his field, he has found the prosecutrix there. She has cut the grass from their field, which was objected by him, and the co-accused Jan Mohammad has also reached there. On objections raised by the accused, the prosecutrix has abused them and thereafter had threatened for lodging the false case against the accused persons.

10. After concluding the trial, the trial court having found that the offense of rape has been committed by the accused persons, the appellants herein, the trial court has convicted them for offence under Section 376 I.P.C. and sentenced them to undergo seven years rigorous imprisonment against which the instant criminal appeal has been filed by the appellants.

11. Submission of learned counsel for the appellants is that there is delay of about 12 hours in lodging the F.I.R. and from the close scrutiny of the statement of the prosecutrix as well as the husband of the prosecutrix, PW3, it is apparent that the F.I.R. is nothing but an afterthought. Thus, the F.I.R. which has been lodged as an afterthought is

fatal to the prosecution case and the appellants have been falsely implicated by the prosecutrix in the instant case due to rivalry.

12. Learned counsel for the appellants further submits that the medical report do not support the prosecution case with regard to the commission of offense of rape against the prosecutrix. Prosecution has failed to examine the key eyewitnesses named in the F.I.R. Thus, the instant case was lodged due to enmity by the PW3 making the false allegations of rape of the prosecutrix. Therefore, learned counsel for the appellants seeks acquittal in the instant case.

13. *Per contra*, Sri S.K. Ojha, learned AGA for the State, assisted by Sri Satendra Nath Tiwari, learned AGA, submits that the delay in lodging the F.I.R. in the cases of rape, that too long back in the year 1985, was not fatal to the prosecution case because lodging of the F.I.R. for rape cases at that relevant time was a very courageous movement for the entire family as the reputation of not only the prosecutrix but the entire family was at stake. Therefore, as per the prosecution story, though rape was committed around 6:00 PM in the evening on 13.08.1985, the prosecutrix has come back to the house thereafter. On coming of her husband she has narrated the entire story. Thereafter, the responsible persons in the family have discussed the issue whether to lodge the F.I.R. or not of such a heinous crime, which was committed against the prosecutrix as it involved the reputation of the entire family including the reputation of the prosecutrix.

14. Learned AGA further submits that the Hon'ble Supreme Court in such circumstances has held that the delay in lodging the F.I.R. in such cases is not fatal to the prosecution case. In support of his submission he has relied upon the judgment of the Apex Court in ***Harpal vs. State, 1981 : Criminal Law Journal page 1*** and ***State of Rajasthan vs. Dhanya, 1984 Criminal Law Journal 956***.

15. Learned AGA further submits that since the prosecutrix was a married lady and was habitual to sexual intercourse, which was a natural situation, in such circumstances, the medical opinion which has not given any definite opinion of the offense of rape against the prosecutrix is of no consequence, as her oral testimony is clear and uncontroverted even in the

cross-examination. She has given the minute details how the offense was committed to her. The entire discussion is at page no. '11' of the impugned judgement. The deposition of the PW1 has been fully corroborated by the PW3, her husband. There is no iota of doubt with regard to the deposition of PW1 is concerned.

16. It is also submitted by learned AGA that the reasons for non-examination of the eyewitnesses, namely Ajba and Kasim, has been duly explained by the prosecution by moving the application for their discharge, as they have already submitted their affidavits denying the prosecution story, having been won over by the defense and the aforesaid application was also endorsed by the defense during the trial.

17. It is further submitted by learned AGA that the trial court has taken into consideration the entire facts and circumstances of the case as detailed by the PW1, which are corroborated by PW3 and thereafter, having been satisfied that charges of rape against the appellants are proved, they have been convicted. Therefore, learned AGA submits that no interference is called for in the impugned judgment and order passed by the trial court, convicting the appellants for the offense under Section 376 I.P.C. and sentencing them to seven years rigorous imprisonment, which is a minimum punishment at the relevant time for the said offense.

18. Having heard the rival submissions made by the learned counsel for the parties, this Court has carefully gone through the record of the case. Before proceeding further, it is relevant to take note of the statement of PW1, the prosecutrix. In her examination-in-chief, the prosecutrix PW1 states that she was the resident of Kalyanpur. She was married about eight years back. Since after the marriage, she is residing with her husband at village- Thal. She states her husband was doing the labor work on the agriculture field and he has also taken the field of Fatey Lohar and has also sown the maize on the said field. The name of her brother-in-law is Fayyaz. Her husband and brother-in-law both are residing at the same place. Her husband is weak, therefore she also used to help in the agriculture work. She further states that she knew the appellant no.1, Mangey. He is also resident of the same village. She is also acquainted with Jan Mohammad, who is also resident of the same village. She further

states about one and half years ago her husband and brother-in-law had gone to the jungle and they were late in coming back. Therefore, in the evening she has gone in search of them. When she reached about 12 Kiyaris away, Jan Mohammad came there and obstructed her way. Mangey was also accompanying him. Thereafter, both the accused persons have forcibly pulled her towards the maize field. In the process one of her slippers left on the boundary of the field and one was on her foot. Thereafter, Jan Mohammad has removed her Salwar. Thereafter, both of them have insulted her.

19. She further states that they have kept her legs on their shoulders and thereafter have done the offense. The Court had observed that the prosecutrix was repeatedly asked what was the work done by them. Then, she stated that both of them have insulted her. At that time she was wearing the Salwar and Kameez and her Salwar was damaged due to the act done by the accused persons. Then, subsequently she stated that they have committed the bad act to her. She has shouted and on her shouting Kasim and Azabdeen have reached there. Having seen them the accused persons have fled away from the spot. Thereafter, both of them have brought her out from the field and then to village. After she reached the house her husband also came there and she has narrated the entire story to her husband. Next day morning she has accompanied her husband to the police station for lodging the report. Report was lodged by her husband. Thereafter, her medical examination was conducted at hospital at Meerut. The Salwar which was damaged due to the act done by the appellants was handed over to the police. When the sealed Salwar was shown to the prosecutrix, she has identified the same and said that she was wearing that Salwar during the incident. She further states that when her husband has come back at the house it was late night, when she has returned to house after the incident committed by the accused persons, thereafter, her husband has come back to the house.

20. At the time when the accused persons have committed the bad act after removing the salwar at that time it was still some time left for sunset. In the cross-examination she has stated that her husband has three brothers, Israel, Fayyaz, and Meharban. Her husband is of the middle one. One brother is elder to him and the another brother is younger to him. The

elder brother of the husband has already married however younger brother is unmarried. She has not gone to her maternal house since last eight years and she is residing in her in-laws' place only. Father's name of Jan Mohammad is Yasin. There was no enmity or altercation with her husband and Yasin. Brother of Jan Mohammad is Gulfam. Gulfam has never beaten her husband. The house of the accused Jan Mohammad is adjoining to her house and there is a passage in between. In this passage there is a drainage. Yasin has objected them to flow the water in the said drain. Since then, they have not flown the water on the said drainage. Some water during bath flow in the drainage and for that reason sometime there is some altercation between them. The field of Fatey Lohar is towards the ridge where her husband has shown the maize. Towards the hill side there is residences of the Scheduled Caste and about two kiyaris away from the said residence, the field of Fatey Lohar is there. On the query made by the court she has explained the field of Fatey Lohar is about 40 kiyaris away from the residential area. When her husband has gone in the morning then it was sun-rising. He has taken the food. Her husband used to go to the fields everyday and used to come back in the noon and thereafter he used not to go. On the day when the accused persons have committed insult upon her and on that day her husband has not returned in the noon and her husband has taken food in the morning while going to the field. The field on which the accused persons have committed the bad act upon her, from there Fatey Lohar's field is about 30 kiyaris away.

21. She further states that Jan Mohammad has came out from the same field where he has committed bad act to her. When the Jan Mohammad came out and obstructed she has not shouted because he has caught hold of her hand and also her mouth. Mangey was also there when Jan Mohammad has caught hold of her. Jan Mohammad and Mangey met her on the east side of the field. When the accused persons were caught hold of her, she was on the midway, on the other side of the passage there is a field of Shakoora Pradhan. In all the fields there was maize grown. The accused persons have ran away from the spot when she came out of the field and shouted for help. When she has reached the house while crying, her husband has reached the house. On the day when she has disclosed the

incident to her husband, they didn't go to the police station, however they have gone next day. In the night, they stayed in the house and consulted each other, as they have assaulted upon their daughter-in-law (बहू), therefore they should be named in the F.I.R. Therefore, all the family members, Fayyaz, Meharban and her husband has consulted each other, and Qasim and Ajba were also called for consultation. When they were going to the police station, sun had not risen. Police persons have interrogated her, at the police station as well in the village on third day, the salwar was handed over to the police on the day when she has gone to the police station.

22. PW2 is the scribe of the written report and stated that when Israel came there for getting the report scribed, it was around 7:00-7:30 or 8:00 in the morning. He has not given any statement to police officer, nor he has interrogated him. PW3 is the husband of the prosecutrix. In initial statement recorded on 13.04.1987, including the examination-in-chief and the cross-examination, he has supported the prosecution case as was narrated by the prosecutrix. He has also supported that he has lodged the F.I.R. having got scribed from PW2. All the suggestions that the F.I.R. was lodged, in consultation, at the behest of the village Pradhan Shakoora, such suggestion was categorically denied by this witness on 13.04.1987. However in subsequent cross-examination conducted on 17.04.1987, this witness has admitted that the report was lodged in consultation with said Shakoora.

23. PW-3 has explained that when in the night his wife has narrated the incident to him, due to the delay in the night, he could not go to the police station. Next day morning he reached the police station and lodged F.I.R. In the cross-examination, this witness has stated that on 25.03.1987 also, he came to the court for his deposition. Thereafter, Ayub Ali, Shami, Yasin, and Israel, who are his cousin brothers, have surrounded him and had asked him to settle the dispute and due to which he could not depose on that day and they had asked him to settle the dispute. Therefore, upon their instructions he has to submit an affidavit. The advocate who has recorded his statement on oath has read over the same, and thereafter he has put his thumb impression on the said affidavit.

24. In the cross-examination, this witness has further stated that on the date of incident, he had gone in the morning at 8 AM to the field along with his brother. After taking the food, he has not carried the food along. In those days, he used to take food in the morning and do not use to take lunch in the noon and after returning from the field in the evening, he used to take the food. On that date also, he has returned as usual in the evening. When he reached home, at first his wife has narrated the story, and next day morning he has lodged report at police station. After lodging the report he has returned. When further cross-examination was conducted on 17.04.1987, this witness has stated that after lodging the report, he went to his village and his wife had gone for medical examination at Meerut and thereafter, the Investigation Officer has met him after about two days. He was called at the house of the village Pradhan and other witnesses were also called there and thereafter he submits that his statement was not recorded by the Investigation Officer. However, he states that he has got written all the incident as was narrated by his wife in the report.

25. In further cross-examination he admits that there was a dispute with regard to cutting of the grass between his wife with the accused and he came to know about the same later on after registration of the F.I.R. He further submits he has not witnessed that altercation. He further states that his wife has stated that in the morning at 8:00 AM there was altercation with regard to cutting of the grass and the said incident came to his knowledge on the same date. The field in which the incident has taken place belongs to Mohammad Umar, Shami Sher, and father of Mangey Barkhu. He further stated that he has later on discovered that the report is false and due to some dispute with regard to cutting of grass, the report was lodged. Village pradhan and various other persons of the village had instigated him. The accused used to quarrel with your wife daily, therefore, you should lodge the F.I.R. that the accused persons have committed the rape upon her. On the query made by the court, he has stated that he know what is true and what is false and whatever statement he has given on the previous date, was given relying upon the narration of the story by his wife, and relying upon the same, the report was lodged. On 13.04.1987, the statement which was made by him that he has not

lodged the false case on instructions of the village Pradhan is a true statement.

26. From the perusal of the entire evidence available on record it is apparent that the incident of rape as narrated by the prosecutrix has taken place on 13.08.1985 in the evening around 6 o'clock. The prosecutrix has disclosed the incident with minute detail. How the incident has taken place, how both the accused persons have committed rape upon her by pulling out her salwar. While considering the delay in lodging the F.I.R. it would be relevant to take note that the F.I.R. was lodged next day morning at 6.05 AM. Obviously, after the incident it would have taken some time to the prosecutrix to reach her house and thereafter when her husband came there, she has narrated the incident. Thereafter, as has been stated by the prosecutrix herself that there was discussion between the husband and her brothers, whether to report the case against the accused persons or not as the same involves the reputation of the prosecutrix as well as the entire family. Thereafter, they have decided, they have shown their courage and decided to lodge the F.I.R. on the next day morning without any further delay.

27. Therefore, in the considered opinion of this Court, the delay of about 12 hours which is in the given circumstances a very natural one, as in the late night there were discussions whether to go ahead with lodging the report or not and subsequently once they have decided to lodge the report, immediately in the early morning they have lodged the report after getting the same scribed from PW-2. Therefore, the delay in lodging the F.I.R. in the instant case would not be of any consequence of which benefit can be granted to the accused persons. So far as the medical report do not confirm the rape having been committed upon the prosecutrix is concerned, it is apparent from the said medical examination report and the statement of witnesses available on record that the prosecutrix was a married lady and was habitual to the sexual intercourse. In such circumstances, any definite opinion with regard to rape cannot be given and accordingly, from the medical report no inference can be drawn either side and merely because no definite opinion has been given by the medical officer examining the prosecutrix, it cannot be concluded that no rape had been committed upon her. In such circumstances, close scrutiny

of the prosecutrix deposition is required which has already been done here in above. The prosecutrix has given the great detail of the incident of the rape committed by the accused appellants, both the accused persons in a pair together, Jan Mohammad has obstructed her way and thereafter both of them have pulled her towards the maize field where they have removed the salwar and put the legs of the victim on their shoulders and thereafter committed rape upon her. From the investigation stage itself, there was attempt by the defence side to win over the witnesses, which is apparent from the record itself. Though the charge-sheet was filed in the instant case, however, during the trial it is apparent from the deposition of PW-3 that a successful attempt was made by the defence side by forcing the PW-3 as well as his brothers and other witnesses too, file an affidavit in the instant case denying the story of the prosecution.

28. In his deposition, PW-3 has categorically admitted that the aforesaid affidavits were filed by the said witnesses under the pressure created by the defense side to settle the dispute on 25.03.1987. Subsequently, on 13.04.1987 the PW-3 has categorically supported the prosecution case. However, again it appears that there is an attempt by the defence side to win over this witness and in further cross-examination the PW-3 has deposed that he later on learned that the prosecution story as narrated by his wife was false and there was some dispute with regard to cutting of grass between the prosecutrix as well as the accused persons. Thus, it is nothing but pressure created by the defense which has forced the PW-3 who had tried to dilute the prosecution case. However, so far as the deposition of the PW-1 is concerned, that is uncontroverted and fully reliable and the first part of the statement of PW-3 also supports and corroborates the statement of PW-1. However, later on as has been apparent from the record that under the pressure created by the defence side he had tried to dilute the story of the prosecution, though unsuccessfully as in the course a query made by the court he has categorically admitted that the statement which he has recorded on 13.04.1987 is a true statement. In the cases of rape, ordinarily there is no direct evidence except that of the prosecutrix. In catena of judgments, the Apex Court has held that the conviction in the cases of rape can be upheld if the deposition of the prosecutrix is uncontroverted and inspires the

confidence of the court.

29. In the instant case, there is nothing on record which can create any shadow of doubt on the statement made by the prosecutrix, which has given each and every minute detail with regard to the incident as has been committed by the accused persons, which inspires the confidence of the court. In such circumstances, this Court does not find any illegality in the conviction and sentence awarded to the appellants herein. Accordingly, the instant appeal fails and is ***dismissed***.

30. Appellants have already been apprehended in terms of the last order passed by this Court issuing non-bailable warrants against the appellants and are stated to be confined in jail from 17th January 2026. Let them undergo the remaining part of the sentence in accordance with law.

31. The original Trial Court record along with the copy of the instant judgment be sent back to the trial court to be consigned.

(Anish Kumar Gupta,J.)

February 2, 2026
Shubham Arya