

Bhanwaria and ors., Etc. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-04-1994

Reported in : 1994CriLJ3742

Judge : J.R. Chopra and; R.R. Yadav, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 376, 376(2), 379, 392 and 411; Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Criminal Appeal Nos. 10, 36 and 44 of 1990

Appellant : Bhanwaria and ors., Etc.

Respondent : State of Rajasthan and ors.

Advocate for Def. : D.R. Bohra, Public Prosecutor

Advocate for Pet/Ap. : D.P. Saraswat, Adv. (in Cri. Appeal No. 10 of 1990),; M.D. Purohit, Sr. Adv. assisted by;

Judgement :

J.R. Chopra, J.

1. These three appeals are directed against the common Judgment rendered by the learned Additional Sessions Judge No. 1, Jodhpur dated 2-12-1989, whereby, the accused-appellant Bhanwariya son of Phoosaram was held guilty of the

offences under Sections 376(2)(g) and 411, IPC and he was sentenced to life imprisonment together with a fine of Rs. 1000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year for the offence under Section 376(2)(g), IPC; and one year's rigorous imprisonment together with a fine of Rs. 100/- and in default, to further undergo rigorous imprisonment for one month for the offence under Section 411, IPC. The accused-appellants Bhanwariya son of Surjaram and Mangilal were also held guilty of the offence under Section 376(2)(g), IPC and they were sentenced to ten years rigorous imprisonment together with a fine of Rs. 1,000/- and in default, to further undergo rigorous imprisonment for one year. The accused-appellant Gutiya alias Bhutiya alias Devaram was held guilty of the offences under Sections 376(2)(g), and Section 411, IPC and was sentenced to imprisonment for life together with a fine of Rs. 1,000/- and in default, to further undergo rigorous imprisonment for one year for the offence under Section 376(2)(g), IPC and one year's rigorous imprisonment together with a fine of Rs. 100/- and in default, to further undergo one month's rigorous imprisonment for the offence under Section 411, IPC. The accused-appellant Sriram was also held guilty of the offence under Sections 376(2)(g) and 379, IPC and was sentenced to imprisonment for life together with a fine of Rs. 1000/- and in default, to further undergo rigorous imprisonment for one year for the offence under Section 376(2)(g), IPC and two years rigorous imprisonment together with a fine of Rs. 500/- and in default, to further undergo six month's rigorous imprisonment for the offence under Section 379, IPC. The sentences awarded to accused-appellants Bhanwariya son of Phoosaram, Gutiya alias Bhutiya alias Devaram and Sriram on both the counts were ordered to be run concurrently. On recovery of the amount of fine, the Prosecutrix Mst. Gajaraki and Laharaki were ordered to be paid Rs. 2250/- each as compensation.

2. It was further ordered that out of the recovered golden ornaments, the golden Kanthi (Article 8) be returned back to Mst. Gajaraki and all the three silver ornaments Articles 14, 15 and 16 were ordered to be returned back to Mst. Laharaki and the recovered clothes and pieces of bangles were ordered to be destroyed after the period of appeal is over.

3. The facts necessary to be noticed for the disposal of this appeal briefly stated are: that both the prosecutrix i.e. P.W. 2 Mst. Gajaraki wife of P.W. 1 Poonaram and P.W. 4 Mst. Laharki wife of Gokalram belong to village Finch situated near village Satlana. P.W. 1 Poonaram and Gokalram are the real brothers. Poonaram is the elder brother of Gokalram. They are sons of Rattaram and Loombaram is the real brother of Rattaram. It is alleged that on 18-3-1987, P.W. 1 Poonaram and his uncle Loombaram went to get their Messey Fergusson tractor repaired at Jodhpur. They started from village Finch at about 7 a.m. on 18-3-1987 i.e. after three days of Hbli. It is further alleged that when Poonaram and Loombaram started for Jodhpur for getting repaired their tractor, P.W. 1 Poonaram asked his wife Mst. Gajaraki and his younger brother's wife Mst. Laharaki to go to their well to look after the crop. Thus, at about 8 a.m. these two ladies started from their village Finch. Mst. Gajaraki had her son in her lap and Mst. Laharaki was carrying a she-calf with her. When they reached near the pond of their village, the she-calf got herself released from the hold of Mst. Laharaki and went into the herd of cows, whereupon, it is alleged that Sanwariya caught hold of her she-calf, brought it back to Mrs. Laharaki and enquired from these ladies, where they were going? It is further alleged that at that time, accused-appellants Bhanwariya son of Phoosaram, Bhanwariya son of Surjaram, Gutiya alias Bhutiya alias Devaram, Nangilal and Sriram were sitting on the bank of the village Pond. It may be stated here that initially, these ladies were not knowing the name of accused Sriram. It is further alleged that when these ladies reached near the boundary of village Satlana, all the five accused-appellants i.e. Bhanwariya son of Phoosara, Bhanwariya son of Surjaram, Gutiya alias Deveram, Mangiram and Sriram came there armed with lathies and knives and tried to block their way, whereupon, they took the side way but after some distance, it is alleged that all these accused-persons put off their Dhoties under a Khejri tree and also put their weapons there and became naked. They again tried to block the way of these two ladies, whereupon they came to know about their wrong intention and Mst. Gajaraki caught hold of a branch of a Aakara tree to save her honour but that was of no avail. It is further alleged that Bhanwariya son of Phoosaram snatched the she-calf from the hands of Mrs. Laharaki and tied it to a Khejri tree and accused Mangilal snatched the child from the lap of Mst. Gajaraki and threw it away. All these

accused-persons scuffled with these two Sadies. It is alleged that accused Bhanwariya son of Phoosaram, Bhanwariya son of Surjaram, Mangilal and Gutiya alias Devaram availed Mst. Gajaraki and accused Sriram availed Mst. Laharaki. They tried to tear their clothes and fell them down. These two ladies resisted their attempts in which their clothes were torn. Ultimately, they over-powered Mst. Gajaraki. It is alleged that one more person joined them after 15-20 minutes and that person aged about 20-25 years was also belonging to village Finch and he helped accused Sriram in falling down Mst. Laharaki. Thereafter, it is alleged that Bhanwariya son of Phoosaram and Gutiya alias Bhutiya alias Devaram caught hold of Mst. Gajaraki and Bhanwariya alias Surjaram and Mangilal went towards Mst. Laharaki because she could not be over-powered by accused Sriram and his companion i.e. the 6th man, who came to the place of occurrence after about 15-20 minutes. The story regarding reaching of this 6th man at the place of the occurrence and helping accused Sriram has been abandoned by the prosecution witnesses at the trial. Be that as it may, it is alleged that accused Bhanwariya alias Surjaram, Mangilal and Sriram succeeded in felling down Mst. Laharaki and her clothes were torn by them. It is alleged that Mst. Gajaraki was first raped by accused Gutiya alias Bhutiya alias Devaram. After commission of rape, accused Gutiya alias Bhutiya alias Devaram caught hold of the neck of Mst. Gajaraki and accused Bhanwariya son of Phoosaram committed rape with Mst. Gajaraki. Mst. Laharaki was raped by accused Bhanwariya son of Surjaram, Sriram and Mangilal. Thereafter, it is alleged that accused Bhanwariya son of Surjaram came towards Mst. Gajaraki and caught hold of her neck and accused Bhanwariya son of Phoosaram and Gutiya alias Bhutiya alias Devaram went towards Mst. Laharaki and committed rape with Mst. Laharaki. These ladies cried for help but no body came to rescue them and they were not allowed to move from the place where they were fell down. It is alleged that in the scuffle, their bangles were broken and those pieces of bangles were recovered from the place of occurrence, where these ladies were raped.

4. It is alleged that at the time when accused Bhanwariya son of Phoosram was committing rape with Mst. Laharaki, Sanwariya came there and he told the accused-persons as to why they are committing rape with these ladies, whereupon, these accused-persons told him to go away from the place of the

occurrence. In the FIR, it has been alleged that he went away from the place of the occurrence but at the trial, the version given is that he smilingly told these accused-persons as to why they are ravishing these ladies and they may lose their lives but he was told by these accused-persons either to join them or to go away from the place of the occurrence but he did not go away but stayed there at a distance of 10 paces. After commission of rape with these two ladies, the accused-persons went below the Khejri tree, tied their Dhoties and then they threatened these two ladies that if they tell anybody about it, they will be killed.

5. After some time, when Mst. Gajaraki was composed, she stood up, put on her Ghaghra and picked up her son, who was thrown away at a distance of 5 to 8 paces, from the place where she was ravished. Thereafter, she went towards Mst. Laharaki, took up her clothes and gave them to her. Initially, in the FIR the version given was that Ghaghras were thrown away at the time of rape but later at the trial, it has been stated that only their Odhnas were thrown away and not the Ghaghras. Be that as it may, their clothes i.e. Ghaghra, Odhna, Kurti and Kanchli all were torn. The accused put off those clothes in the scuffle. They also received injuries on their cheek, breasts, elbows etc. Mst. Gajaraki received injuries on her breasts and Mst. Laharaki received injuries on her cheeks by teeth bite.

6. These two ladies, then went to their well and there, it is alleged that on the night of 20-3-1987 at about 10 p.m., P. W. 1 Poonaram and Loombaram came there after getting their tractor repaired. Initially, they were served food and then Loombaram relaxed on his cot in the chowk and P. W. 1 Poonaram set inside the Guwadi, where it is alleged that the entire incident was related to him by Mst. Gajaraki. It is alleged that in this scuffle and rape, the golden Kanthi of Mst. Gajaraki and two silver bangles and Kakni of Mst. Laharaki were also taken away by the accused-persons. In the FIR, it has been mentioned that these ornaments were not found after the accused-persons left, the place of occurrence but at the trial, it has been given out that accused Bhanwariya son of Phoosararn took out the golden Kanthi from the neck of Mst. Gajaraki and gave it to Sanwariya, who has been held guilty of the offence under Section 411, IPC and has been let off on probation and he has not filed any appeal against this order of his conviction. It is further alleged that accused Sriram, Guitya alias Bhutiya alias Devaram and

Bhanwariya son of Phoosaram took out the silver Kakni and bangles of Mst. Laharaki and took away these ornaments with them. On the information of accused Sriram, one silver Kakni was recovered vide memo Ex. P. 8 and on the information of accused Bhanwariya son of Phoosaram, one silver bangle was recovered vide memo Ex. P.6. On the information of accused Gutiya alias Bhutiya alias Devaram, one silver bangle has been got recovered vide memo Ex. P.7. On the information of accused Sanwarram, one golden Kanthi was got recovered vide memo Ex. P. 21.

7. When Mst. Gajaraki related the entire incident to her husband P. W. i Poonaram, it was dead hour of night and, therefore, they did not go anywhere. However, on the next day morning, P.W. 1 Poonaram and Loombaram went to village Finch, where they enquired, who were the other two persons who participated in the occurrence in addition to accused Bhanwariya son of Phoosaram, accused Bhanwariya son of Surjaram, Mangilal, Gutiya alias Bhutiya alias Devarara and they came to know that one of them was accused Sriram but the name of other persons who joined them after 15-20 minutes in the field of Manaram could not be known. As stated above, this story of 6th man coming at the place of the occurrence and joining the accused-persons has been abandoned by the prosecution witnesses at the trial. However, both the ladies have stated that the 6th man was Sanwariya and nobody else. As soon as the name of accused Sriram was brought to the notice of these two ladies, they also remembered his name and that name has been mentioned in the FIR. After going to village Finch and bringing some money with them from their house, 1*.W. ! Poonaram and Loombaram along with these two ladies went to Satiana School where they got this report written through Poonaram by a School Teacher and then presented it at Police Station, Looni on 21-3-1987 at about 8.10 p.m. to P.W. 14 ASI Malookaram, who made some enquiries from them and these ladies told him that all these accused-persons committed rape against their wishes. These two ladies further stated that they can recognise their ornaments. On enquiries, it was disclosed to ASI Malookaram that accused Bhanwariya son of Phoosaram has taken away the golden Kanthi of Mst. Gajaraki and rest of the accused-persons have taken away the silver ornaments of Mst. Laharaki. It was further disclosed that in this incident, Mst. Gajaraki received certain abrasions on her breasts, and there are certain

abrasions on the back portion of her both elbows. Her Ghaghra was torn at four places and her Kanchli and Kurti were torn at 2-3 places and her Odhna was also torn at four places. She complained of pain in her entire body. Mst. Laharaki also told she received 5-6 abrasions on her breasts and she had a teeth bite injury on her right cheek and there were certain abrasions on her left elbow. The Ghaghra of Mst. Laharaki was also found torn at 5-6 places. Her Odhna was torn at 4 places and her Kanchli and Kurti were found torn at two places.

8. On the basis of this written report and further enquiries made by ASI Malookaram, a formal FIR was drawn by ASI Malookaram and a case under Section 376/392, IPC was registered. The injuries received by Mst. Gajaraki were noted in Memo Ex. P.2 and the injuries received by Mst. Laharaki were noted in the Memo Ex. P.6 on that very day. Thereafter, the investigation was handed over to P.W. 20 SHO Ramchandra, who inspected the site on the next day and prepared site plan and site inspection memos. The clothes of Mst, Gajaraki and Mst. Laharaki were recovered. Thereafter, accused Sriram, Gutiya alias Bhutiya alias Devaram and Bhanwariya son of Phoosaram were arrested on 22-3-1987 vide their arrest memos Ex. P. 12 to 14 respectively. Their injuries were also got examined vide injury reports Ex. Ps. 16, 18 and 20 respectively. Thereafter, accused Bhamwarlya son of Surjaram was arrested and his injuries were so got examined vide Memo Ex. P. 19. Accused Mangilal was absconding and he was arrested on 28-2-1988.

9. On the information of accused Bhanwariya son of Phoosaram, accused Bhanwariya son of Surjaram accused Gutiya alias Bhutiya alias Devaram and Sriram, their underwears were also recovered but actually, they were wearing Dhoties and they were washed and, therefore, no semen could be detected on those underwears. However, man's semen was detected in the Ghaghras of these two ladies. The silver ornaments were got identified from Mst. Laharaki and the identification Memo Ex. P. 34 has been proved by Shri Brij Mohan Bansal, Judicial Magistrate No. 1, Jodhpur. The golden Kanthi was also got identified from Mst. Gajaraki and its identification Memo has been got proved by P.W. 19 Shri Brij Mohan Bansal, Judicial Magistrate No. 1, Jodhpur. The chemical and Serological reports were also obtained.

10. After usual investigation, the case against the accused-persons was challanged in the court of learned Munsif and Judicial Magistrate, Jodhpur District, Jodhpur, from where it was committed to the court of learned Sessions Judge, Jodhpur who made it over to the court of learned Addl. Sessions Judge No. 1, Jodhpur for trial. The accused Sanwarram was charged with the offence under Section 411, IPC whereas accused Sriram, Gutiya alias Bhutiya alias Devaram, Bhanwariya son of Phoosaram and Bhanwariya son of Surjaram were charged with the offences under Sections 376(2)(g), read with Section 379 IPC. The accused Mangilal was earlier absconding but later on, he was arrested somewhere in the year 1988 and he was also charged with the offence under Section 376(2)(g), read with Section 379, IPC. The accused-persons did not plead guilty to the charges and claimed trial, whereupon, the prosecution examined as many as 22 witnesses in the case. The statements of the accused-persons were recorded under Section 313, Cr.P.C. They have taken the plea that there are two parties in the village and there-fore, they have been falsely implicated. They have not disclosed the fact that which were those two parties and to which party, they belong. Accused Sriram has taken the plea that ASI Malookaram arrested him because he. was not able to pay him Rs. 5000/-. Accused Mangilal has also taken the plea that his three brothers have been murdered and a case about their murder is pending in the court and, therefore, on account of that enmity, he and his two brothers viz., Gutiya alias Bhutiya alias Devaram and Bhanwariya have been falsely implicated and they were forced either to compromise that murder case or else they will be prosecuted. No defence evidence has been produced in support of these allegations and not a single question about these allegations was put to the prosecution witnesses in their cross-examination. However, after hearing both the parties, the learned Addl. Sessions Judge has convicted and sentenced the accused-appellants as aforesaid and hence this appeal.

11. We have heard Mr. M.D. Purohit, Senior Advocate assisted by Mr. T.R. Singh Sodha, Mr. D.P. Saraswat and Mr. J.S. Choudhary, the learned counsel appearing for the accused-appellants, Mr. D.R. Bohra, the learned Public Prosecutor for the State and Mr. J.R. Patel, learned counsel appearing for the complainant party and have critically gone through the record of the case. We have also bestowed our most earnest considertion to the rival submissions made at the bar.

12. In this case, except these two ladies viz., Mst. Gajaraki and Mrs. Laharaki, only Sanwarram was an eye witness and nobody else has seen the occurrence. P. W. 22 Sonaram has seen these accused-persons sitting on the village pond and he has stated that the accused-appellants were sitting on the village pond and they came towards village Satlana through Kutchha way and ascended the Pal (bank) of the village Pond. This is what was informed by him to P.W. 1 Poonaram when he related the entire incident to him. He had no inkling of this crime. When the entire incident was related to him by P.W. 1 Poonaram, he told that he saw these persons sitting on the bank of the village pond on the date of the occurrence. Thus, the entire case hinges on the testimony of these two ladies i.e. Mst. Gajaraki and M'st. Laharaki.

13. P.W. 1 Poonaram is the husband of Mst. Gajaraki. He has not seen the occurrence. He is the person to whom the entire incident was related by Mst. Gajaraki for making a report to the Police. He has stated that he went with 1 oombaram to Jodhpur City for repair of his Messey Fergusson tractor. It was enquired from P.W. 17 Loombaram that what was the make of the tractor and he has stated that it was a Messey Fergusson Tractor. It was also enquired from both P.W. 1 Poonaram, and P.W. 17 Loombaram that from which Mechanic, this tractor was got repaired and they have stated that it was repaired by Kheemaram Mechanic, who has his own workshop near Masooriya. Various parts of tractor's engine were out of order and therefore, those parts were purchased from market and thereby, they spent Rs. 5,000/ -- and the tractor was got repaired.

14. It was contended by the learned counsel appearing for the accused-appellants that neither the tractor has been produced in the court nor its number has been disclosed. Even the Machanic from whom this tractor was got repaired has also not been produced in the witness box. They have submitted that the prosecution has failed to produce the bills regarding repairing of the tractor before the Court and therefore, in absence of any material corroboration of these material aspects of the testimony of these two witnesses, it cannot be said that Poonaram and Loombaram possessed a tractor and. they went to Jodhpur for getting it repaired. Not a single question was asked to these witnesses that they did not possess any tractor. Even the numbers of their tractor were also not asked. It was only enquired

from them as to from which Mechanic they got their tractor repaired and what were the problems in the tractor and they have categorically stated that the tractor was got repaired from one Kheemaram Mechanic and there were defects in the Nosal and Pump of the tractor. Thus, this evidence is enough to prove that P.W. 1 Poonaram and P.W. 17 Loombaram went to Jodhpur for getting their tractor repaired. The prosecutrix Mst. Gajaraki and Mst. Laharaki as also P.W. 1 Poonaram and P.W. 17 Loombaram have categorically stated that Poonaram and Loombaram left their village Finch after three days of Holi i.e. on 18-3-1987 at 7 a.m. and it has been stated by P.W. 17 Loombaram that they straight away went to their well from Jodhpur because they have already told these ladies to go to the well for looking after the crop. P.W. 1 Poonaram has stated that his father and mother were in their village Finch and they are four brothers. He went with Loombaram to get his tractor repaired at Jodhpur. His brother Gokalram went to village Dhundhara to the house of his father's sister to attend a Dhoondh ceremony, which is performed on the day of Holi when a son is born in a family. One of his brothers was at Jodhpur where he was doing service. His younger brother aged about 11-12 years was in the village. Except his parents and younger, brother, no other male member of their family was available in their village Finch.

15. It has been strenuously contended by the learned counsel appearing for the appellants that although the incident took place on 13-3-1987, the report of this incident was lodged on 21-3-1987. As stated above, all these four material witnesses have categorically stated that except the father of Poonaram, no other male adult member was available in the family in the village because one of the brother of P.W. 1 Poonaram was at Jodhpur where he was doing service and the other brother viz., Gokalram had gone to village Dhundhara to attend the Dhundh in the family of his father's sister and he returned back on 22-3-1987, after the report of the incident was lodged. Moreover, the prosecutrix i.e. Mst. Gajaraki and Mst. Laharaki have categorically stated that they did not go to the village because they were threatened by these accused-persons not to relate this incident to anybody else, otherwise they will be killed. It was on account of this threatening, after this incident that these ladies went to their well and remained there for three days waiting for P.W. 1 Poonaram and did not inform anybody else out of a feeling

of sheer shame and disgust that a gang rape has been committed with them. It was on 20-3-1987 at about 10 p.m. in the night, when P.W. 1 Poonaram and P.W. 17 Loombaram came to their well. They first served meals to them, which was usual for the ladies and then Mrs. Gajaraki related the entire incident to her husband P.W. 1 Poonaram. Mst. Laharaki had already told the entire incident which has happened with her to Mst. Gajaraki. P.W. 1 Poonaram told his wife Mst. Gajaraki that it was dead hour of night and therefore, they cannot go anywhere else and they have also no money with them because the entire money which they were having, has been spent in the repair of the tractor. On the next, day, in the morning, the male members went to their village for bringing money and in the way, they met P.W. 22 Sonaram, who enquired from them as to why they have come to the village because that was the time when the agriculturists harvest their crops. On this, P.W. 1 Poonaram, related to him the entire incident which has happened with Mst. Gajaraki and Mst. Laharaki. Thereafter, P.W. 22 Sonaram told him that these accused-appellants were sitting on the village pond on the date of the occurrence and that is how, name of accused Sriram came to their notice. Although, in the FIR, it has been stated that the name of 5th person was not known but these two ladies have categorically told to P.W. 1 Poonaram that in all five accused-perons were there, out of whom, four were named and fifth was the person who actually scuffled with Mst. Laharaki. Accused-appellants Bhanwarlal son of Phoosaram, Bhanwarlal son of Surjaram, Gutiya alias Bhutiya alias Devaram and Mangilal scuffled with Mst. Gajaraki and they belong to village Finch and, therefore, they have been named in the FIR. It appears that these two ladies did not remember name of accused Sriram and when the name of accused Sriram was disclosed to Poonaram by P.W. 22 Sonaram, they remembered his name and that has been got mentioned in the FIR. It is true that Mst. Gajaraki, Mst. Lahuaraki, P.W. 1 Poonaram and P.W. 17 Loombaram have taken the stand in their statements at the trial that the name of Sriram was known to them but that does not appear to be correct. Had it. been known to them, there was no occasion for them to get it written in the FIR that the name of 5th person was not known and that was disclosed to them by some persons in the village. Although it has not been mentioned in the FIR. that Sonaram has disclosed the name of accused Sriram but It has been mentioned that the name of accused Sonaram has been

disclosed to them in the village and now, it has come in the evidence that P.W. 22 Sonaram met Poonaram and he disclosed the name of accused Sriram to Poonaram and that is how, his name was conveyed to these ladies and they remembered that yes, it was accused Sriram. It is not a case where it has been alleged that only four persons committed rape with these ladies and the 5th was not there and his name has been inserted later on. Rather, the categorical case of the eye witnesses is that the 5th person came there and blocked the way of these two ladies near the field of Manaram but these two ladies took the side way and went ahead but again these accused-persons blocked their way, became naked and after overpowering these ladies, they fell them on the earth and committed rape with them. In this scuffle and rape, the Odhanies, Ghaghras, Kanchlis of these ladies were torn and those clothes have been presented by them to the police. It has also been stated by these two ladies that after felling down Mst. Gajaraki on the ground by accused-appellants Bhanwarlal son of Phoosaram, Bhanwariya son of Surjaram, Mangilal and Guitya alias Bhutiya alias Devaram, the accused appellants Mangilal and Bhanwariya son of Surjatam went towards Mst. Lahariki because accused Sriram was not able to fell down Mst. Lahariki on account of the resistance put by her. Although, these two ladies have categorically stated that in scuffle, some time they were felled down but they again stood up and again put up resistance and again fell down and again sto?)d and, therefore, Mst. Lahariki has stated that had accused Sriram alone been there, she could not have been felled down and raped. Such was the spirit of resistance put by these two ladies. Mst. Lahariki could be availed only when accused Bhanwariya son of Surjaram and Mangilal joined accused Sriram along with 6th man. It is true that the story of 6th man joining accused Sriram has been abandoned and it has been stated that only accused Sanwarram came as 6th man and no other person aged about 20-25 years was there.

16. Be that as it may, it has been stated in the FIR that only these five accused-persons were responsible for committing rape with these two ladies. Accused Bhanwariya son of Phoosaram and Guitya alias Bhutiya alias Devaram committed rape with Mst. Gajaraki. Both these ladies have further stated that after commission of rape with Mst. Gajaraki, accused Bhanwariya son of Phoosaram went towards Mst. Lahariki and accused Bhanwariya son of Surjaram committed

rape with Mst. Laharaki. Accused Bhanwariya son of Phoosaram caught hold of Mst. Laharaki and accused Gutiya alias Bhutiya alias Devaram caught hold of Mst. Gajarakai, so that Mst. Gajaraki may not go to Mst. Laharaki and help her to put up further resistance. It has not been alleged by Mst. Gajaraki that accused Bhanwariya son of Surjaram committed rape with her. She has only stated that accused appellants Bhanwariya son of Phoosaram, Bhanwariya son of Surjaram, Mangilal and Gutiya alias Bhutiya alias Devaram scuffled with her and accused Sriram scuffled with Mst. Laharaki. Initially, they blocked their way near the field of Manaram but they took the side way and went ahead but again they blocked their way, became naked and tried to overpower her and in this process, sometimes, she fell down and again stood up but ultimately, she was overpowered by these four accused-persons and thereafter, accused Bhanwariya son of Surjaram and Mangilal went towards Mst. Laharaki because she could not be overpowered by accused Sriram but ultimately, she could be overpowered by accused Sriram, with the help of these two accused-appellants and one more person aged about 20-25 years.

17. At the place where Mst. Gajaraki was raped by accused Bhanwariya son of Phoosaram and Gutiya alias Bhutiya alias Devaram, three pieces of red bangles were recovered by the police and she has identified those three pieces of red bangles, as belonging to her. Two pieces of white coloured bangles with pink coating of plastic bangles were recovered from the place where Mst. Laharaki was raped and she has also identified these two pieces of plastic bangles. The recovery memos of these bangles have also been proved by these two ladies as also P.W.20 SHO Ramchandra and P.W. 3 Chhogasingh.

18. Learned counsel appearing for the accused appellants have laid much stress on the fact that whether these bangles were of glass or of plastic has not been categorically stated by these two witnesses. Mst. Gajaraki and Mst. Laharaki both have categorically stated that the bangles of Mst. Gajaraki were of glass and the bangles of Mst. Laharaki were of plastic and they have identified those bangles as their own and they were recovered from the places where they were raped. These two ladies have categorically stated that they were not allowed to move from the places where they were fell down and were overpowered and raped. Thus, nothing

turns upon this controversy. Actually, these pieces of bangles were recovered from the places where these ladies were alleged to have been raped by these accused-persons. Moreover, P.W. 20 Ramchandra and P.W. 3 Chhogasingh have stated that lot of foot prints were found in the field of Manaram and at the places where these ladies were overpowered and fell down. The symptoms of their felling down and laying down on the earth were there. The land was soft and therefore, simply because no injuries have been found on the private parts of these two ladies does not in any way belittle the importance and reliability of their testimony. In this respect, reliance can be placed on a decision of their lordships of the Supreme Court in *State of Orissa v. Damburu Naiko* (1992) 2 Crimes 77: (1922 Cri LJ 1537), wherein their lordships of the Supreme Court have held that simply because injuries were not found on the private parts of the ladies, it cannot be said that the sexual intercourse was committed with consent. In this case, as stated above, these two ladies were raped on the soft ground, which has already been cultivated and no stumps of crop sown were there because in the earlier year, when the fields were ploughed, there were no rains and, therefore, no crop was sown and, therefore, the fields were soft. Of course, some thorns may be there and they have caused abrasions but no stumps were there and this is what has been stated by P.W. 4 Mst. Laharaki also.

19. Mst. Gajaraki and Mst. Laharaki both have consistently stated that P.W. 1 Poonaram and P.W. 17 Loombaram went to Jodhpur for getting their tractor repaired and they told them to go to their well and both of them started for the well at about 8 a.m. on the date of the occurrence. Mst. Gajaraki was carrying her son Amariya in her lap and Mst. Laharkki was carrying a she-calf with her. When they reached near the village Pond, their she-calf got herself released from the hold of Mst. Laharaki and went into the herd of cows. It was brought back to them by Sanwarram and he enquired from them as to where they were going and they informed him that they were going to their Well. This probably might have been heard by these accused-appellants who were present on the bank of village Pond and it was because of this, that they followed them and blocked their way near the field of Manaram. They took the side way and went ahead but these accused-persons again blocked their way after putting off their Dhoties and after they became naked. Both laides have categorically stated that they put lot of resistance

but that was of no avail and ultimately, they were over-powered by these accused persons and then they were raped. Their evidence is totally consistent so far as this aspect of the story regarding commission of rape with them is concerned. They have no enmity whatsoever with these accused-persons and, therefore, there is no question of false implication of these accused-appellants in this case. These accused-persons were of their own village and they were known to them. They have only forgotten the name of accused Sriram and when Poonaram disclosed this fact to them that the 5th man was accused Sriram, they recollected it in their memory and it was got mentioned in the FIR that the 5th man was accused Sriram.

20. It was contended by the learned counsel appearing for the accused-appellants that the scribe of the FIR has not been produced in the witness box by the prosecution and, therefore, the prosecution story becomes doubtful. Simply because the scribe of the written report presented to the Police by P.W. 1 Poonaram has not been examined as a witness in this case, it hardly matters because he has nothing to do with the incident. He being a literate person, the entire incident was related to him by P.W. 1 Poonaram and he scribed it in a written report and, therefore, his non-production does not make the case of the prosecution doubtful. The statements of P.W. 2 Mst. Gajaraki and P.W. 4 Mst. Laharaki further inspire confidence on account of the fact that injuries were found on their breasts, cheeks and elbows and the injury report of Mst. Gajaraki (Ex. P. 28) and the injury report of Mst. Laharaki (Ex. P. 25) have been proved by P. W. 18 Dr. Vijay Kumar Malhotra. P.W. 18 Dr. Vijay Kumar Malhotra has stated that he examined the injuries of Mst. Laharaki and Mst. Gajaraki on 22-3-1987 on the requisition of the SHO, Luni. The injuries received by these two ladies were also recorded by the Police in Memos Ex. P. 2 and Ex.P. 6 respectively on 21-3-1987 and these Memos have been proved by ASI Malookaram. In the scuffle and rape, the clothes of these two ladies were also torn and this fact has been proved by production of their torn clothes before the Police and this fact of their clothes being torn has been proved by P.W. 20 Ramchandra, SHO. Their Ghagharas were found stained with human semen. Even while inspecting the site, it was found that there were lot of foot prints at the place of the occurrence and this fact has been got recorded in the site inspection memo, which has been proved by P.W. 20

Ramchandra and P.W. 3 Chhogasingh.

21. Even at the time, when accused-appellants Sriram, Gutiya alias Bhutiya alias Devaram, Bhanwarlal son of Phoosaram and Bhanwarlal son of Surjaram were arrested vide their arrest Memos Ex. P. 12 dated 22-3-1987, Ex.P. 13 dated 2-3-1987, Ex. P. 14 dated 22-3-1987 and Ex.P.37 dated 26-3-1987 respectively, injuries were found on their person and, therefore, their medical reports were obtained vide Ex. P. 18, 20, 1.6 and 19 respectively. These medical reports containing injuries found on the person of the accused-appellants Sriram, Devaram, Bhanwarlal son of Phoosaram and Bhanwartal son of Surjaram have been proved by P.W. 9 Dr. S.P. Vyas. He has stated that the duration of those injuries was 6 days which co-insides the day of the occurrence. These were abrasions and bruises, which are possible in a forcible rape. He has further stated that he also examined the potency of these accused-persons and they were found potent enough to commit the rape,

22. The testimony of these two laides i.e. P.W. 2 Mst. Gajaraki and P.W. 4 Mst. Laharaki is further corroborated by the recovery of the golden and silver ornaments from the possession of the accused-persons, which they took away from the place of the occurrence after commission of rape with these two laides. The silver Kakni has been recovered on the information and at the instance of accused Sriram vide recovery memo Ex. P. 8 dated 27-3-1987, The golden Kanthi of Mst. Gajaraki has been got recovered on the inforamtion and at the instance of accused Sanwarram vide memo Ex. P.21. On the information and at the instance of accused Bhanwarlal son of Phoosaram and Devaram, the silver bangles were got recovered vide memos Ex. P. 6 and Ex. P.7 respectively. P.W. 20 Ramchandra and P. W. 12 Manglaram have proved these information and recovery Memos. P.W. 12 Manglaram has categorically stated that these articles were sealed at the place of the occurrence after they were dug out from the earth. P.W. 2 Mst. Gajaraki and P.W. 4 Mst. Laharaki have categorically stated that they were not shown these articles by the Police and they have identified them before the Magistrate. Thus, these injuries on the persons of these accused persons as also the recoveries of the ornaments belonging to these two ladies on their information and at their instance, leads to the conclusion that they have

participated in the crime.

23. It was contended by Mr. M. D. Purohit, the learned counsel appearing for the accused-appellants that in this case, the incident has occurred on 18-3-1987 whereas the report of this incident was lodged on 21-3-1987 and, therefore, late lodging of this FIR creates a doubt in the veracity of the prosecution story. In this respect, he has placed reliance on a decision of this Court in *Ramgopal v. State of Rajasthan*, 1983 Raj LW 64, wherein it has been held that delay in lodging a FIR in a murder case is fatal. As stated above, this is not a murder case but it is a case of gang-rape.

24. Reliance was also placed on a decision of their lordships of the Supreme Court in *Thulia Kali v. State of Tamil Nadu*, : 1972 CriLJ1296 , wherein it has been held that FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the stand point of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of the occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is therefore, essential that the delay in the lodging of the First Information Report should be satisfactorily explained. It was further held that when an occurrence is not reported for more than 20 hours after the occurrence even though the police station is only two miles away from the place of occurrence, it is unsafe to base conviction upon the evidence.

25. Mr. Purohit has next placed reliance on a decision of this Court in *Moolia v. State of Raj*, 1979 Raj Cri C 85, in which, it has been observed that the delay of 22 hours in a case of rape is fatal. That was a case wherein the incident was promptly reported to the father of the prosecutrix and still he took 22 hours in lodging the

FIR and, therefore, the delay was held to be fatal.

26. In *Ishwarsingh v. State of U.P.*, : 1976 CriLJ1883 , their lordships of the Supreme Court have observed that the extraordinary delay in sending the FIR is a circumstance which provides a legitimate basis for suspecting that the FIR was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. In that case, delay of two days in sending the FIR to the Magistrate was considered to be fatal on its face value. That too was a case under Section 302, IPC.

27. On the other hand, Mr. D.R. Bohra, the learned Public Prosecutor appearing for the State assisted by Mr. J.R. Patel, the learned counsel appearing for the complainant has drawn our attention to a decision- of their lordships of the Supreme Court in *Zahoor v. State of U.P.*, : 1991 CriLJ56 . That was a case of murder. In that case, their lordships of the Supreme Court have held that the delay in lodging the FIR by itself is not sufficient to reject the case of the prosecution unless there are clear indications of fabrication. Thus, it is clear that only on account of the late lodging of the FIR, the case of the prosecution cannot be thrown away unless there are clear indications of fabrication and embellishment.

28. As stated above, in this case, P.W. 2 Mst. Gajaraki and P.W. 4 Mst. Laharaki have categorically stated that after commission of rape with them, the accused persons threatened them not to relate this incident to anybody else, otherwise they will be killed. They have further stated that no male member of the family except their father-in-law and mother-in-law along with their younger brother-in-law (DEVAR) aged about 10-12 years was in the village and on account of this threatening, after wearing their clothes, they did not go to the village. They have categorically stated that they were terrorised and, therefore, they went to their well. Out of sheer feeling of shame, they did not relate this incident to anybody else. They were waiting for the arrival of P.W. 1 Poonaram and P.W. 17 Loombaram and as soon as, they arrived, they informed them about this incident. They were wearing those very clothes which they were wearing at the time of commission of rape with them. On account of the threatening extended to them by the accused-

persons, they lost their courage and became terrorised and, therefore, they did not leave their well till P.W. 1 Poonaram and P.W. 17 Loombaram reached their well.

29. Moreover, it was a case where the honour of P.W. 2 Mst. Gajaraki and P.W. 4 Mst. Laharaki was at stake and, therefore, in such matters, if they waited for the arrival of P.W. 1 Poonaram, the husband of Mst. Gajaraki and P.W. 17 Loombaram, the uncle of Poonaram and lodged the report after P.W. 1 Poonaram and P.W. 17 Loombaram reached their well and decided that the matter needs to be reported to the police, even if the honour of the family was at stake, the delay caused in lodging the FIR stands amply explained. This is what these two ladies have stated and they have stood to their version in spite of lengthy and thorough cross-examination and therefore, keeping in view the fact that there is a ring of truth about their testimony which stand supported by other circumstances explained above, this delay in lodging the FIR is not enough to discredit their testimony.

30. In this respect, we may place reliance on decision of their lordships of the Supreme Court in Harpal Singh v. State of Himachal Pradesh, : 1981 CriLJ1 , wherein the incident of rape took place in the night intervening 20th and 21st August, 1972 and the FIR was lodged on 31st August, 1972. Their lordships held that as honour of the family was involved, its members had to decide whether to take the matter to the court or not. The delay of 10 days in lodging the FIR was held to be reasonable.

31. As stated above, in this case, the prosecutrix were threatened not to relate this incident to anybody else, otherwise they will be killed and no male family member was available at their village Finch except their father-in-law and mother-in-law along with younger brother-in-law aged about 10-12 yrs, and therefore, after wearing their clothes they directly went to their well and waited for the arrival of the husband of Mst. Gajaraki P.W. 1, who went with his Uncle P.W. 17 Loombaram to Jodhpur for getting his tractor repaired. As soon as P.W. 1 Poonaram and P.W. 17 Loombaram reached their well, initially they were served with the meals and, thereafter, Mst. Gajaraki related the entire incident which happened with herself and her sister-in-law Mst. Laharaki to P.W. 1 Poonaram. It was dead late hour of

the night and therefore, P.W. 1 Poonaram did not go anywhere else and on the next day morning, he first went to his village to fetch the money and in the way, he met P.W. 11 Poonaram, who informed him that on the date of the occurrence, he saw the accused-appellants sitting on the bank of the village Pond. After fetching money from his village, he immediately went to the Police Station along with his Uncle P.W. 17 Loombaram and the prosecutrix i.e. P.W. 2 Mst. Gajaraki and P.W.4 Mst. Laharaki. Thus, the delay in lodging the FIR stands amply explained.

32. It was next contended by Mr. M.D. Purhohit, the learned counsel appearing for the accused-appellants that it was highly improbable that in the broad day light at about 9 a.m. these prosecutrix ladies would be raped. In this respect, he has drawn our attention to a decision of this Court in *Hari v. State*, 1977 Raj Cri C 262. In that case, no injuries were found on the person of the prosecutrix although she was a married woman and therefore, it was held that it was highly improbable that in the broad day light, the prosecutrix was raped in the presence of another lady. In this case, both the ladies i.e. P.W. 2 Mst. Gajaraki and P.W. 4 Mst. Laharaki received abrasions and bruises on their person. They put up resistance and while putting up resistance, they received these injuries on their person. Even the accused persons were also injured and received as many as 8 to 10 injuries each. Thus, this authority has no application to the facts of the present case.

33. Our attention was next drawn to a decision of this Court in *Motumal v. State*, 1987 Raj Cri C 475. That was a case in which the Doctor has opined that the prosecutrix was habituated to sexual intercourse. The Doctor reserved his opinion till the Chemical examiner report is received. That report was not produced and, therefore, it was held that there is not medical evidence to hold that the rape was committed. In that case, the prosecutrix lied about her age and therefore, her testimony was held to be unreliable. In this case, both the prosecutrix as also the accused-persons received injuries and, therefore, the testimony of the prosecutrix, appears to be reliable.

34. In this respect, we may place reliance on a decision of their lordships of the Supreme Court in *State of Himachal Pradesh v. Raghubir Singh*, (1993) 2 Crimes 887, wherein their lordships of the Supreme Court have held that the conviction

can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity.

35. In this case, it has not been brought in the evidence that there was any groupism in the village and these accused-appellants have been falsely implicated for forcing them to have a compromise in a murder case. Such questions were not asked to the prosecution witness in their cross-examination and even no defence evidence has been produced to corroborate these allegations and, therefore, we are firmly of the view that the statements of P.W. 1 Poonaram, P.W. 2 Mst. Gajaraki, P.W. 4 Mst. Laharaki and P.W. 17 Loombaram are worth reliance and they are fully supported by other circumstantial evidence. The version given by the prosecutrices appear to be acceptable and it is corroborated by medical and other circumstantial evidence.

36. Our attention was next drawn to a decision of their lordships of the Supreme Court in *Pratap Misra v. State of Orissa*, : 1977 CriLJ817 . That was also a case of gang rape with a grown up and experienced pregnant lady. It was alleged that the accused-persons had forcible and violent sexual intercourse with her one after the other in quick succession resulting in her abortion 4 or 5 days thereafter. It was held that the absence of any injury on the person of any of the accused or of the prosecutrix except some bleeding from vagina leads to the conclusion that the prosecutrix was a consenting party. In this case, the prosecutrix i.e. P.W. 2 Mst. Gajaraki and P.W. 4 Mst. Laharaki are not very grown up ladies. Although they are married and habituated to sexual intercourse, but they have put up resistance and thereby, they have received injuries. Even the accused-persons were also injured and, therefore, *Pratap Misra's* case (surpa) helps the case of the prosecutrices that it was not a case of consent, and they have been forcibly raped.

37. In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, : 1983 CriLJ1096 , their lordships of the Supreme Court have observed that corroboration is not the sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who

complaints of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society.

38. In paras 10 and 11 of the Judgment in Bhoginbhi Hirjibhai's case (1983 Cri LJ 1096) (supra), their lordships have further held that a girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors, the victims and their relatives are not too keen to bring the culprit to book and when in the face of these factors, the crime is brought to light there is a built in assurance that the charge is genuine rather than fabricated. This clinches the issue and lends respectability to the evidence of these prosecutrix ladies.

39. Simply because some improvements and contradictions are there in the testimony of the witnesses when compared with the version given in the FIR, that does not make the entire story, unbelievable. In this respect, we may place reliance on a decision of their lordships of the Supreme Court in *Vadivelu Thevar v. State of Madras*, : 1957 CriLJ1000 , wherein it has been observed that generally speaking, the oral testimony in this context may be classified into three categories, namely (1) wholly reliable; (2) wholly unreliable; and (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to the conclusion. It is in the third category of cases that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another

danger in insisting on plurality of witnesses. As stated, above, in this case, the corroboration is forthcoming.

40. In this case, the accused persons have not explained this fact as to how they came in possession of golden and silver ornaments of Mst. Gajaraki and Mst. Laharaki. In *Dhananjay Chatterjee v. State of West Bengal*, 1994 Cri LR (SC) 82, it was held that absence of explanation for possession of golden and silver ornaments belonging to the victim by the appellant is a circumstance, which goes against them to prove their guilt. Thus, the recovery of the silver and golden ornaments which were worn by the prosecutrix at the time of the incident at the instance of the accused-persons is another strong circumstance, which leads to the conclusion that they are responsible for commission for forcible rape with Mst. Gajaraki and Mst. Laharaki.

41. Our attention was next drawn to a decision of their Lordships of the Supreme Court in *Eqbal Baig v. State of A.P.*, : 1987 CriLJ838 , wherein it has been held that the non-mention of the name of accused in the FIR and Inquest report by the witness is no ground for rejecting his evidence. As stated above, accused Sriram's name finds mention in the FIR. Initially, it was got recorded that the prosecutrix did not remember the name of 5th man and after enquiry, when P.W. 1 Poonaram confirmed the name of accused Sriram from P.W. 11 Poonaram, these ladies remembered his name and it finds mention in the FIR. Thus, it is not a case of absence of the name of accused Sriram.

42. In *Promod Mahto v. State of Bihar*, : 1989 CriLJ1479 , it has been held by their lordships of the Supreme Court that no lady will be ready to stake her honour for communal interests or other considerations.

43. In view of the discussion made hereinabove, we are firmly of the view that in this case, the evidence of both the prosecutrix viz., Mst. Gajaraki and Mst. Laharaki who have been forcibly gang raped is totally reliable and their testimony stands supported by other circumstances which have been explained above. Thus, the learned Addl. Sessions Judge was absolutely right in convicting the accused-appellants for the offence under Section 376(2)(g), IPC.

44. In the FIR, it has been stated that these ornaments were not found by these two ladies after the rape was committed with them. In the FIR, it has not been stated that who took away these ornaments. This FIR was got written by P.W. 1 Poonaram, who is the husband of Mst. Gajaraki but when further questions were asked by the ASI Malookaram, Mst. Gajaraki told that her golden Kanthi has been taken away by accused Bhanwariya son of Phoosaram and the other accused-persons took away the silver bangles and Kakni. The golden Kanthi has been recovered from the possession of accused Sanwariya and not from the possession of Bhanwariya son of Phoosaram. Although, P.W. 20 Ramchandra has stated that on 27-3-1987, accused Bhanwariya son of Phoosaram give information to him that he has handed over that Kakni to accused Sanwarram but that information is not admissible in evidence. The golden Kakni was not recovered in pursuance of that information and, therefore, accused Bhanwariya son of Phoosaram has rightly not been convicted of the offence under Section 379, IPC but has been convicted under Section 411, IPC.

45. Accused Sriram has been held guilty of the offence under Section 379, IPC but there is no evidence that he took away these silver ornaments with him. Of course, this has been stated by Mst. Laharaki in her statement at the trial but this was not her version in the FIR but on further enquiry, it was disclosed that others took away silver ornaments and, therefore, whatever ornaments have been recovered from the possession of other accused-persons, they can at best be held guilty of the offence under Section 411, IPC and, not under Section 379, IPC. At best, a charge of Section 379/34, IPC could have been framed against, all the accused-persons and they could also have been held guilty of the same but when accused Bhanwariya son of Phoosaram has been held guilty of the offence under Section 411, IPC, the other accused-persons cannot be held guilty of the offence under Section 379, IPC but they can be held guilty of the offence under Section 411, IPC.

46. Now, so far as the sentence under Section 376(2)(g), IPC is concerned, three accused-appellants have been sentenced to life imprisonment and the other two have been sentenced to ten years' rigorous imprisonment together with a fine of Rs. 1,000/- and in default of payment of fine, to further undergo one year's

rigorous imprisonment. This was probably on account of the injuries having been found on the person of the accused-appellants Bhanwariya son of Phoosaram, Guitya and Sriram. Barring aside the absence of these injuries on the person of Bhanwariya son of Surjaram and Mangilal, there is no difference between the case of other two accused persons viz., | Bhanwariya son of Surjaram and Mangilal and the other three accused persons. They came jointly armed with weapons, blocked the way of these ladies and after overpowering them, they raped them. Accused Mangilal was absconding and, therefore, it cannot be said that he did not receive any injury on his person. Of course, accused Bhanwariya son of Surjaram did not receive any injury on his person and so, simply because one of them did not receive any injury on his person, it does not distinguish his case from others, and, therefore, we are firmly of the view that when other two accused-appellants have been sentenced to ten years' rigorous imprisonment together with a fine of Rs. 1,000/- and in default, to further undergo one year's rigorous imprisonment, instead of sentencing accused-appellants Bhanwariya son of Phoosaram, Devaram and Sriram to life imprisonment, they must be sentenced to imprisonment of ten years' together with a fine of Rs. 1000/- and in default, to further undergo one year's rigorous imprisonment.

47. For the offence under Section 411, IPC, the sentence awarded by the learned Addl. Sessions Judge to the accused-appellants Bhanwariya son of Phoosaram, Guitya alias Bhutiya alias Devaram deserves to be maintained. The accused-appellant Sriram should also be sentenced to one year's rigorous imprisonment together with a fine of Rs. 100/- and in default, to further undergo one month's rigorous imprisonment for the offence under Section 411, IPC.

48. In the result, these appeals partly succeeds. The conviction of the accusedappellants Bhanwariya son of Phoosaram, Bhanwariya son of Surjaram, Guitya alias Bhutiya alias Devaram, Mangilal and Sriram for the offence under Section 376(2)(g), IPC is maintained and they are sentenced to ten year's rigorous imprisonment together with a fine of Rs. 1000/- and in default, to further undergo rigorous imprisonment for one year. The conviction and sentence awarded to the accused-appellants Bhanwariya son of Phoosaram and Guitya alias Bhutiya alias Devaram for the offence under Section 411, IPC is maintained. The accused-

appellant Sriram further convicted for the offence under Section 411, IPC instead of under Section 379, IPC and he is sentenced to one year's rigorous imprisonment together with a fine of Rs. 100/- and in default of payment of fine to further undergo one month's rigorous imprisonment.

49. The substantive sentences awarded to the accused-appellants Bhanwariya son of Phoosaram, Guitya alias Bhutiya alias Devaram and Sriram for the offences under Sections 376(2)(g) and 411, IPC shall run concurrently.

50. Let the record of the case be sent back to the learned lower court forthwith and the Jail authorities be informed of the result of this appeal for compliance.

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