IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 58 of 2013
Reserved on: 28.2.2026
Date of Decision: 23.3.2026

Mohan Singh ...Appellant

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No.***

For the Appellant : Mr G.R. Palsra, Advocate.

For the Respondent : Mr Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction dated 7.12.2013 and order of sentence dated 8.12.2013 passed by the learned Special Judge, Mandi (learned Trial Court) vide which the appellant (accused before the learned Trial Court) was convicted and sentenced as under:-

Under Section 354 of the IPC	To suffer simple imprisonment for one and a half years, pay a fine of ₹5,000/- and in default of payment of fine, to undergo further simple

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

	imprisonment for one month.
Under Section 341 of IPC	To suffer simple imprisonment for 10 days.
Under Section 323 of the IPC	To suffer simple imprisonment for two months, pay a fine of ₹2,000/- and in default of payment of fine, to undergo further simple imprisonment for one month.
Under Section 324 of the IPC	To suffer simple imprisonment for a period of six months, pay a fine of ₹3,000/- and in default of payment of fine, to undergo further simple imprisonment for six months.
All the substantive sentences of imprisonment were ordered to run concurrently.	

(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for committing offences punishable under Sections 376/511, 341, 323, and 324 of the Indian Penal Code (IPC) and Section 3(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC&ST Act). It was asserted that the informant (the name being withheld to protect her identity) was returning to her home after milking her cow on 16.9.2008. The accused Mohan Lal met her on the way. He caught hold of the

informant's arm, dragged her, bit her face and removed her salwar. The informant shouted for help. The accused abused the informant and gagged her mouth. The victim kicked the accused and ran away from the spot without her salwar. Her daughter-in-law (PW-5) met her at home, who consoled her. The informant's husband came to the home in the morning, and she narrated the incident to him. She reported the matter to the police. The police registered the FIR (Ex.PW4/A). Rajesh Kumar (PW7) sent the informant for her medical examination. Dr. Reena Chandel (PW3) examined the informant and found multiple injuries on her person, which could have been caused by a bite and a fall. She issued the MLC (Ex.PW3/A). She preserved the samples and handed them over to the police official accompanying the victim. Rajesh Kumar (PW7) visited the spot. He prepared the site plan (Ex.PW7/A). He found human hair (Ex. P3) and a gas lighter (Ex. P4) on the spot. He put them into the separate parcels, sealed the parcels with seal 'N' and seized them vide memo (Ex.PW7/B). He also obtained the seal impression (Ex.PW7/C) on a separate piece of cloth. The informant produced her shirt (Ex. P6), which was put in a parcel, and the parcel was sealed with eight seals of Seal 'W'. The parcel was seized vide

memo (Ex.PW7/D). Rajesh Kumar arrested the accused. He filed an application (Ex.PW7/E) for the medical examination of the accused. The Medical Officer found that there was nothing to suggest that the accused was incapable of performing the sexual intercourse. He issued the MLC (Ex.PW7/F). Rajesh Kumar recorded the statements of witnesses as per their version. He found during the investigation that Section 3 of the SC&ST Act was applicable. Hence, he submitted the case file to the Superintendent of Police, Mandi, H.P. After the completion of the investigations, the charge sheet was filed before the Court of learned Judicial Magistrate First Class, Court No. 4, Mandi, HP, who committed it to the learned Special Judge, Mandi, HP, for trial.

3. Learned Special Judge, Mandi, HP charged the accused with the commission of offences punishable under Sections 376 read with Section 511, 341, 323, and 324 of IPC and Section 3(xi) of SC&ST Act, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined seven witnesses to prove its case. Inspector Hari Pal Saini (PW1) prepared the challan. Jiwan Lal (PW2) issued a certificate regarding the victim's caste.

Dr Reena Chandel (PW3) examined the victim. Victim (PW4) narrated the incident. The victim's daughter-in-law (PW5) found the victim wearing the shirt. Hari Ram (PW6) investigated the matter partly. Rajesh Kumar (PW7) investigated the matter.

5. The accused, in his statement recorded under Section 313 of Cr.PC denied the prosecution's case in its entirety. He claimed that the witnesses had deposed falsely against him. He did not produce any evidence in defence.

6. Learned Trial Court held that the testimony of the informant/victim was reliable and was corroborated by the testimony of her daughter-in-law and the medical evidence. The informant's statement did not show any attempt to commit rape. The act of the accused would amount to an offence of outraging the informant's modesty. The accused had prevented the victim from proceeding towards a direction where she had a right to proceed. The accused had caused injury to the victim with his teeth. It was not proved that the accused had committed the offence merely because she belonged to the Scheduled Caste. Hence, the learned Trial Court convicted the accused of the commission of offences punishable under Sections 354, 341, 323 and 324 of IPC and acquitted him of the commission of offence

punishable under Section 3(xi) of SC&ST Act and sentenced him as aforesaid.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal, asserting that the learned Trial Court erred in convicting and sentencing the accused. The relationship between the parties was strained over the land. The victim had shouted for help, but nobody came to the spot, even though the place of the incident was 20 mtrs. from her house. This is highly improbable. The witnesses admitted that the houses were located in the vicinity, but the Investigating Officer failed to join any independent witness. The statements of the victim and her daughter-in-law contradicted each other on material aspects. The victim had turned hostile, and her testimony could not have been used to record the conviction. The Medical Officer stated that the injuries could have been caused by a fall, which makes the prosecution's case suspect. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set-aside.

2026:HHC:8209

8. I have heard Mr G.R. Palsra, learned counsel for the appellant/accused, and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

9. Mr G.R. Palsra, learned counsel for the appellant/accused, submitted that the appellant is innocent and he was falsely implicated. The investigation in the present case was conducted by an Inspector. Only a Gazetted Officer can carry out the investigation. Learned Trial Court did not consider this aspect. Therefore, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside. He relied upon ***State of A.P. v. Viswanadula Chetti Babu, (2010) 15 SCC 103, Rajesh Dhiman v. State of H.P., (2020) 10 SCC 740, State of U.P. v. Mohd. Musheer Khan, (1977) 3 SCC 562*** and ***Jai Dev v. State of Punjab, 1962 SCC OnLine SC 84,*** in support of his submission.

10. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the learned Trial Court had acquitted the accused of the commission of an offence punishable under Section 3(xi) of the SC&ST Act. The non-investigation by the Gazetted Officer only vitiates the investigation under the SC&ST Act and does not affect the

offence punishable under the IPC. The mere fact that the victim had not narrated a part of the incident does not make her testimony suspect. The victim had specifically mentioned that the accused had pushed her, and she fell, after which the accused tried to rape her. Therefore, the prosecution's admitted case was that the injuries were caused by means of a fall. Hence, the opinion of the Medical Officer in the cross-examination supports the prosecution's case and does not make it doubtful. Learned Trial Court had taken a reasonable view while convicting the accused, and no interference is required with it. Hence, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. In the present case, the learned Trial Court acquitted the accused of the commission of an offence punishable under Section 3(xi) of the SC&ST Act and Section 376 read with Section 511 of the IPC. The State has not preferred any appeal against the acquittal, and there is no necessity to determine whether the act of the accused constituted an attempt to rape and an offence punishable under Section 3 (xi) of the SC & ST Act.

2026:HHC:8209

13. It was submitted that only a Gazetted Officer could have investigated the matter, and the investigation and trial in the present case are vitiated. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***State of M.P. v. Chunnilal, (2009) 12 SCC 649,*** that the investigation by an unauthorised officer for the commission of an offence punishable under Section 3 of the SC&ST Act is invalid; however, the trial will proceed for the commission of offences punishable under IPC. It was observed: -

> "**8.** The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code, when jointly read, lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under IPC and any of the offences enumerated in Section 3 of the Act, the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation, the proceedings shall proceed in an appropriate court for the offences punishable under IPC, notwithstanding investigation and the charge-sheet not being liable to be accepted only in respect of the offence under Section 3 of the Act for taking cognisance of that offence.
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> **9.** In the present case, there is no denial of the fact that the accusations related to offences both under the Act and the IPC. The High Court was therefore not justified in quashing the entire proceedings. The order shall be

restricted to the offence under Section 3 of the Act and not in respect of offences punishable under the IPC.

14. This position was reiterated in ***M.P. v. Babbu Rathore,*** ***(2020) 2 SCC 577***, wherein it was observed:-

> 9. By virtue of its enabling power, it is the duty and the responsibility of the State Government to issue a notification conferring the power of investigation of cases by a notified police officer not below the rank of Deputy Superintendent of Police. Rule 7 of the 1995 Rules provides rank of an investigation officer shall not be below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer in investigating reference to the offences committed under any provisions of the 1989 Act but the question arose for consideration is that apart from the offences committed under the 1989 Act, if the offence complained are both under IPC and the offence enumerated in Section 3 of the 1989 Act and the investigation being made by a competent police officer in accordance with the provisions of the Code of Criminal Procedure (hereinafter being referred to as "the Code"), the offences under IPC can be quashed and set aside for non-investigation of the offence under Section 3 of the 1989 Act by a competent police officer. This question has been examined by a two-Judge Bench of this Court in ***State of M.P. v. Chunnilal [State of M.P. v. Chunnilal, (2009) 12 SCC 649 : (2010) 1 SCC (Cri) 683***]. Relevant para is as under: (SCC pp. 651-52, paras 7-8)
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> > "7. ... By virtue of its enabling power, it is the duty and responsibility of the State Government to issue a notification conferring the power of investigation of cases by a notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the Rules provided rank of investigating officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as an investigating officer.

> *8.* The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code, when jointly read, lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. *But when the offence complained are both under IPC and any of the offences enumerated in Section 3 of the Act, the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation, the proceedings shall proceed in an appropriate court for the offences punishable under IPC, notwithstanding investigation and the charge-sheet not being liable to be accepted only in respect of the offence under Section 3 of the Act for taking cognisance of that offence*." (emphasis supplied)

> 10. Undisputedly, in the instant case, the respondents were charged under Sections 302/34, 404/34 IPC apart from Section 3(2)(*v*) of the 1989 Act and the charges under IPC have been framed after the investigation by a competent police officer under the Code, in such a situation, in our view, the High Court has committed an apparent error in quashing the proceedings and discharging the respondents from the offences committed under the provisions of IPC, where the investigation has been made by a competent police officer under the provisions of the Code. In such a situation, the charge-sheet deserves to proceed in an appropriate competent court of jurisdiction for the offence punishable under IPC, notwithstanding the fact that the charge-sheet could not have proceeded confined to the offence under Section 3 of the 1989 Act.

15. In view of the binding precedents of the Hon'ble Supreme Court, the submission that the accused is entitled to acquittal because the investigation was conducted by an unauthorised officer cannot be accepted. The learned Trial Court

could have proceeded for the commission of offences punishable under various Sections of the IPC, and there is no infirmity in it. In ***State of A.P. v. Viswanadula Chetti Babu, (2010) 15 SCC 103,*** the offence was registered under the SC&ST Act and not under the various provisions of the IPC. Therefore, the cited judgment does not apply to the present case.

16. The informant/victim (PW4) stated that she was returning after milking her cow. The accused met her on the way. He caught her and laid her on the ground. She abused him. A scuffle took place between her and the accused. The accused bit on her cheek. He also removed her salwar. She pushed her with her leg. She was permitted to be cross-examined. She admitted that she had lodged the FIR (Ex.PW4/A), which was written as per her version. She admitted that the accused had overpowered and undressed her. She admitted that she had shouted for help. She admitted that she had asked the accused whether he had a mother and sister in his house, upon which the accused abused her and gagged her mouth. She admitted that she had pushed the accused and freed herself from him and went to her home, where her daughter-in-law was present. She admitted that her husband was not present at home, and he arrived the next morning. She

admitted that she had narrated the incident to her husband, and thereafter she reported the matter to the police. She admitted that she had been medically examined, and the police had seized one lighter and human hair from the spot. She stated that she had forgotten the details because of the time lapse.

17. It is apparent from the statement of the victim that she was not contradicted with her previous testimony, and she is not shown to have made inconsistent statements on different occasions. Her credit was not impeached by the State. It was laid down by the Hon'ble Supreme Court in ***Selvamani v. State, 2024 SCC OnLine SC 837,*** that the testimony of a hostile witness is not effaced from the record and the version which is as per the prosecution evidence or the defence version can be accepted if corroborated by other evidence on record. It was observed:

> "**9.** A 3-Judge Bench of this Court in the case of ***Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627: 1991 INSC 153***, relying on the judgments of this Court in the cases of ***Bhagwan Singh v. State of Haryana (1976) 1 SCC 389: 1975 INSC 306, Sri Rabindra Kuamr Dey v. State of Orissa (1976) 4 SCC 233: 1976 INSC 204, Syad Akbar v. State of Karnataka (1980) 1 SCC 30: 1979 INSC 126***, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further 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 scrutiny thereof.

10. This Court, in the case of ***C. Muniappan v. State of Tamil Nadu (2010) 9 SCC 567: 2010 INSC 553***, has observed thus:

> "**81.** It is a settled legal proposition that (***Khujji case***, SCC p. 635, para 6)
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> > '*6.....* the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. 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 scrutiny thereof.'
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> 82. In ***State of U.P. v. Ramesh Prasad Misra,(1996) 10 SCC 360,*** this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in ***Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543, Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516, Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450, Sarvesh Narain Shukla v. Daroga Singh, (2007) 13 SCC 360*** and ***Subbu Singh v. State, (2009) 6 SCC 462***.
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> 83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof, which are admissible in law, can be used by the prosecution or the defence."

18. Therefore, the submission that the victim's testimony is to be discarded because she was declared hostile and was

permitted to be cross-examined by a learned Public Prosecutor cannot be accepted.

19. She stated in her cross-examination that her cowshed is located at a distance of 40-50 mtrs. from her house. She admitted that the houses of Dhanna Ram and Bhoop Singh were located on the way. She had earlier gone to the house of her parents and had got traditional food with her. She denied that she and her husband sat near the house of Mohan Singh to take the meal and consume liquor. She denied that the accused objected to their activities, and a scuffle took place between her husband and the accused. She stated that no one came to the spot on hearing her cries. She volunteered to say that the accused had gagged her mouth. She reached her house at about 9.00 PM. The scuffle continued between her and the accused for more than three hours. She denied that she was making a false statement.

20. There is nothing in her cross-examination to show that she was making a false statement. The suggestions made to her in the cross-examination that she and her husband were consuming meals and taking liquor, which were objected to by the accused and led to the scuffle between the accused and the informant's husband, were denied. A denied suggestion does not

amount to any proof, and no reliance can be placed upon it to discredit the testimony of the informant.

21. It was submitted that her testimony shows that the houses of Dhanna Ram and Bhoop Singh were located near the place of the incident, and it is highly unlikely that they would not have heard the noise raised by her. This submission will not help the accused. There is no evidence that any person was present in the houses of Dhanna Ram and Bhoop Singh. Further, the victim has explained that the accused had gagged her mouth. Therefore, no person could have heard the victim's cries. Hence, her testimony cannot be discarded simply because the inmates of the houses of Dhanna Ram and Bhoop Singh had not heard her cries.

22. The victim stated in her cross-examination that the scuffle had continued for about three hours. It was submitted that this statement is not believable. This submission will not help the accused. The victim is illiterate. She had put her thumbprint on her statement. Therefore, her testimony that the incident continued for three hours cannot be accepted at its face value.

23. The victim's testimony is corroborated by the statement of her daughter-in-law (PW5). She stated that she was

present in her home. The victim returned to the house and called for her elder daughter. She (PW5) came out of the house and found the victim lying unconscious in the verandah. She was wearing only the shirt and no salwar. She noticed tooth bite and injury marks on the victim's face. The victim's husband had gone to the house of his brother-in-law. She (PW5) tried to contact him but could not do so. He returned in the morning, and the incident was narrated to him. The victim and her husband left the house. She stated in her cross-examination that she had not told the police that the victim had narrated the incident after regaining consciousness. Her parents-in-law had gone to the victim's parental home at about 12.30 PM. She had not disclosed the incident to any of the villagers. She denied that her father-in-law and his brother-in-law had quarrelled with the accused on the date of the incident, and a false case was made against the accused due to the quarrel.

24. The testimony of this witness corroborates the victim's testimony in material particulars. She specifically stated that she had noticed the victim without any salwar. She had also noticed the injury marks on the victim's face. Therefore, the

learned Trial Court had rightly relied upon the testimony of this witness.

25. It was submitted that she had exaggerated her version by saying that the victim was unconscious, which was not narrated by the victim. It was laid down by the Hon'ble Supreme Court in ***Achhar Singh v. State of H.P.*, *(2021) 5 SCC 543: 2021 SCC OnLine SC 368*** that the testimony of a witness cannot be discarded because of exaggeration alone. It was observed at page 555:

> "**25.** It is vehemently contended that the evidence of the prosecution witnesses is exaggerated and thus false. *Cambridge Dictionary* defines "exaggeration" as "the fact of making something larger, more important, better or worse than it really is". *Merriam-Webster* defines the term "exaggerate" as to "enlarge beyond bounds or the truth". The *Concise Oxford English Dictionary* defines it as "enlarged or altered beyond normal proportions". These expressions unambiguously suggest that the genesis of an "exaggerated statement" lies in a true fact, to which fictitious additions are made so as to make it more penetrative. Every exaggeration, therefore, has the ingredients of "truth". No exaggerated statement is possible without an element of truth. On the other hand, *Advanced Law Lexicon* defines "false" as "erroneous, untrue; opposite of correct, or true". *Concise Oxford English Dictionary* states that "false" is "wrong; not correct or true". Similar is the explanation in other dictionaries as well. There is, thus, a marked differentia between an "exaggerated version" and a "false version". An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the "opposite" of "true"). It is well said

that to make a mountain out of a molehill, the molehill shall have to exist primarily. A court of law, being mindful of such a distinction is duty-bound to disseminate "truth" from "falsehood" and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that, in their separation, no real evidence survives that the whole evidence can be discarded. [***Sucha Singh v. State of Punjab, (2003) 7 SCC 643, para 18: 2003 SCC (Cri) 1697***]

26. The learned State counsel has rightly relied on ***Gangadhar Behera [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381: 2003 SCC (Cri) 32]*** to contend that even in cases where a major portion of the evidence is found deficient, if the residue is sufficient to prove the guilt of the accused, conviction can be based on it. This Court in ***Hari Chand v. State of Delhi [Hari Chand v. State of Delhi, (1996) 9 SCC 112: 1996 SCC (Cri) 950]*** held that : (***Hari Chand case [Hari Chand v. State of Delhi, (1996) 9 SCC 112: 1996 SCC (Cri) 950***], SCC pp. 124-25, para 24)

"24. ... So far as this contention is concerned, it must be kept in view that *while appreciating the evidence of witnesses in a criminal trial, especially in a case of eyewitnesses, the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon.*"(emphasis supplied)

26. In the present case, the victim's daughter-in-law (PW5) made the statement on 24.8.2012, whereas the incident had taken place on 16.9.2008. The memories fail with the lapse of

time, and her statement cannot be discarded because of minor exaggeration.

27. The victim's testimony is also corroborated by the statement of Dr Reena Chandel, who found a small abrasion on the right side of the forehead above the middle eyebrows, small abrasion below lateral side of right lower lid, multiple teeth marks over right side of cheek, contusion over the left knee, contusion over the right shin below knee and multiple abrasions on both thighs. As per the opinion of the Medical Officer, the injuries could have been caused by a bite, a fall or a scuffle.

28. It was submitted that the Medical Officer admitted that injuries could have been caused by a fall, and the medical evidence has not unequivocally supported the prosecution's version. This submission will not help the accused because the victim had specifically stated that the accused had pushed her, and she fell. Thus, the injuries noticed by the Medical Officer, which could have been caused by a fall, corroborate her version rather than contradict it.

29. Therefore, the learned Trial Court had rightly accepted the prosecution's version and held that the accused had restrained the victim from proceeding further, caused simple

injuries to her and removed the victim's salwar, showing the intent to outrage the victim's modesty.

30. Learned Trial Court had convicted the accused of the commission of an offence punishable under Section 324 of the IPC for biting the victim's cheek. This cannot be sustained. It was laid down by the Delhi High Court in ***Neetu Bhandari v. State, 2019 SCC OnLine Del 11383,*** that the injury caused by the teeth does not fall within the definition of Section 324 of the IPC. It was observed:

> "**5.** This Court is of the view that the question whether human teeth fall within the scope of an instrument for cutting as mentioned under Section 324 of the IPC is no longer *res integra.* The Supreme Court in the case of ***Shakeel Ahmed v. State (Delhi), (2004) 10 SCC 103*** has authoritatively held that "*teeth of a human being cannot be considered as a deadly weapon as per the description of deadly weapon enumerated under Section 326 IPC*"
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> **16.** Section 326 of the IPC set out below-
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> **"326. Voluntarily causing grievous hurt by dangerous weapons or means-**
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> Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment for

life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

17. It is at once clear that the language of Section 326 of the IPC is almost identical to the language of Section 324 of the IPC. While Section 326 of the IPC relates to an offence of causing grievous hurt by means of instruments as specified therein, Section 324 of the IPC is attracted if the hurt caused by those instruments is not grievous. The essential ingredients of both sections, apart from the nature of hurt, remain the same.

18. In ***Shakeel Ahmed*** (supra), the Supreme Court had considered a case where the assailant had bitten off the phalanx of the index finger of the injured. The injury caused fell within the description of grievous hurt and therefore, the appellant was convicted of an offence under Section 326 of the IPC. The Supreme Court held that the offence could not be considered as an offence under Section 326 of the IPC and, at best, had remained an offence punishable under Section 325 of the IPC. The Court reasoned that the teeth of a human being could not be considered as a deadly weapon as enumerated under Section 326 of the IPC.

19. In ***Khemchand Soni v. The State of Madhya Pradesh: Crl. Rev. No. 2411/2012, decided on 20.03.2013***, the High Court of Madhya Pradesh had proceeded on the basis that the question whether teeth could be considered as a cutting weapon or not would depend on the wound inflicted. The Court reasoned that if a thumb is chopped by teeth, then it would be considered a sharp cutting weapon. However, if a bone was broken due to the pressure exerted by the teeth, then the injury could be considered as caused by a blunt object. This Court does not find the said reasoning persuasive. The question of whether the teeth are an instrument for cutting would not be dependent on the manner in which the teeth are used. Similarly, the question of whether an instrument is for shooting or stabbing would not be dependent upon the manner in which it is used.

> **20.** In this regard, it would be relevant to refer to the observations made by the Supreme Court in ***Anwarul Haq v. State of U.P., (2005) 10 SCC 581***. The Court had set out the provisions of Section 324 of the IPC and had observed as under:—
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> > "12....The expression "any instrument, which is used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this Section...."
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> **21.** In view of the above, the contention that the complaint did not indicate an offence punishable under Section 324 of the IPC is merited. The status report does indicate commission of an offence under Section 323 of the IPC. However, the said offence is not cognizable and therefore, the police authorities could not have investigated the same without the order of a Magistrate.
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> **22.** In view of the above, the FIR, to the extent that it records commission of an offence under Section 324 of the IPC, is set aside. It would be open for respondent no. 2 to seek an appropriate order from the concerned Magistrate."

31. Madhya Pradesh High Court also took a similar view in ***Ramkesh v. State of M.P., 2019 SCC OnLine MP 2615,*** wherein it was observed:

> **5.** Having heard learned counsel for the parties at length and gone through the judgment and order passed by both the Courts below and also perused the record, particularly the statement of Bhawanideen (PW-1) and Ganesh (PW-2) and the medical expert Dr. Surendra Sharma (PW-7), the finding of both the courts below that the applicant voluntarily caused simple injury to Ganesh (PW-2) and also caused injury on the cheek of Bhawanideen (PW-1) by

biting are not required any interference. However, the injury caused by biting cannot be considered to be caused by a deadly weapon or a cutting weapon, as held by the Apex Court in the case of ***Shakeel Ahmed v. State of Delhi, (2004) 10 SCC 103***. Therefore, the applicant's conviction under Section 324 of the IPC is not sustainable. However, looking to the other evidence and concurrent findings of the trial court and appellate court, there is no hesitation to confirm the conviction under Section 323 of the IPC (on two counts). Accordingly, the conviction is modified.

32. A similar view was taken by the Madras High Court in ***Ponnusamy v. State, 2020 SCC OnLine Mad 13455,*** wherein it was observed:

> "**9.** The learned Counsel for the appellant/accused took a defence that teeth cannot be termed as a weapon. From the evidence of the Doctor [PW8] and the Accident Register [Ex. P5], it is clear that the victim [PW1] has sustained an avulsion injury in the thumb of the right hand with loss of pulp and nail, and it is a grievous injury due to amputation of the tip of the thumb. The thumb is a very important part of the body. Amputating a part of the body, no doubt, is a grievous one, but the offence has been committed by biting.
>
> **30.** Though several High Courts around the Country took different stands as to the definition of 'instrument' to attract the offence under Sections 324 and/or 326 IPC, the Hon'ble Supreme Court in ***Shakeel Ahmed v. State, Delhi, reported in (2004) 10 SCC 103***, has held as follows:
>
> > "2. The appellant stands convicted under Section 326 read with Section 34 of the Penal Code, 1860. Injuries, no doubt, are grievous as the phalanx of the index finger has been snipped off. But the allegation is that the assailant had bitten the index finger and caused the said injury. The teeth of a human being cannot be considered as a deadly weapon as per the description of

a deadly weapon enumerated under Section 326 IPC. Hence, the offence cannot escalate to Section 326. It can best remain only at Section 325 IPC. We, therefore, alter the conviction to Section 325 IPC read with Section 34 IPC."

31. In view of the aforesaid pronouncement, irrespective of the nature of injury, ie, simple and grievous, the tooth of a human being cannot be considered as a deadly weapon, as such, the injury caused by a human tooth cannot attract Sections 324 and/or 326 IPC, but, attract Sections 323 and/or 325 IPC."

33. Jammu and Kashmir High Court also held similarly in ***Satish Kumar v. State, 2025 SCC OnLine J&K 739*** as under:

"**25.** Various High Courts across the country have taken the view that a human tooth may be described as an instrument of cutting and that causing a tooth bite injury on a delicate part of the body by the accused may fall under Section 324 or 326 of the Penal Code, depending upon the nature of the injury- 'simple' or 'grievous'. In this context, reference may be made to ***Jagat Singh v. State, 1984 Cri LJ 115, Rameshwar v. State of Rajasthan, 1990 WLN (UC) 59, Hari Chandra v. State of Madhya Pradesh, (2011) 104 AIC 755, Chaurasi Manji v. State of Bihar, AIR 1970 Pat 322, Chotta @ Akash v. State of Madhya Pradesh, dated 16.10.2015*** and ***Gopal Bhai Chhaganlal Soni v. State of Gujarat, (1972) 13 GLR 848***.

26. Let us have a look at Sections 324 and 326 RPC: —

324. **Voluntarily causing hurt by dangerous weapons or means**

"Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is

deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

326. **Voluntarily causing grievous hurt by dangerous weapons or means**

"Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

27. Sections 324 and 326 of the Penal Code respectively deal with causing 'hurt' or 'grievous hurt' by dangerous weapons or means. In view of the text and context in which the word "any instrument" is used in the aforesaid Sections, it cannot be considered a body part. The language employed in the provisions is voluntarily causing hurt or grievous hurt, "by means of any instrument for shooting, stabbing or cutting or any instrument which is used as a weapon of offence". A human bite, no doubt, is capable of causing 'hurt' or 'grievous hurt', as it can sever a body part. However, it is evident from the plain language of the provisions and the context in which the expression "instrument" is employed that a body part cannot be treated as an instrument for shooting, stabbing or cutting or as a weapon of offence. It necessarily refers to an instrument other than a body part.

28. The prosecution's case on hand is that the appellant bit the complainant's right ear, and it got severed. In a similar

fact situation, Hon'ble Supreme Court in ***Shakeel Ahmed v. State of Delhi, (2004) 10 SCC 103***, where the allegation was that the accused bit the index finger and a phalanx was snipped off, held that human teeth cannot be considered a deadly weapon within the meaning of Section 326 IPC and that such an offence would at best fall under Section 325 IPC. The relevant excerpt of the judgment for ease of reference is given below: —

> "The appellant stands convicted under Section 326 read with Section 34 of the Penal Code, 1860. Injuries, no doubt, are grievous as the phalanx of the index finger has been snipped off. But the allegation is that the assailant bit the index finger and caused the said injury. The teeth of a human being cannot be considered a deadly weapon as per the description of a deadly weapon enumerated under Section 326 IPC. Hence, the offence cannot escalate to Section 326. It can best remain only at Section 325 IPC. We, therefore, alter the conviction to Section 325 IPC read with Section 34 IPC."

29. It is evident from the afore-quoted observation of the Hon'ble Supreme Court that a human tooth does not fall under the definition of a dangerous weapon within the meaning of Section 324 or 326 of the Penal Code, and if grievous hurt is caused by a human bite, the offence would likely fall under Section 325 of the Penal Code. No doubt, the severity of the injury, particularly the chopping of a body part, is a relevant consideration, but the charge must be based on the means used, i.e., the teeth, which are a part of the human body and not a deadly weapon *per se*. Based on the principle of law enunciated by the Apex Court in ***Shakeel Ahmed***, although a human tooth may be described as an instrument or weapon in a broad sense, but it cannot automatically be treated as a deadly weapon within the scope of Sections 324 or 326 of the Penal Code because human tooth being a natural part of the human body, cannot be equated with weapons specifically categorised as a dangerous weapons in law. Therefore, if "hurt" or "grievous hurt" is caused by a human bite, Sections 324 or 326 of the Penal Code would not be attracted, and the charge would fall within the limits of

"hurt" and "grievous hurt" as envisaged under Section 323 or 325 of the Penal Code.

34. Bombay High Court also took a similar view in ***Tanaji Shivaji Solankar and Ors. vs. The State of Maharashtra and Ors. (04.04.2025 - BOMHC): MANU/MH/3261/2025*** and observed:

> 6. We would like to go by the contents of the First Information Report, statements of witnesses and other documents to consider whether the offence under Section 324 of the Indian Penal Code has been made out or not. The other offences, i.e. Sections 323, 504, 506, read with Section 34 of the Indian Penal Code, are non-cognizable in nature, and in that event First Information Report under Section 154 of the Code of Criminal Procedure will not be maintainable. First Information Report and statements of witnesses, especially the injured, would also show that when the informant had allegedly requested applicants not to transport bricks from the brick kiln till the decision of the case, she states that she was assaulted. She levels an allegation against applicant No. 1 that he took a bite (i.e. by using his teeth as a weapon) to the left forearm of her brother Laxman, and she also states that applicant No. 2 had taken a bite of her right hand. That means, she has levelled an allegation that applicants Nos. 1 and 2 both have used teeth as a weapon. As per the ingredients of Section 324 of the Indian Penal Code, the hurt should be by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood etc. As aforesaid, the medical certificates of the informant and her brother show that there was simple hurt to both of them. Now, the weapon that is used is stated to be a hard and blunt object. The teeth marks were not noted by the Medical Officer, and he has given the

> description of injury as Contused Lacerated Wound. The dimensions given cannot match the injury that might be caused by human teeth. The natural curve in the case of a bite is not noted. Therefore, it is hard to believe that injuries which were noted on the person of the informant and her brother would have been caused by human teeth. Hon'ble Supreme Court in Shakeel Ahmed (supra), while considering the offence under Section 326 of the Indian Penal Code, observed that the teeth of a human being cannot be considered as a deadly weapon as per the description of a deadly weapon enumerated under Section 326 of the Indian Penal Code. If we consider Section 326 of the Indian Penal Code, then as compared to Section 324 of the Indian Penal Code, there is only the difference of the word 'hurt' and 'grievous hurt' in the respective sections and then the change in the sentence. Therefore, the observations in ***Shakeel Ahmed*** (supra) are applicable to the case under Section 324 of the Indian Penal Code also. In ***Shakeel Ahmed*** (supra) injury was grievous as the phalanx of the index finger was snipped off, and, therefore, it was considered under Section 325 of the Indian Penal Code. If we apply the same rule, then the injury would come down to Section 323 of the Indian Penal Code, which is non-cognizable in nature. Therefore, with this evidence, though there appears to be a cross case, yet, it would be an abuse of the process of law to ask the applicants to face the trial, as the ingredients of the offence under Section 324 of the Indian Penal Code are not attracted for the aforesaid reasons."

35. Thus, the predominant view of the High Courts in the country is that injury caused by teeth does not fall within the purview of Section 324 of the IPC. I respectfully agree with the same. Hence, the learned Trial Court erred in convicting and sentencing the accused of the commission of an offence punishable under Section 324 of the IPC.

36. Learned Trial Court sentenced the accused to undergo one and a half years and pay a fine of ₹5,000/-, and in default of payment of fine to undergo further simple imprisonment for one month. This cannot be said to be excessive, considering that the accused had taken advantage of the victim at a lonely place and outraged her modesty. Learned Trial Court sentenced the accused to undergo simple imprisonment for ten days for the commission of an offence punishable under Section 341 of the IPC. This is also not excessive. Learned Trial Court sentenced the accused to undergo simple imprisonment for two months and pay a fine of ₹2,000/-, and in default to undergo further simple imprisonment for one month for the commission of an offence punishable under Section 323 IPC. The offence punishable under Section 323 of the IPC can be punished with imprisonment of one year, and the imprisonment of two months is not excessive.

37. In view of the above, the present appeal is partly allowed. The judgment and order passed by the learned Trial Court convicting and sentencing the accused of the commission of an offence punishable under Section 324 of IPC is ordered to be set aside, and the accused is acquitted of the commission of an offence punishable under Section 324 of IPC. Subject to this

2026:HHC:8209

modification, the rest of the judgment and order passed by the learned Trial Court are upheld.

38. A modified warrant be prepared accordingly.

39. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

23rd March, 2026
(Chander)