

Judgment Reserved on:31.12.2025

Judgment delivered on:12.02.2026

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE MR. RAVINDRA MAITHANI, J.

HON'BLE MR. ASHISH NAITHANI, J.

Criminal Appeal No. 143 of 2019

Mool Chandra @ Moola

.....Appellant

Vs.

State of Uttarakhand

.....Respondent

With

Criminal jail Appeal No. 11 of 2019

Bhup Singh @ Bhupali

.....Appellant

Vs.

State of Uttarakhand

.....Respondent.

Presence:

Mr. Mahavir Kohli, Advocate for the Appellant Mool Chandra @ Moola.

Mr. Asif Ali, Advocate for the Appellant Bhup Singh @ Bhupali.

Mr. J.S. Virk, Deputy Advocate General for the State.

As Per Hon'ble Ashish Naithani, J.

1. These connected criminal appeals, namely Criminal Appeal No. 143 of 2019 and Criminal Jail Appeal No. 11 of 2019, have been preferred

under Section 374(2) of the Code of Criminal Procedure by the Appellants, challenging the common judgment and order of conviction dated 18.02.2019 passed by the learned IInd Additional Sessions Judge, Haldwani, District Nainital, in Sessions Trial No. 45 of 2018, arising out of FIR No. 33 of 2018, Police Station Banbhulpura, District Nainital. Since both appeals arise out of the same judgment, pertain to the same incident, and are founded on common evidence, they are being heard and decided together by this common judgment.

2. By the impugned judgment, the Appellants were convicted for offences punishable under Sections 363, 366-A, 376(2)(1), and 376-D of the Indian Penal Code, and were sentenced to undergo varying terms of rigorous imprisonment, directing that all sentences shall run concurrently.
3. The case of the State, in brief, is that a missing person report was lodged by the brother of the victim at Police Station Banbhoolpura, Haldwani, on 08.03.2018. The report stated that the victim was a girl aged about 13 years (with the question of age being a matter arising on the record) and that she was suffering from intellectual disability and had difficulty with speech. It was reported that she had gone missing from her residence on 07.03.2018 at about 4:00 p.m.
4. The victim was found the next day at about 11:30 p.m., at a distance of approximately 50 meters ahead of Awla Chauki Gate, near a petrol pump. She was found alone and in a frightened condition. She was taken back to her home, where her mother noticed that she was wearing a blood-stained pyjama and had black marks on her body. The State case further is that the victim, through gestures and signs, communicated to her mother that she had been sexually assaulted and beaten by two persons.
5. While searching for the victim, her brother came across CCTV footage obtained from a camera installed at the Power House situated on

Himalayan School Road. In the said footage, the victim was seen being led by a person holding her hand and taking her towards Awla Chauki Gate on Gaula Bypass Road. The brother of the victim took a snapshot of the CCTV footage on his mobile phone and, on the basis of this clue, continued efforts to trace the victim.

6. Thereafter, on enquiries, the person seen accompanying the victim in the footage was identified as Mool Chandra, son of Gothi Lal. It was further stated that on the previous night, a girl with intellectual disability and short hair was seen in the company of Mool Chandra and his associate Bhup Singh, who was stated to be a driver, and that both were seen loitering around in the area. These facts were reported at the police station.
7. The victim was medically examined after about three days of the incident at the Government Female Hospital, Haldwani, on 10.03.2018 at about 9:30 a.m.
8. The medico-legal record contains a structured questionnaire pertaining to the history of sexual violence. The examining Medical Officer recorded that the victim was not able to provide information in response to the queries in the questionnaire, and the entries relating to penetration, emission, condom use, use of any object, and allied particulars were marked “not applicable”, as the victim was not able to comprehend or respond.
9. On internal examination, the hymen was found to be absent, and slight lacerations were observed. It was further noted that there was bleeding on touch and the presence of slight white discharge.
10. As the case was reported to involve sexual violence, during the course of the medical examination, samples and swabs, along with the clothes of the victim, were collected for pathological and forensic examination.

11. In the supplementary medical report, no spermatozoa were found in the vaginal smear. The Senior Medical Officer reported that, taking into account the history, clinical examination, and pathological reports, no definite opinion regarding rape could be given. However, the possibility thereof was not ruled out.
12. Seventeen exhibits relating to the victim and the Appellants were sent for forensic examination to the Forensic Science Laboratory at Dehradun, including the salwar of the victim (Exhibit 2), nail scrapings of the victim (Exhibit 4), the green underwear of accused Bhup Singh (Exhibit 11), and the jeans and blood samples of accused Mool Chandra (Exhibits 13, 14, and 16), besides other exhibits.
13. The FSL report recorded that human semen and human blood were detected on Exhibit 2 (the salwar of the victim) and Exhibit 11 (the green underwear of accused Bhup Singh).
14. The DNA obtained from the salwar and the nail scrapings of the victim matched the DNA obtained from the blood samples of the victim herself and did not match the DNA obtained from the blood samples of either accused.
15. Significantly, the DNA obtained from the underwear of accused Bhup Singh matched the DNA obtained from the blood sample of the victim as well as the blood sample of Bhup Singh.
16. Insofar as Appellant Mool Chandra is concerned, the forensic narrative placed on record states that no semen, blood, or DNA linking him to the alleged sexual assault was detected on the victim's clothing, nail scrapings, or any other incriminating exhibit, and there was no scientific corroboration by DNA profiling linking him to the alleged sexual assault.
17. Upon appreciation of the evidence on record, the learned trial court returned findings of guilt against the Appellants and passed the

impugned judgment of conviction and sentence, which is the subject matter of challenge in the present connected appeals.

18. Learned counsel for the Appellants assailed the impugned judgment and submitted that the conviction and sentence are unsustainable on the evidence on record.
19. Learned counsel for Appellant Mool Chandra submitted that the evidence does not establish his involvement in the act of sexual assault beyond a reasonable doubt. It was urged that the conviction for sexual assault has been recorded on a broad inference drawn from association and suspicion, without proof that reaches the required standard.
20. Learned counsel for Appellant Mool Chandra emphasized that the medical evidence is inconclusive. It was submitted that the victim was medically examined about three days after the incident, and the supplementary medical report records that no spermatozoa were found in the vaginal smear and that no definite opinion regarding rape could be given. It was therefore urged that the medical evidence does not provide definitive corroboration identifying any particular assailant.
21. Learned counsel for Appellant Mool Chandra placed specific reliance on the forensic material and submitted that it does not implicate him in the act of sexual assault. It was urged that no semen, blood, or DNA linking Mool Chandra to the alleged sexual assault was detected on the victim's clothing, nail scrapings, or any other incriminating exhibit, and that there is no scientific corroboration, by DNA profiling, connecting him to the alleged sexual assault.
22. Learned counsel for Appellant Mool Chandra further submitted that, at the highest, the circumstance of being seen in the company of the victim may suggest presence or proximity; still, it cannot be stretched to conclude participation in sexual assault in the absence of scientific or other dependable linking evidence. It was therefore urged

that the conviction of Mool Chandra is unsafe and deserves to be set aside.

23. Learned counsel further submitted that the prosecution failed to prove the authenticity and integrity of the electronic record in accordance with the law and that mere production of CCTV footage, without strict compliance with the requirements governing electronic evidence, renders the same inadmissible and unsafe for reliance. It was urged that the conviction cannot be founded, even partially, on such infirm electronic evidence.
24. Additionally, Learned counsel for Appellant Bhup Singh submitted that the learned trial court has erred in appreciating the surrounding circumstances and has not examined the infirmities in the State narrative with the caution required. It was urged that the State's case contains inconsistencies on foundational aspects and that the Court must evaluate the evidence as a complete chain before sustaining a conviction.
25. Learned counsel for Appellant Bhup Singh also relied upon the medical evidence and submitted that it is not definitive. It was urged that the medical opinion does not conclusively establish the nature of the act or identify the assailant, and therefore, conviction must rest only on evidence that is certain and reliable.
26. Learned counsel for Appellant Bhup Singh addressed the forensic finding relating to Exhibit 11, the green underwear attributed to Bhup Singh, and submitted that even scientific evidence must be evaluated in the context of the integrity of collection, seizure, sealing, custody, and forwarding. It was urged that unless the Court is satisfied that the exhibit remained protected from contamination or substitution, the circumstance cannot be treated as conclusive to sustain a conviction.
27. Learned counsel for Appellant Bhup Singh lastly submitted that the victim was stated to be a person with disability, and that the case

therefore calls for heightened judicial sensitivity. However, it was urged that even in such cases, conviction must be founded on proof beyond a reasonable doubt and not on moral shock or suspicion.

28. Per contra, learned counsel appearing for the State supported the impugned judgment and submitted that the State has proved its case beyond a reasonable doubt. It was urged that the victim was a vulnerable girl with intellectual disability and difficulty with speech, and her inability to narrate in conventional terms cannot detract from the occurrence when the surrounding circumstances and scientific evidence provide strong corroboration.
29. Learned State counsel submitted that the sequence of events, including the victim going missing, being recovered thereafter in a frightened condition, and the circumstance of the victim being seen in the company of the accused persons, establishes the case against the Appellants. It was urged that the learned trial court has appreciated the evidence in accordance with the law, and the conviction does not warrant interference.
30. Learned State counsel placed strong reliance on the forensic evidence, particularly against Bhup Singh, and submitted that human semen and human blood were detected on his underwear and that the DNA obtained therefrom matched the DNA of the victim as well as Bhup Singh. According to the State counsel, this is strong scientific corroboration of sexual contact with the victim and is sufficient to sustain the conviction.
31. As regards Mool Chandra, learned State counsel submitted that though the forensic linkage may not be available, the evidence establishes his presence with the victim during the relevant period and his association with Bhup Singh.
32. Learned State counsel refuted the aforesaid contention and submitted that the CCTV footage was duly proved during trial in

accordance with law. It was pointed out that a certificate under Section 65-B of the Indian Evidence Act was produced through Prosecution Witness No. 6, and the electronic record was taken on file and marked as an exhibit without any objection at the time when it was so marked.

33. It was urged that forensic evidence is corroborative in nature and its absence does not by itself exonerate an accused if other circumstances establish involvement. It was therefore contended that the conviction recorded by the learned trial court calls for affirmation.

34. Heard learned counsel for the Parties and perused the records.

35. The case concerns a victim who was initially stated to be a minor girl aged about 13 years at the inception of the proceedings. However, upon medical and documentary assessment conducted during the course of investigation, her age was subsequently determined to be between 18 and 20 years, thereby rendering her a major in the eyes of the law.

36. The foundational facts are not in dispute. A missing person report was lodged by the brother of the victim on 08.03.2018, stating that the victim, aged about 13 years, had gone missing from her residence on the previous day. She was recovered the following night at about 11:30 p.m., alone and in a frightened condition, near Awla Chauki Gate, close to a petrol pump.

37. Upon being taken home, her mother noticed blood-stained clothes and bodily marks. Through gestures, the victim indicated that she had been subjected to physical and sexual assault. These facts constitute the immediate backdrop of the case.

38. The victim was medically examined on 10.03.2018 at 9:30 a.m. at the Government Female Hospital, Haldwani, approximately three days after the incident. In the medico-legal examination, the victim was unable to provide any history or respond to the structured

questionnaire relating to sexual violence, including the nature of the incident or the assailant.

39. On internal examination, the hymen was found absent, with slight lacerations and bleeding on touch. No swelling was noted. The medical findings were suggestive of sexual activity but did not identify the perpetrator and, in the absence of reliable forensic linkage, were not by themselves sufficient to sustain a conviction under Section 376 IPC.
40. In the supplementary medical report, no spermatozoa were detected in the vaginal smear. The Senior Medical Officer opined that no definite conclusion regarding rape could be drawn, though the possibility was not ruled out. The time gap between the incident and the medical examination is a relevant factor in appreciating these findings.
41. During the medical examination and investigation, biological samples of the victim and the Appellants, including vaginal swabs, hair samples, nail scrapings, and clothing, were collected and forwarded for pathological and forensic examination.
42. Seventeen samples were forwarded to the Forensic Science Laboratory, Panditwari, Chakrata Road, Dehradun. The FSL report marks these samples as distinct exhibits, as follows:
- Exhibit–1: A black and military-coloured printed hood of the victim.
Exhibit–2: A light brown coloured salwar of the victim.
Exhibit–3: Scalp hair of the victim.
Exhibit–4: Nail scrapings of the victim.
Exhibit–5: Pubic hair of the victim.
Exhibit–6: Two vulval swabs of the victim.
Exhibit–7: Two vaginal swabs of the victim.
Exhibit–8: Two anal swabs of the victim.
Exhibit–9: Two vaginal washings of the victim.
Exhibit–10: Blood sample of the victim in an EDTA vial.
Exhibit–11: A green coloured underwear of accused Bhup Singh.
Exhibit–12: Pubic hair of accused Bhup Singh.
Exhibit–13: A blue-coloured pair of jeans of accused Mool Chandra.

Exhibit–14: Blood sample of accused Mool Chandra in an EDTA vial.
Exhibit–15: Blood sample of the victim on an FTA card.
Exhibit–16: Blood sample of accused Mool Chandra on an FTA card.
Exhibit–17: Blood sample of accused Bhup Singh on an FTA card.

43. Before proceeding to evaluate the forensic results against the individual Appellants and the corroborative circumstances relied upon by the State, it is necessary to examine whether the State has established an unimpeachable chain of custody in respect of the forensic exhibits. The deficiencies noticed herein do not render the forensic evidence wholly inadmissible; however, they require the Court to exercise caution and to avoid resting a finding of guilt solely upon such material.
44. The FSL report, dated 3rd July 2018, addresses the Court, namely the Court of the learned FTC/Addl. District and Sessions Judge / Special Judge (POCSO), Haldwani, District Nainital, stating that “with reference to the forwarding memo dated 03.04.2018 in connection with Crime No. 33 of 2018 under Sections 363, 366(क), 376(2)(ब), 323 IPC and Sections 5/6 of the POCSO Act, Police Station Banbhoolpura, District Nainital, regarding the examination of exhibits received through Constable No. 660 CP Trilok Singh dated 03.04.2018 for laboratory examination.”
45. Meaning thereby that, with the order of the trial court dated 02.04.2018, the samples were sent for examination to the FSL laboratory, and Constable Trilok Singh handed over the said materials on the next day, that is, 03 April 2018. Considering this, there is no delay after the court’s order up to the samples reaching the FSL, Dehradun.
46. The evidentiary value of forensic material does not rest solely upon the scientific conclusions drawn by the Forensic Science Laboratory, but equally upon the sanctity, continuity, and transparency

of the chain through which such exhibits pass, commencing from the point of collection and culminating in forensic examination. Any unexplained break or infirmity in this chain would have the potential to erode the reliability of the scientific opinion.

47. As per the General Diary dated 10.03.2018, both the accused were apprehended, and the said GD further mentions the time as 12:00 noon. A pink coloured shirt with blue stripes worn by the accused Mool Chandra @ Moola, son of Thori Lal, which was captured in the CCTV footage and reported to have been worn by the accused Mool Chandra, was also noted.
48. Another point of consideration regarding the letter and the material collected from the Appellant-accused-convict is that, as per the statement of the Investigating Officer, namely Prosecution Witness No. 6, Smt. Kumkum Dhanik has mentioned in her statement that during the course of the arrest of the accused persons, their clothes were taken into custody for the purpose of forensic examination.
49. As per her statement, the underwear of only one accused was taken, i.e., of accused Bhup Singh @ Bhupali, marked as “A green coloured underwear of accused Bhup Singh”, Exhibit–11, whereas the underwear of the other accused, namely Mool Chandra @ Moola, was not collected.
50. Now the question that arises is that if the Investigating Officer has collected and mentioned about the green coloured underwear of the accused Mool Chandra, then why it was not sent for FSL examination.
51. It is also to be considered that entry in the malkhana was not done. As whenever any material is collected, and before it has to be sent for FSL examination, firstly it has to be noted and registered in the malkhana register, unless it is promptly and straightaway taken before the concerned Magistrate or competent authority for consideration.
52. Since there is an anomaly with regard to the chain of custody of clothes that were taken from the accused on 10th March 2018, and as

mentioned in the statement of the Investigating Officer, Prosecution Witness No. 6, that they were taken for FSL and medical examination, therefore, with regard to the first link of documentary evidence, the same ought to have been examined.

53. Firstly, the malkhana moharrir, and thereafter the person responsible for receiving sanction from the trial court for FSL examination.

54. After the samples of the Appellant-accused were collected, that is, clothes, DNA-related blood samples, FTA cards, and other materials, the question over here is as to when they were handed over to the malkhana moharrir, how they were placed before the court, and how they were registered.

55. As per the FSL report, the sanction letter dated 02.04.2018 reached the laboratory situated at Dehradun on the very next day, which was handed over by Constable Trilok Singh on 3rd April 2018. There is no question of delay with respect to the samples being received for forensic examination after they were sanctioned by the court.

56. Now, to clarify this anomaly, Constable Trilok Singh was required to testify to the chain of evidence, but he was not examined before the court.

57. In the present case, the record establishes that the victim was subjected to a medico-legal examination on 07.03.2018 at the Government Female Hospital, Haldwani. During the said examination, the Medical Officer collected the victim's clothes and other materials, including her salwar, along with biological samples and nail scrapings, strictly in accordance with prescribed medico-legal protocol. As per the medico-legal examination and the statements of the Medical Officer, the top (military coloured hoodie) and the light-coloured salwar of the victim, which were worn at the time of the incident, were

taken in the hospital on 10th March 2018, sealed, and handed over to the police.

58. However, the Court notes that no independent DNA profiling report explaining the methodology, parameters of matching, or expert opinion has been formally proved during trial. The forensic finding, therefore, cannot be treated as conclusive by itself and must be evaluated as a corroborative circumstance.
59. However, the record does not disclose any contemporaneous seizure memo or recovery document evidencing the collection of the said underwear from the possession of accused Bhup Singh. In the absence of a complete and demonstrable chain of custody, the forensic reference to the said article cannot be treated as conclusive proof of sexual assault
60. The Forensic Science Laboratory examined seventeen exhibits, including, inter alia, the salwar of the victim (Exhibit-2), the nail scrapings of the victim (Exhibit-4), and the green coloured underwear of accused Bhup Singh (Exhibit-11), besides the blood samples of the victim and the accused persons. The laboratory report does not record any discrepancy in seals, packaging, or identification marks.
61. The Hon'ble Supreme court in, *Criminal Appeal No. 1672 OF 2019; Kattavelai @ Devakar versus State of Tamil Nadu* has recently observed that,

“Para 44.....(4)Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall

render the I.O. responsible for explaining such lapse. The Directors General of Police of all the States shall prepare sample forms of the Chain of Custody Register and all other documentation directed above and ensure its dispatch to all districts with necessary instruction as may be required."

62. Now the main question that has to be looked into is whether there is anything on record to indicate that the exhibits passed through any unauthorised hands or were exposed to any condition capable of compromising their integrity. At the same time, whether it holds the chain of custody of the materials so sent to the FSL for examination; that includes, at the outset, the medical examination of the Appellants/Convicts. Then, whether there are any certified recovery memo of the underwear of the accused Bhup Singh as indicated in the FSL report as “Exhibit–11: *A green coloured underwear of accused Bhoop Singh*”, and whether there is a certification or memo of samples as mentioned in the FSL report as “Exhibit–16: *Blood sample of accused Mool Chand on an FTA card*” and “Exhibit–17: *Blood sample of accused Bhoop Singh on an FTA card*”. If these are found to be present and verified, there ought to be corresponding entries in the General Diary.

63. Significantly, during the course of the trial, no substantive challenge was raised to the chain of custody. Neither the Medical Officers who collected the samples nor PW-6 Smt. Kumkum Dhanik, the Investigating Officer who handled and forwarded the exhibits, were confronted with any suggestion of tampering, contamination, substitution, or improper handling. No material contradiction has been elicited to cast doubt upon the continuity of possession or the condition of the seals at any stage.

64. Apart from the medical and forensic evidence, the State relies upon electronic evidence in the form of CCTV footage. During the

search for the victim, CCTV footage obtained from a camera installed near the Power House on Himalayan School Road depicts the victim being led by a person holding her hand in the direction of Awla Chauki Gate. The electronic record was produced along with a certificate under Section 65-B of the Indian Evidence Act by Prosecution Witness No. 6, the Investigating Officer, Kumkum Dhanik, and was marked as Exhibit 19-KA. The certificate and the accompanying electronic record were taken on record during the chief examination of Prosecution Witness No. 6.

65. It is borne out from the footage that accused Bhup Singh does not appear therein. The footage captures only a limited segment of movement and does not depict the place or time of the alleged sexual assault.
66. No objection was raised by the defence at the time the Section 65-B certificate and the CCTV footage were taken on record, nor was any suggestion put during the cross-examination of Prosecution Witness No. 6 questioning the authenticity or correctness of the electronic record. The CCTV footage, having been admitted in evidence without objection, forms part of the evidentiary material on record for appreciating the movement of the victim during the relevant period.
67. While the vulnerability of the victim warrants heightened judicial sensitivity, it does not dilute the fundamental requirement that criminal liability must rest on proof of each essential ingredient of the offence against each accused.
68. From the common evidentiary foundation already noticed, the culpability of Appellant Bhup Singh now falls for consideration. Insofar as this Appellant is concerned, the prosecution case rests primarily on scientific and medical evidence, which assumes decisive importance.

69. The culpability of Appellant Bhup Singh must now be tested in the light of the statutory framework. Section 376(2)(1) of the Indian Penal Code treats rape as an aggravated offence where it is committed upon a woman who is unable to communicate consent. The expression “unable to communicate consent” is not confined to physical incapacity alone, but extends to situations where, owing to intellectual disability or severe impairment of comprehension and speech, a woman is incapable of understanding the nature and consequences of the act or of conveying consent in any meaningful manner.
70. So far as accused Bhup Singh is concerned, the prosecution case rests substantially upon alleged forensic linkage. However, the foundational requirement of an unbroken and duly proved chain of custody of the incriminating exhibits has not been established. The record does not disclose any contemporaneous seizure memo, sealing certificate, or documentary proof demonstrating the safe custody, transmission, and handling of the material exhibits from the point of collection till their examination at the Forensic Science Laboratory. In the absence of such proof, the possibility of tampering, substitution, or contamination cannot be ruled out. Consequently, the forensic material relied upon by the prosecution loses its evidentiary sanctity, and no adverse inference can be drawn against Bhup Singh on the basis of such unverified material.
71. At this juncture, it becomes necessary to examine the applicability of Section 376-D of the Indian Penal Code. The said provision postulates rape committed by more than one person acting in furtherance of a common intention, and by a legal fiction, deems each such person to have committed the offence of gang rape. The statutory requirement is, therefore, twofold: first, participation of more than one person in the commission of rape, and second, such participation being in furtherance of a common intention. Once the evidence does not

establish participation of more than one person in the act of sexual assault, the statutory foundation for the offence under Section 376-D IPC collapses

72. It is in this legal backdrop that the role and culpability of Appellant Mool Chandra must now be examined on the basis of the evidence as it stands.

73. So far as Appellant Mool Chandra is concerned, the forensic evidence unequivocally excludes him from the act of sexual assault. No semen, blood, or DNA connecting him with the alleged offence was detected on any exhibit relating to the victim, including her clothing, biological samples, or nail scrapings, nor was any incriminating material found on his jeans. The blood samples taken for comparison were purely exclusionary. In the absence of any scientific linkage, his involvement in the offence of rape or aggravated rape is not proved.

74. The case against Appellant Mool Chandra rests on circumstantial and corroborative evidence. Prosecution Witness No. 1 established that the victim, who was intellectually disabled and incapable of independent movement, went missing from her residence on 07.03.2018, thereby proving that she was taken away without the consent of her lawful guardian. This circumstance is supported by electronic evidence. As per the CDR report dated 18.03.2018, proved through Prosecution Witness No. 6, the mobile location of Appellant Mool Chandra between 3:23 p.m. and 9:38 p.m. on the relevant date was traced in proximity to the place where the victim was last seen and later recovered.

75. Even independently of the electronic evidence relied upon by the State, the fact that the victim was taken away from the custody of her lawful guardian without consent stands established through the testimony of Prosecution Witness No. 1 and the surrounding factual

circumstances. The electronic evidence, including the CDR and CCTV footage, merely lends corroborative assurance to this conclusion and does not constitute the sole foundation of the culpability of Appellant Mool Chandra.

76. Further, the CCTV footage, duly proved with a certificate under Section 65-B of the Indian Evidence Act and marked as Exhibit 19-KA, shows the victim being taken away by a person holding her hand, identified during the trial as Appellant Mool Chandra. This evidence establishes his presence with the victim at the time she went missing and that he had taken her away from her residence.
77. Notwithstanding the victim being biologically a major, the evidence on record consistently establishes that she suffered from intellectual disability and was incapable of independent decision-making. In this context, Section 361 of the Indian Penal Code assumes relevance. The said provision defines kidnapping from lawful guardianship to include the taking of a person of unsound mind out of the keeping of the lawful guardian without consent. The protection under Section 361 IPC is not confined to minors alone but extends to persons who, by reason of mental unsoundness or intellectual disability, are incapable of safeguarding their own interests and remain under the care and protection of a guardian.
78. The medical and factual material on record clearly establishes that, notwithstanding her biological age, the victim was unable to comprehend the nature or consequences of her actions and remained dependent upon her family for care and supervision. The act of taking her out of the house without the consent of her lawful guardian, therefore, squarely falls within the ambit of Section 361 IPC and constitutes the offence punishable under Section 363 IPC. The essential ingredients of kidnapping from lawful guardianship, namely taking, absence of the guardian's consent, and lack of capacity on the part of the victim to make an informed choice, stand fully satisfied.

79. At the same time, the statutory limits of criminal liability must be respected. The forensic evidence conclusively excludes Appellant Mool Chandra from the act of sexual assault. There is no material to show that he committed, participated in, or facilitated the act of rape. The circumstance of last seen, even when coupled with proximity and association, cannot substitute for proof of sexual assault. Consequently, the offences punishable under Sections 376(2)(l) and 376-D IPC are not made out against Appellant Mool Chandra.
80. The culpability of Appellant Mool Chandra having thus been conclusively determined and confined to the offence punishable under Sections 363 IPC, the Court now proceeds to consider the case of the co-accused separately.
81. On cumulative appreciation of the evidence on record, the Court finds that while the circumstances raise grave suspicion, the evidentiary threshold required for sustaining a conviction under Section 376 IPC against accused Bhup Singh is not met.
82. Criminal law mandates that a conviction must rest on legally proved evidence and not on suspicion, however strong. In the present case, the absence of documentary proof establishing the seizure and custody of the alleged forensic article creates a reasonable doubt as to the authorship of the sexual act. Accused Bhup Singh is therefore entitled to the benefit of such doubt insofar as the offence under Section 376 IPC is concerned.

ORDER

In view of the foregoing discussion and findings, the connected appeals are disposed of in the following terms.

The appeal filed by Appellant Bhup Singh is allowed. The conviction of Appellant Bhup Singh under Section 376-D IPC and Section 376(2)(l) IPC is set aside.

The appellant Bhup Singh is in jail. Let he be set free forthwith, if not wanted in any other case. He shall furnish personal bond and two sureties each of the like amount, to the satisfaction of the court concerned under Section 437A of the Code within a period of four weeks from today.

The appeal filed by Appellant Mool Chandra is partly allowed. His conviction and sentence for offences punishable under Sections 376(2)(1) and 376-D IPC are hereby set aside. His conviction for the offence punishable under Section 366-A IPC is also set aside. The conviction and sentence awarded to Appellant Mool Chandra for offence punishable under Sections 363 IPC is hereby affirmed.

The appellant Mool Chandra has been sentenced to 4 years of rigorous imprisonment with a fine of Rs. 2,500/- under Section 363 IPC. It is brought to the notice of the Court that he has already undergone more than 4 years in custody. Therefore, let the appellant Mool Chandra be set free forthwith, if not wanted in any other case. He shall furnish personal bond and two sureties each of the like amount, to the satisfaction of the court concerned under Section 437A of the Code within a period of four weeks from today.

The record of the learned trial court be transmitted forthwith, along with a certified copy of this judgment, for necessary compliance.

A copy of this judgment shall also be forwarded to the Superintendent of the Jail concerned for immediate information and compliance.

(Ravindra Maithani, J.)

(Ashish Naithani, J.)

12-02-2026

NR/