

Supreme Court, Division Bench
Honorable Justice Sapana Pradhan Malla
Honorable Justice Hari Prasad Phyal

Judgement

Date of Decision: 2076/8/2 (corresponding to 18 November, 2019)

071-CR-0659

Appellant/Plaintiff: Nepal Government through the FIR of “Gha” Kumari

Vs.

Respondent/Defendant: Sagar Bhatta, son of Khem Raj Bhatta resident of Baitadi District, Bhumesore V.D.C. Ward No. 2

- Rape is a heinous crime that inflicts harm not only on a person’s body but also on their dignity. When a woman’s body and self-respect are attacked in an unexpected and unimaginable manner, she may fall into a state of psychological disturbance. In such circumstances, it can be difficult for the victim to immediately recall or express the details of the sexual assault, and the memories may return gradually over time. This condition is known as **Rape Trauma Syndrome (RTS)**. Such situations must be taken with utmost seriousness by the justices.

(Para 7)

- The nature of the crime of rape is different from that of other offences. In other crimes, consistency in statements is essential for evaluating the truth; however, in cases of rape, certain contradictions may appear in the victim’s statements due to the trauma caused by the assault.
- In cases of rape, the primary issue of importance is whether or not the incident actually occurred, and the court must focus its consideration on that question. In cases of rape, the victim’s body itself is the scene of crime.

(Para 8)

- It is the duty of the State to conduct an effective investigation and to collect the financial details of both the victim and the defendant. However, failure to properly document or the negligence of investigators during the investigation should not result in a situation where the victim is deprived of compensation. Likewise, the State’s inaction should not be used as a basis for awarding a reduced amount of compensation, as such reasoning would be illogical and unjustified.

(Para 36)

- While determining compensation, it is appropriate to consider not only the suffering endured by the victim but also the impact of the psychological trauma caused by the shock of the violence on the victim’s mental health.

(Para 39)

- The act of committing rape is not only contrary to the law but also against humanity, human dignity, and social morality.

(Para 43)

On behalf of appellant/plaintiff: Learned Joint Government Attorney Surya Raj Dahal, Mr. Uddav Pudasaini and Advocate Swagat Nepal

On behalf of Respondent/Defendant: Learned Senior Advocate Mr. Raman Kumar Shrestha

Precedents Cited:

Relevant Laws:

Court of First Instance:

Honorable Justice Himalaya Raj Pathak

Baitadi District Court

Appellate Level:

Honorable Justice Ramesh Prasad Rajbhandari

Honorable Justice Nar Bahadur Shahi

Appellate Court, Mahendranagar

Decision

Honorable Justice Sapana Pradhan Malla: Summary of facts and decision of the case submitted pursuant to Clause 9 of the Judicial Administration Act, 2073 is as follows:

Facts of the Case

A joint application was filed at the Area Police Office, Patan, by Laluram B.K., Principal of Shree Siddheshwor Higher Secondary School, Melchaur, and Ganesh Dutta Bhattarai, Chairperson of the School Management Committee, stating that on 2068/12/09 (corresponding to 22 March, 2012), a student named “Gha” Kumari (name redacted), who had come to Patan to appear in the S.L.C. examination, was raped by Amar Raj Awasthi and Sagar Bhatt, who operated a shop in Patan Bazaar, and requesting that strict action be taken against both individuals.

Victim “Gha” Kumari on 2068/12/10 (corresponding to 23 March, 2012) filed an FIR before the District Police Office, Baitadi stating that on the afternoon of 2068/12/09 (corresponding to 22 March, 2012), at around 12:00 PM, while she had gone to Patan Bazaar to buy guess papers, Amar Raj Awasthi and Sagar Bhatt, operators of Chadani Digital Photo Studio, first harassed her and shortly thereafter, took her to their photo studio where upon using various kinds of medicinal injection, rendered her unconscious and collectively committed rape and had requested legal action be taken against them.

The site inspection report dated 2068/12/11 (corresponding to 24 March, 2012) states that the alleged incident occurred at Sagar Bhatt's Jagannath Store, located within four boundary points in Ward No. 9 of Patan VDC, Baitadi District, which are as follows: on the east - paved road leading to Shree Krishna Higher Secondary School, on the west - Goida river, on the north - Tek Singh Rawal's concrete house, and on the south - road also leading to Shree Krishna Higher Secondary School. Within this location, it is alleged that on 2068/12/09, Sagar Bhatt called "Gha" Kumari and forcibly committed rape. Upon inspection, no physical evidence related to the incident was found within this four boundary area. Chadani Photo Studio is located on the ground floor of Ganesh Bhatt's three-story concrete house within the same four-boundary area, in front of a paved road, with the following nearby landmarks on the south-east Ram Dutta Joshi's shop, on the north Deepak Bhatt's shop, on the west paved road leading from the market to Patan Campus and on the east Perennial Energy office. The studio consists of two rooms, one interior room containing a cot (*khatiya*) and another exterior room containing a computer and various cosmetic items. No other physical evidence related to the incident was found during the inspection.

Letters No. 2897 and 2898, dated 2068/12/10 (corresponding to 23 March, 2012), regarding medical examination of the victim and the defendants.

Seizure report dated 2068/12/11 stating that the clothes worn by the victim at the time of the incident were recovered from her residence.

Medical report of the victim forwarded by District Health Office, Baitadi on 2068/12/10 (corresponding to 23 March, 2012) states the following: bruise below left eye, on right arm in medial aspect 2 bruises of 1.5 cm x 1.5 cm and bruises below the left eye and arms, on P/v examination, whitish discharge was noted and around the introitus, two fingers were easily inserted inside the vagina.

On 2068/12/13, the victim "Gha" Kumari submitted an application to the Women and Children Office, Patan, Baitadi, stating that the defendant Sagar Bhatt and Amar Raj Awasthi, had gang-raped her. The application submitted to the Women and Children Office was received under dispatch no. 89 by the District Police Office, Baitadi.

The medical report of the clothes worn by the victim at the time of the incident on 2068/12/09, along with the blood group reports of the defendants was obtained from the Central Police Forensic Laboratory, Maharajgunj, Kathmandu.

A letter was submitted by Shree Kailpal Development and Protection Society Nepal to the Honorable Prime Minister, with a copy of the same to the District Police Office, Baitadi, stating that on 2068/12/09, a student named "Gha" Kumari who had come to Patan to appear in the S.L.C. examination, was forcibly given a drink laced with a narcotic substance by the defendants Sagar Bhatt and Amar Raj Awasthi, in Patan Bazaar, and subsequently gang-raped her and requested that strict legal action be taken against the defendants for this heinous crime.

The statement made by Kamala Bista is as follows: The victim "Gha" Kumari is my paternal cousin and was staying at my house while giving her examination. On the evening of 2068/12/09, at around 7:00 PM, she was sitting in the room playing with my mobile phone. I took the mobile from her, telling her to study and went to prepare food and she ate only half a piece of bread (*roti*).

She said that someone was teasing her through the phone, but after I took the phone, no one called. Afterwards, the victim began exhibiting unusual behavior and went outside to sleep. I then called other people from the vicinity, brought her inside, and performed a shamanic healing ritual (*jhārfuk*), and after she started damaging things inside the house, I tied her hands and they were untied the next morning. This incident did not occur in my house; rather, on the 9th of the same month, when she had gone to Patan Bazaar to collect her examination materials, she was raped and for this reason her mental state must have been adversely affected.

Statement made by Nirmala Bhatt reads as follows: On 2068/12/09, while I was at Sagar Bhatt's shop, the victim "Gha" Kumari came and asked me the whereabouts of Sagar Bhatt.

Statement made by Ramesh Bohara is as follows: Since both the defendants from the very beginning were not of good character, it is likely that they must have colluded to commit the crime.

The 7 page statement by defendant Sagar Bhatta drawn on 2068/12/20 (corresponding to 2 April, 2012) reads as follows: On 2068/12/09, at around 1:00 PM, she came to my shop and purchased a geometry box, a mathematics guess paper, and a calculator. After that, I do not know where she went. I had no enmity with the victim, and it is possible that someone else, using our names, could have committed such an act.

The seven-page statement by the defendant Amar Raj Awasthi drawn on 2068/12/20 reads as follows: On 2068/12/09, I was at my shop when, around 12:00–1:00 PM, I saw the victim, "Gha" (pseudonym), enter the bookshop of the defendant Sagar Bhatt from my shop. She remained there for approximately 4–5 minutes, but I do not know what was discussed or where she went afterward. On the morning of 2068/12/10, around 7:00 AM, I saw the complainant at Sagar Bhatt's shop. I had no prior enmity with the complainant, and I do not know why a FIR was filed in my name.

The report, received along with letter No. 2972 dated 2068/12/21 (corresponding to 3 April, 2012) from the Central Forensic Science Laboratory, states that among the clothes worn by the victim at the time of the incident human semen were detected in Exhibit No. 1, blood group of exhibit no. 1 could not be confirmed and exhibits nos. 4 and 5 were human hairs.

Statement made by Gagan Singh Bhandari on 2068/12/25 (corresponding to 7 April, 2012) reads as follows: On 2068/12/09 (corresponding to 22 March, 2012), I saw the victim when she had come to Patan Bazaar to purchase items. The next day, when she was crying and saying that she could not sit for examination, I inquired as to what had happened. She told me that on 2068/12/09, while she had come to the market to buy items, the accused, Sagar Bhatt and Amar Raj Awasthi, lured her under various pretenses and took her to the bedroom of Amar Raj Awasthi at Chadani Photo Studio. There, first Sagar Bhatt and then Amar Raj Awasthi forcibly raped her, and when she tried to escape, she was injured in the eye. Based on what the victim told me and considering the previous behavior of both the defendants, I am fully convinced that the two defendants must have committed the incident.

Statement of Indra Singh Bohora reads as follows: On the morning of 2068/12/10, when I came to Patan Bazaar for some work, I inquired with the victim. She stated that on 2068/12/09, when she had gone to the market to purchase items, the defendants Sagar Bhatt and Amar Raj Awasthi, under various pretenses lured her inside the house and, one after the other forcibly raped her. She further

stated that she sustained an injury to her eye while trying to escape, and I learned about the incident from her account.

According to a statement by Dhana Pahari, she learned that on 2068/12/09, when the victim came to Patan Bazaar, the defendants, Amar Raj Awasthi and Sagar Bhatt, lured her and took her to Amar Raj Awasthi's photo studio, where both the defendants, one after the other, forcibly raped her.

Statement made by Laluram B.K., Principal of Shree Kedar Higher Secondary School, Melchaur reads as follows: upon receiving news via phone that the victim "Gha" Kumari had been raped in Patan Bazaar on 2068/12/09, he went to Patan Bazaar the same day to inquire about the incident. He learned that on 2068/12/09, when the victim had gone to the market to purchase items, both defendants lured her inside and, one after the other forcibly raped her. Observing the bruises under the victim's left eye, he is fully convinced that the incident was committed by both defendants.

Statement of Ganesh Dutta Bhattarai, Chairperson of the School Management Committee of Shree Siddheshwor Higher Secondary School, Melchaur reads as follows: upon receiving the information about the incident via phone on the morning of 2068/12/09, he went to Patan. Upon seeing the bruises under the victim's eye and upon inquiring about what had transpired, he learned that on 2068/12/09, when the victim had gone to Sagar Bhatt's shop in the afternoon to buy guess papers, the defendant Amar Raj Awasthi had also arrived, and took her inside Chadani Photo Studio, and both the defendants forcibly raped her. Based on the account of the victim, he is firmly convinced that the incident was committed by both the defendants.

According to the site inspection report dated 2068/12/25 (7 April 2012) by Gagan Singh Bohara and six others, they learned that on the afternoon of 2068/12/09, when the victim "Gha" Kumari had gone to Sagar Bhatt's shop in Patan Bazaar to purchase her examination materials, the owner of Chadani Photo Studio, Amar Raj Awasthi, also arrived. She was then lured into the photo studio, despite her resistance, where first Sagar Bhatt and subsequently Amar Raj Awasthi forcibly raped her. Based on what they were told, they are firmly convinced that both defendants colluded to commit the incident.

According to a statement by Chaman Bhandari, a resident of Patan VDC, Ward No. 9, Baitadi District, he is firmly convinced that the accused, Sagar Bhatt and Amar Raj Awasthi, forcibly raped the victim "Gha" Kumari inside a room of Chadani Photo Studio on the afternoon of 2068/12/09. He noted that the defendants usually closed their shop after 7:00 PM, but on that day, the shop was already closed around 3:00 PM, which further strengthens his conviction that the defendants committed the crime.

The statement of Manmaya B.K., Police Constable at the Women's Service Center of the District Police Office, Baitadi reads as follows: on 2068/12/10, when the victim was brought to the District Police Office, she stated that on 2068/12/09, around 1:00 PM, she had gone to Sagar Bhatt's bookshop in Patan Bazaar to purchase a mathematics guess paper. When she asked for the paper, she was directed to Chadani Studio, where shortly afterward Sagar Bhatt also arrived. The victim stated that both defendants lured her inside and, despite her resistance she was forcibly raped by Sagar Bhatt and then by Amar Raj Awasthi. She also stated that she had bruises under her left eye and on her arm.

A primary charge-sheet was filed which reads as follows: Based on the supporting evidence, including the complaint petition, FIR, site inspection report, search and seizure report, victim's medical examination report, test report from the Central Police Forensic Laboratory, statements of the accused, documents from witnesses of the incident, and statements of individuals present during the site inspection, it is established that on the afternoon of 2068/12/09, the defendant Sagar Bhatt and Amar Raj Awasthi, forcibly administered an injection to render the victim "Gha" Kumari unconscious, took her inside their shop, laid her on a cot, and successively raped her. This act constitutes an offense under Section 1 under the Chapter of Rape Chapter of the *Muluki Ain* (Country Code). Therefore, it is requested that both accused be punished in accordance with Section 3 (4) of the same Chapter, with additional punishment under Section 3 (k) for gang rape, and that mental damages be awarded to the victim "Gha" Kumari under Section 10 of the same Chapter. The accused have been arrested, and this charge sheet, along with the case file, is hereby submitted for proceedings. Furthermore, during her treatment, the victim had submitted a petition to the Women's Development Officer stating that, while she was unconscious during the gang rape committed by both defendants, it was possible that other individuals might have also assaulted her, or that persons unknown to her may have participated in the assault. The charge-sheet further states that provided, additional individuals are identified during the course of the investigation, a separate supplementary charge sheet will be filed pursuant to No. 88 under the Chapter of Court Proceeding (*Adalati Bandobasta*).

The deposition of Amar Raj Awasthi before the Baitadi District Court is as follows: On 2068/12/09, the defendant Sagar Bhatt was at his shop, and I was at my own shop. On that day, between 12:00 and 1:00 PM, I saw the victim "Gha" Kumari at Sagar Bhatt's shop. At that time, no rape was committed by Sagar Bhatt, and as there were other people present, there was no opportunity for anyone to commit such an act. I also did not commit rape on that day or during the night. On the morning of 2068/12/10, around 7:00 AM, I saw the victim speaking with Sagar Bhatt at his shop before going for her exam. I became aware of the allegation of rape only after she was taken to the police post and reported that she had been raped. We did not commit rape, and we request that the actual perpetrators be punished and that we be acquitted of all charges.

According to the deposition of the defendant Sagar Bhatt before the Baitadi District Court, on 2068/12/09, the victim "Gha" (pseudonym) came to his shop around 11:00 AM while he was in his room preparing food. Later, around 1:00 PM, she returned to purchase books, a calculator, and a geometry box. He had known the victim for approximately three days prior to the conclusion of her examination. He stated that neither he nor the defendant Amar Raj Awasthi committed any rape. He further stated that he only became aware of the allegation that he had forcibly raped the victim in his sister's room in Patan after 2068/12/10, upon arriving at the police post.

Order issued by Baitadi District Court reads as follows: In the present case, although the defendants, Sagar Bhatt and Amar Raj Awasthi, have denied committing the alleged offense before the police and before this court, the evidences including other written complaints and petitions attached to the case file, the FIR submitted by the victim "Gha" Kumari (identify concealed), the site inspection report, the search and seizure report, written statements submitted by Gagan Singh Bohara and Devendra Khadka at the site inspection, the victim's medical examination report indicating that the vaginal opening could accommodate two fingers, bruising under the left eye, and a 1.5 x 1.5 cm wound on the right forearm, and the forensic report from the Central Police Forensic Laboratory showing human sperm cells and hairs on the clothes worn by the victim at the

time of the incident, along with other evidence collected in the case, it is establish that the defendants, Sagar Bhatt and Amar Raj Awasthi, are prima facie guilty of the offense. Accordingly, pursuant to No. 118 (2) of the Court Proceedings (*Adalati Bandobasta*) under the *Muluki Ain* (Country Code), a remand warrant pursuant to No. 121 of the Court Proceedings hereby issued and the defendants are hereby sent to the District Jail, Baitadi, for detention pending trial.

An order had been issued by the Baitadi District Court directing the District Police Office, Baitadi to present Ganesh Dutta Bhattarai, Chairperson of Shiddheshwar Higher Secondary School, Melchor, Principal Laluram B.K., the complainant and the victim “Gha” Kumari, individuals present during the site inspection, persons providing statements regarding the incident, and witnesses from the fact-finding reports through the District Government Attorney’s Office Office, Baitadi. The order further directs that the witnesses for the defendants also be presented in person and that all testimonies be submitted in accordance with the law.

The deposition of Nirmala Bhatt before the Baitadi District Court is as follows: when Chaman Singh Bhandari inquired with the victim “Gha” Kumari as to whether any incident occurred last night, “Gha” Kumari had replied that nothing had happened and when she was asked as to whether any drugs had been administered to her, she responded that no drugs had been given to her.

The deposition made by Kamala Bista before the Baitadi District Court is as follows: On 2068/12/09, after the victim “Gha” Kumari arrived at my house, she attempted to call her parents. Since the phone belonged to me, I asked her not to make unnecessary calls as it could incur costs. She replied that some unknown boy had been giving her missed calls and that she would not make the call. I then snatched the phone from her and kept it with me. Thereafter, while she was sitting in the room she turned on the room lights and also the torch. I asked her why she was behaving this way. She replied that I should not speak to her and that she was experiencing different emotions. When I went into the room and told her, “Let’s go to sleep,” the victim “Gha” went outside the house. I followed her and asked why she was behaving in this manner, to which she replied that I would understand the next day regarding what she had consumed, and she began wailing. As we were monitoring the victim “Gha” throughout the night, we were unable to sleep.

The deposition of Jayraj Joshi, attesting to the crime scene report before the Baitadi District Court, is as follows: Chadani Photo Studio is a three-storey building and that he is unaware of the exact number of rooms. He stated that the front room contained cosmetics and other beauty items, while the back room was equipped with photographic lighting and curtains. The room with the cosmetics was partitioned, and there was a cot approximately 3–4 feet wide. He states that according to the statement of one party, the incident allegedly took place at the house of the victim’s paternal aunt, Kamala Bista. However, police records indicate that the incident occurred at Chadani Photo Studio. Based on this discrepancy, he opined that the incident may have been fabricated.

The deposition made by Gagan Singh Bhandari, person attesting the incident report before the Baitadi District Court is as follows: I met the victim “Gha” Kumari on 2068/12/10 at Shyam Damai’s shop located at Patan Bazaar. On the same day at around 7:00 AM in the morning, “Gha” Kumari showed me her admission card and indicated that it had been marred by Sagar Bhatta. At that time, both “Gha” Kumari and Ramesh Bohara were at the shop of Sagar Bhata. I have no knowledge regarding where and by whom “Gha” Kumari was allegedly raped.

Deposition made by Ram Singh Bohara person attesting the search and seizure report before the Baitadi District Court (QA 6 and QA 14) is as follows: On the morning of 2068/12/10, when I reached the vicinity of Patan School I met my daughter, “Gha” Kumari. When I inquired with my daughter, she stated that on 2068/12/09, she informed me that she had come to the bookstore in Patan to purchase a guess paper which she had purchased. She further informed me that the shopkeeper asked her where she had come and where she resided. At that time, a photographer was also present. One of them offered her tea and water, saying that they were also sitting for the exam. She drank the tea and water, and after about 10 - 15 minutes, she lost consciousness. She further stated that she did not know what happened afterward. When I noticed bruising around her eye and asked what had happened, she said that the photographer may have squeezed her. The misconduct perpetrated against my daughter “Gha” Kumari allegedly took place at the bookstore owned by the defendant Sagar Bhatt.

The deposition of Ganesh Dutta Bhattarai, attesting to the incident report before the Baitadi District Court (QA 6 and QA 7) is as follows: I have no knowledge of the incident. I learned that it had occurred the previous day, and on the following day, we were called at around 3:00 PM. I saw the complainant from a distance, and there was no conversation between us.

The deposition made by Tej Bahadur Chand, person attesting the site inspection report before the Baitadi District Court (QA 6) is as follows: I do not believe that the complainant was forcibly raped after being administered medicine in her tea. My shop is directly opposite to that of the defendants shop. I learnt about the incident through hearsay and that the police called me to provide my statement eight days later.

The deposition made by Devendra Bahadur Khadka, person attesting the site inspection report before the Baitadi District Court (QA 5) is as follows: I did not writn that I was fully convinced that the defendants had committed rape. That statement was written for me and the statement was not read out to me by the police. I was not summoned to the police station, instead, they came to my hotel in a police vehicle and asked me to quickly sign the document.

Deposition made by Police Constable Mana Maya B.K., person preparing the incident report before the Baitadi District Court (QA 6) is as follows: I personally observed bruises on the victim. I did not witness her being injected; rather, I was informed by the victim that she had been injected.

Deposition made by Shiva Dutta Panta, witness of the respondents before the Baitadi District Court (in QA 12) is as follows: On the evening of 2068/12/11, when “Gha” Kumari was questioned by her father and other villagers, she was physically assaulted by having her hair pulled and being beaten after stating that four people had come into her life. Others also subjected her to various forms of mental harassment, with instructions not to fabricate stories. Given that the incident, facts and statements repeatedly recorded differently and presented inconsistently, the case appears to be false and fabricated.

The deposition made by Navaraj Awasthi, a witness to the defendants before the Baitadi District Court (in QA 10) states the following: When I spoke with the defendants, they stated that on the morning of 2068/12/10, while going to take their exam, both “Gha” Kumari and Ramesh Bohara, who is related to her as a brother, went together to the shop of the defendant Sagar Bhatt. He asked why they had quarrelled with his sister and why she was being teased and further threatened the

defendants that he would file a case against them after the exam. This suggests that the case was orchestrated in a premeditated manner.

The deposition made by Tarka Singh Thagunna, attesting the on-site report before the Baitadi District Court (in QA 9) states as follows: I saw “Gha” Kumari, at the District Hospital in a disturbed mental state. She had a wound and bruises above her eye, but I could not determine as to which eye it was. She said the injury occurred in Patan, and that statement is true. When providing my statement to the police, they did not read out the details to me and I was simply asked to sign the document, which I did.

The deposition made by Bir Singh Thagunna (QA 6) before the Baitadi District Court is as follows: On 2068/12/9 (22 March 2012), I was at home. The statement I gave to the police was not read out to me. During my statement to the police, I said that I had met the girl and noticed that she had an injury on her eye. I did not get the chance to ask her how she sustained the injury, nor did I have any further conversation with her. That is all I had stated. I did not say that anyone had committed rape. I had only heard that the incident took place on the 9th at the victim “Gha” Kumari’s aunt’s house.

The deposition of the complainant “Gha” Kumari before the Baitadi District Court (QA 5) is as follows: On 2068/12/9 (March 22, 2012), I had gone to Sagar Bhatt’s shop in Patan to buy a guess paper. While looking through the different types of guess papers, it got late. I asked Sagar Bhatt for a glass of water and drank it. Amar Raj Awasthi was also sitting there at that time. After drinking the water, I experienced headache and dizziness. Thereafter, I went to my sister’s house and on my way home, both the defendant, Amar Raj Awasthi and Sagar Bhatt, followed me halfway, but I did not pay attention to them. I reached home at around 6 p.m., and my sister cooked dinner, and I had my dinner. The dizziness gradually worsened. Since my sister’s daughter was going to sleep with me, I did not lock the door. I was lying curled up under the blanket when, at around 10:30 p.m., both the defendant Sagar Bhatt and Amar Raj Awasthi entered my room. They covered my entire face with a pillow, pressing it so tightly that I could neither move nor speak. Then they injected something into my leg and in my right arm, and thereafter, I do not know what they did to me. When I woke up at around 11:30 - 12:00 midnight, both of the defendant had already gone outside. When I looked at my body, I saw a bruise on my left cheek. I experienced pain in both the upper and lower parts of my body. The clothes that I had been wearing had been changed and my under garment and vest was missing. Thereafter, I drank the water that my sister brought for me. When she asked me what had happened, I was unable to tell her what had transpired and I kept feeling increasingly drowsy and was unable to get up from the bed. The next morning, I put on a different set of clothes and went to the market to sit for my exam. Near Patan Bazaar, I met a police officer and I briefly informed the officer about what had happened to me. From there, I went to the examination center and informed the exam superintendent about the incident, and I informed him that I was having difficulties and that I was not in a condition to sit for the exam. He handed me the question paper and told me to attempt as many as I could. I was able to answer a few questions. My head was aching and my hands started trembling while attempting to write. Thereafter, I submitted my paper and returned to my sister’s house. My sister had called my father early in the morning. My sister’s name is Kaushi Bohara. I was taken to the Patan Police Station by the Exam Superintendent and other people. I was unconscious and I do not know where else was I taken.

The decision of the Baitadi District Court is as follows: In her statement before the court, the complainant and victim “Gha” Kumari stated that the defendants had injected a syringe into her leg and right arm, after which she lost consciousness. She further stated that she had been forcibly raped by Sagar Bhatt and Amar Raj Awasthi. She further stated that her hair was disheveled, there was a bruise on her mouth, and she was experiencing pain in her genital area. She also stated that there was semen on her private parts, which she claimed belonged to the defendants, affirming that the incident had indeed occurred. The victim “Gha” Kumari stated that the defendants, Sagar Bhatt and Amar Raj Awasthi, had forcibly raped her, and that they had ruined her life and requested severe punishment be imposed against them. Considering that an unmarried student would not, under ordinary circumstances, file such a complaint against these defendants and thereby stain her own future, and that she even discontinued an important examination such as the SLC midway, these facts and evidences clearly indicate that the defendants, Sagar Bhatt and Amar Raj Awasthi, jointly committed the act of rape against the victim “Gha” Kumari. Accordingly, based on the evidence and materials collected in the case file, and as claimed in the charge-sheet, it has been established that defendants Sagar Bhatt and Amar Raj Awasthi are guilty of committing rape upon the victim “Gha” Kumari (name changed). Based on the findings, pursuant to Section 3 (4) under the Chapter of Rape of the National Criminal Code, the defendants Sagar Bhatt and Amar Raj Awasthi are hereby sentenced to 8 (eight) years of imprisonment. Since both defendants jointly committed the rape against the victim “Gha” Kumari, the defendants pursuant to Section 3 (a) under the Chapter of Rape of the National Criminal Code, are hereby sentenced to an additional 5 (five) years of imprisonment. Furthermore, under Section 10 under the Chapter of Rape of the National Criminal Code, the defendants Sagar Bhatt and Amar Raj Awasthi shall each pay the victim “Gha” Kumari compensation at the rate of NPR 50,000 (fifty thousand rupees).

The appeal petition filed by the defendant Amar Raj Awasthi before the High Court, Mahendranagar is as follows: The report from the examination of the complainant’s clothing indicates the presence of human semen in the undergarment she was wearing. However, since the blood group of the semen does not match my blood group, the defendant has no connection to the semen found. Where there is doubt regarding the occurrence of rape, convicting the defendant is contrary to the fundamental principles of criminal justice. The deposition of the prosecution’s witness Kamala Bista clearly establishes the defendant’s innocence. I have consistently denied the charges against me, and this has been corroborated by the statement of my witnesses Navaraj Awasthi and Shiv Dutta Pant. Additionally, prosecution witnesses Nirmala Bhatt, Ganesh Dutta Bhattarai, and Kamala Bista have stated in their depositions before the court that they do not believe that the defendant Amar Raj Awasthi committed the offense, confirming that the defendant did not commit the crime. Since my involvement in the alleged offense has not been established and my innocence has been proven, I request that the verdict convicting me be set aside and that I be acquitted of all charges.

The appeal petition filed by the defendant Sagar Bhatta before the High Court, Mahendranagar is as follows: In its judgment, the trial court asserted with certainty that the semen found on the victim’s undergarment belonged to me. However, the semen has no connection with my blood group. Under Section 25 of the Evidence Act, 2031, the burden of proving a claim rests upon the plaintiff, and our legal position aligns with this principle. The law mandates that all statements and documents collected during the investigation must be verified in court. Prosecution witnesses Kamala and Nirmala have confirmed that no crime had occurred and that the defendant was not involved. This completely refutes the allegation, and any other statements from individuals who

are contradictory or based on hearsay cannot be given probative value. Accepting such statements as evidence would be contrary to the Evidence Act. Similarly, my witnesses have confirmed through their depositions that I had no involvement at the time of the alleged incident, corroborating my consistent denial of the charges. In view of this clear proof of my innocence, convicting me would be unjust and the defendant therefore request that the trial court's verdict be set aside and that the defendant be declared innocent.

An order was set aside by the Appellate Court, Mahendranagar, on 2070/3/17 (1 July 2013), which reads as follows: Based on the evaluation of the evidence, it appears that the verdict of the Baitadi District Court may differ. Therefore, pursuant to No. 202 of the Court Proceedings (*Adalati Bandobasta*) of the Muluki Ain and Rule 47 of the Appellate Court Regulations, 2048, the respondents are hereby ordered to be produced before the court, or the case file to be submitted upon the expiry of the prescribed period.

The decision of the Appellate Court, Mahendranagar dated 2071/01/15 (corresponding to 28 April, 2014) reads as follows: The complainant's FIR, her deposition in the court, the site inspection report, and the statements of the persons interviewed show inconsistencies and contradictions. Furthermore, the medical examination report and the report from the Central Police Forensic Science Laboratory do not conclusively establish the actual facts of the incident. Therefore, based solely on the contradictory statements of the complainant and speculative assumptions, the verdict of the District Court cannot be concurred with. Since the conviction rendered by the Baitadi District Court on 2069/11/22 (5 March, 2013) was based merely on presumptions and assumptions, and as it sentenced the defendants Sagar Bhatt and Amar Raj Awasthi each to 8 (eight) years of imprisonment under Section 3 (4) under the Chapter on Rape of the Muluki Ain, and an additional 5 (five) years of imprisonment under Section 3 (a) of the same Chapter, and ordered them to pay compensation of NPR 50,000 (fifty thousand rupees) each to the victim under Section 10, such a verdict is found to be unsupported by evidence. Therefore, the said judgment is hereby reversed, and the defendants are to be acquitted of the charges.

The appellate petition submitted by Nepal Government reads as follows: The appellant does not concur with the decision of the Appellate Court, Mahendranagar, dated 2071/1/15 (corresponding to 28 April, 2014), that overturned the verdict of the Baitadi District Court. The victim "Gha" Kumari had filed a complaint that on 2068/12/9 (22 March, 2012), stating that the victim "Gha" Kumari had gone to Sagar Bhatt's shop to buy a guess paper, wherein, the defendants Sagar Bhatt and Amar Raj Awasthi took her to Chandni Photo Studio in Patan Bazaar, administered a sedative injection that rendered her unconscious, and jointly raped her. The medical reports attached to the case file further show that the victim became mentally disturbed and lost consciousness following the incident. However, despite the evidence of the assault and her medical condition, the defendants were acquitted on the ground that the victim could not precisely identify the location of the alleged rape. The medical examination report of the victim "Gha" Kumari shows that her vagina was dilated, there was a bruise under the left eye, and wounds on the right forearm. The Central Police Forensic Science Laboratory, Maharajgunj, Kathmandu, also reported the presence human sperm cells and hair in the undergarment worn by the victim at the time of the incident, which is corroborated by the complainant and the deposition made by the victim. As for the defendants' claim that the semen did not belong to them, the burden of proving this lies on the defendants. In this context, Section 27 of the Evidence Act, 2031 prescribes that: "provided, a defendant makes any claim regarding remission from the penalty or acquittal from the charge, the

burden of proof of proving such fact shall lie in the defendant.” A young unmarried girl, striving for a bright future, would have no reason to falsely file written complaint and make corresponding court depositions alleging rape by another person, which could tarnish her future. Therefore, there is no question of doubting the truthfulness and veracity of her disclosures. The Appellate Court, Mahendranagar, ignoring the victim “Gha” Kumari’s written complaint, her medical examination report, and her deposition before the court and without evaluating the evidence attached with the case file had reversed the verdict of the Baitadi District Court. Since the decision of the Appellate Court, Mahendranagar is flawed and erroneous, the said decision should be set aside, and the defendants should be punished according to the charges filed.

An order had been set aside by this court on 2074/9/5 (corresponding to 20 December, 2017) which reads as follows: In this case, the victim, “Gha” Kumari (name changed), had filed a written complaint alleging that the defendants forcibly raped her. Examination of the clothes she was wearing at the time of the incident revealed the presence of human sperm cells and upon physical examination showed bruises under her left eye and on the forearm, and on P/V Examination, whitish discharge was noted in and around the introitus, two fingers were easily inserted inside the vagina, indicating abnormal dilation of the genitalia. The victim had also testified in court that the defendants administered an injection and raped her while she was in a disturbed state. Considering these facts, the decision of the Appellate Court, Mahendranagar, acquitting the defendants from the charges may seem to differ and therefore, pursuant to No. 202 of the Court Proceedings (*Adalati Bandobasta*) of the Muluki Ain, the defendants are hereby summoned to be produced before the court and to submit the case as per the rules.

Decision

In accordance with the rules, the present case was listed in the daily cause list and presented before the bench. Learned Joint-Government Attorneys Mr. Surya Raj Dahal and Mr. Uddav Pudasaini on behalf of the appellant/plaintiff, the Government of Nepal, and Advocate Mr. Swagat Nepal on behalf of the victim argued that the victim, “Gha” Kumari, in her written complaint and in her deposition before the court had stated that the defendants had administered a sedative injection at a photo studio, rendering her unconscious, and jointly raped her, causing her mental trauma and ruining her life. They further argued that the victim’s medical examination report indicates that the clothes she was wearing at the time of the incident contained human sperm cells. The physical examination also revealed bruises under the left eye and on the forearm, and on P/V Examination - whitish discharge was noted in and around the introitus, with two fingers easily inserted into the vagina. These findings confirm that the victim was subjected to forcible rape. For an act to constitute forcible rape, three fundamental elements are essential: intent, action, and the absence of the victim’s consent and all these elements are clearly evident in the present case. It is not unusual for the victim’s deposition to slightly differ from her written complaint given that she was mentally disturbed from the time of the incident until the deposition. The court must seriously consider the state of trauma suffered by a rape victim. They further argued that, based on the victim’s medical examination report, incident report, court deposition, and the defendants’ own statements admitting their presence at the time and place of the incident, the decision of the Appellate Court, Mahendranagar, acquitting the defendants appears to be erroneous and therefore, the decision should be overturned, and the defendants should be punished according to the charges filed.

Learned Senior Advocate Raman Kumar Shrestha on behalf of the defendant argued that - the contents of the FIR and the contents of the deposition provided by the victim, “Gha” Kumari, are inconsistent and that the victim has not been able to specify as to whether the incident occurred at the photo studio or at her sister Kamala Bista’s house and has also failed to state the exact time of the incident. He further stated that the victim’s sister, Kamala Bista, stated that the incident did not occur at her house and further stated that since the victim had begun exhibiting abnormal behavior, she had performed an exorcism (*jhārfuk*) upon the victim which allegedly caused the bruises on her body. Moreover, the persons interviewed have not appeared in court to support the incident report, and the statements of each individual are contradictory to one another. Similarly, the defendants denial of their involvement is further corroborated by the medical examination report that fails to confirm that the human semen found on the victim’s clothes belonged to the defendants, there is no conclusive evidence of the occurrence of the forcible rape and since the benefit of doubt must go to the defendants, the decision of the Appellate Court, Mahendranagar, acquitting the defendants should be upheld.

Upon hearing the arguments of the learned counsels appearing on behalf of the appellant and the defendants and upon perusal of the case file, it is noted that the following questions need to be addressed for decision in the present case:

- a) As to whether or not forcible rape as alleged by the plaintiff the Government of Nepal, actually occurred?
 - b) As to whether or not the defendants committed the said incident? Provided, the incident was committed by them does it establish a crime of gang rape?
 - c) As to whether or not the decision of the Appellate Court, Mahendranagar, that overturned the verdict of the Baitadi District Court and acquitting the defendants, is proper and justified?
2. Considering the first question, the appellant, the Government of Nepal, had filed an appeal petition before this court seeking that the defendants, Sagar Bhatt and Amar Raj Awasthi, be punished under Sections 1 and 3 (4) under the Chapter of Rape of the Muluki Ain, including additional punishment under Section 3 (a) for gang rape, and that compensation be awarded to the victim “Gha” Kumari under Section 10. In the original case, the Baitadi District Court had convicted the defendants for forcible rape, sentencing each of them to 8 years of imprisonment under Section 3 (4) and an additional 5 years under Section 3 (a) for gang rape along with compensation of NPR 50,000 each under Section 10. However, the Appellate Court, Mahendranagar, overturned this verdict and acquitted the defendants, wherein the Government of Nepal had filed an appeal seeking the Appellate Court’s decision to be set aside and that the defendants be punished in accordance to the charge-sheet.
 3. In this context, upon examining the case file and related evidence, it appears that on 2078/12/09 (corresponding to 23 March, 2022) at around 12:00 noon, while the victim “Gha” Kumari went to Patan Bazaar to buy guess paper, Amar Raj Awasthi, the proprietor of Chadani Digital Photo Studio, and Sagar Bhatt teased her, and a little later, inside the same photo studio, they administered various types of drug injections, rendering her unconscious, and then gang-raped her. Consequently, the victim “Gha” Kuari filed a FIR at the District Police Office, Baitadi, requesting legal action be initiated against them.

4. It is found that a FIR had been filed immediately against the defendants Sagar Bhatt and Amar Raj Awasthi, and that the complainant victim “Gha” Kumari had deposed before the court and had identified that same persons named in the FIR were the ones who forcibly raped her. Supporting the contents of the victim’s complaint, the medical examination report of the victim issued by the District Health Office, Baitadi, dated 2068/12/10 (corresponding to 23 March, 2012) mentions the following findings: bruise below the left eye, on right arm in medial aspect 2 bruises of 1.5 x 1.5 cm (contusions on the victim’s left eye and arm). On P/v examination – whitish discharge in and around the introitus, two fingers could be easily inserted inside the vagina. Furthermore, according to the report of the Central Forensic Science Laboratory, dated 2068/12/21 (Ref. No. 2972), it was found that: upon examination of the clothes worn by the victim “Gha” Kumari at the time of the incident, human semen was detected on Exhibit No. 1. The blood group of Exhibit No. 1 could not be confirmed, and exhibit Nos. 4 and 5 were identified as human hairs.
5. Thus, based on the FIR filed by the victim, her statement before the court confirming the incident, the presence of signs of struggle such as bruises below the left eye and on the arm, the detection of human semen on the victim’s clothes, and the medical examination indicating evidence of vaginal penetration, along with the fact that the victim was unable to sit for her S.L.C. examination and had to undergo medical treatment due to mental distress, it is evident that the victim was subjected to an act of rape.
6. With regards the discrepancy between the victim’s FIR and her court testimony concerning the place and time of the incident; it appears that in her initial complaint, the victim stated that while she had gone to the photo studio to buy the guess paper, the defendants committed rape. However, in her statement before the court (QA 5), she mentioned that at around 10:30 p.m., while she was sleeping at her sister Kamala Bista’s house, the defendants Sagar Bhatt and Amar Raj Awasthi came over, covered her mouth with a pillow, injected something into her leg and right arm, and did not know what happened thereafter. She further stated that when she woke up at around 11:30–12:00 at night, she saw both the defendants outside, and therefore claimed that these defendants had raped her. Similarly, in the victim’s deposition (QA 8), she stated that “After my mental condition deteriorated, it took one month for me to regain consciousness, and I underwent treatment for four months. I am fine now; the treatment was carried out at Patan Mental Hospital.” This fact cannot be disregarded by the court. Furthermore, the victim’s sister Kamala Bista, in her deposition (QA 5), mentioned that since the day the alleged incident occurred, the victim began to display abnormal behavior. This further corroborates that the victim was subjected to sexual violence and had lost her mental wellbeing. Although the documents attached to the case file indicate some inconsistency in the victim’s statements regarding the place of the incident, it appears that such variation in her account is a result of the trauma caused by the rape committed against her. Having certain contradictions in the victim’s statements in cases of rape is recognized as a manifestation of Rape Trauma Syndrome (RTS). *Modi’s Medical Jurisprudence and Toxicology* notes that “mental derangement have been known to follow rape.”¹ Similarly, according to the **WHO Guidelines for Medico-Legal Care for Victims of Sexual Violence**, Rape Trauma Syndrome (RTS) is defined as: “The stress response pattern of a person who has experienced sexual

¹ Modi’s Medical Jurisprudence and Toxicology, K. Mathiharan, Amrit K. Patnaik (eds), 23rd edition, Lexis Nexis, New Delhi, 2005, p.934

violence. RTS may be manifested in somatic, cognitive, psychological and/or behavioural symptoms².” In this context, **The Diagnostic and Statistical Manual of Mental Disorders** published by the *American Psychiatric Association*, describes the symptoms of trauma observed in victims following rape. It states that: “In avoiding reminders of the trauma, the victim may experience amnesia with respect to some aspect of the event³.” This indicates that after being subjected to rape, a victim may forget certain facts or details related to the incident. Similarly, trauma expert Dr. Lori Haskell, in an article published in the *Victims Department of Justice Canada*, states that traumatic events such as sexual violence are experienced differently from ordinary daily life events. As a result, we remember and describe traumatic events differently from routine experiences. Due to the effects of fear, threat, or intense stress, a victim may experience vivid recollections, fragmented memories, or impaired memory of the event. Traumatic events such as sexual assaults are encoded (converted) differently than more routine, everyday experiences in life... As a result, we recall and narrate traumatic events differently than routine events. The effect of fear, threat or states of intense stress on memory can result in intensified memory recollection, or it can result in fragmented or impaired memories.

7. Rape is a heinous crime that causes trauma not only to a person’s body but also to their self-respect and dignity. When a woman’s body and dignity are attacked in an unexpected and unanticipated manner, it can result in severe mental distress. In such circumstances, it may be difficult for the victim to immediately recall or articulate the sexual violence she has experienced, or she may remember the events gradually over time. Such a condition is recognized as Rape Trauma Syndrome (RTS). The justices must treat these conditions with due seriousness. The Supreme Court of Nepal, in *Bam Bahadur Kathayat vs. Government of Nepal*, established the principle that: “in a serious crime like rape, rather than considering it merely from a numerical or evidentiary standpoint as in other cases, the court must take a sensitive approach, as the victim’s dignity and sense of self-respect are severely impacted⁴.”
8. The nature of the crime of rape is fundamentally different from other types of offences. In other crimes, consistency in statements is generally required to assess the truthfulness of the testimony; however, in rape cases, some contradictions may appear in the victim’s statements due to the trauma experienced. Accordingly, in *Plaintiff the Government of Nepal vs. Rajesh K.C. (Opponent/Defendant)*, this Court has held that: “minor discrepancies between the statements made by the victim during investigation and the testimony given before the court cannot be regarded as unnatural⁵.” Hence, slight variations between the contents of the complaint and the victim’s deposition should be considered admissible and credible, taking into account the impact of trauma. Similarly, in *Appellant/Plaintiff Government of Nepal (Appellant) vs. Deepak Tulasi Byakhyo*⁶ (Opponent/Defendant), the principle was laid down

² World Health Organization, Guidelines for medico-legal care of victims of sexual violence, World Health Organization, 2003

³ American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 5th Edition: DSM-5, 2013

⁴ *Bam Bahadur Kathayat vs. Nepal Government* Nepal Law Reporter 2062, Unit 10, Decision No. 7611, pg. 1251

⁵ *Plaintiff Nepal Government vs. Opponent/Defendant Rajesh K.C. et.al.*, Nepal Law Reporter 2060, Unit 5, Decision No. 7216, pg. 377

⁶ *Nepal Government vs. Opponent/Defendant Deepak Tulasi Byakhyo*, Nepal Law Reporter 2063, Unit 10, Decision No. 7772, pg. 1294

that: “Giving undue weight to minor inconsistencies found between the FIR and the deposition, and misjudging the evidence to acquit the accused, renders the initial decision of the Appellate Court to be flawed and liable to be overturned.” This establishes the precedent that minor discrepancies in the victim’s statements should not be used to discredit the case or absolve the accused, particularly in rape cases. In *Mukesh & Anr vs. State for NCT of Delhi, 2017* (Nirbhaya Rape Case), the Supreme Court observed that: “It is not expected of a victim to disclose all the finer aspects of the incident in the FIR... More so, the victim who suffers from an incident is obviously in a state of shock, and it is only when we move in his/her comfort zone that he/she starts recollecting the events one by one. Thus, to stop the victim from elaborating the facts to describe the finer details, if left out earlier, would be too much⁷.” This underscores that the trauma of the crime can place the victim in a state of shock, and therefore, it is unreasonable to expect the victim to remember or report every detail of the incident immediately. Thus, it would not be justifiable to conclude that the incident did not occur merely on the basis of discrepancies in the content of the victim’s FIR and deposition regarding the place of the incident. The fact that sperm was detected on the victim, human hairs were found, and bruises and injuries were observed on different parts of her body clearly establishes that the incident did indeed take place. In cases of rape, the primary issue is whether or not the incident of rape actually occurred, and this court must focus on that matter. In rape offenses, the principal scene of the crime is the victim’s body itself, that is: “in cases of rape, the victim’s body itself is the scene of the crime.” In this context, in *Government of Nepal (Appellant/Plaintiff) vs. Saroj Hingmang (Opponent/Defendant)*, the court laid down the principle that: “the first link in the evidence of a rape incident is the victim herself, and the next link is to rely on the physical examination of the victim⁸.” This establishes that both the victim’s testimony and the medical evidence of her body are crucial for proving the occurrence of the crime. Based on the various reasons mentioned hereinabove, and taking into account the FIR, the victim’s medical examination report, and the victim’s deposition supporting her complaint that she was raped, it is established that the incident of rape did indeed occur against the victim.

9. Turning to the second question, in the present case, the victim has clearly named the defendants in her FIR and in her deposition QA 5 and 23. In crimes like rape, which are committed secretly and in isolation, it is generally the case that no third party witnesses are present except the victim herself. In this context, in *Government of Nepal (Opponent/Plaintiff) vs. Deepak Rawal (Appellant/Defendant)*, the Court has ruled that: “since the act of rape is a clandestine criminal act, there can be no eyewitnesses. In such crimes, the statement of the woman victim must be taken as generally accepted evidence unless proven otherwise. Unless other material evidence disproves the victim’s statement, it must be accepted⁹.”
10. It is not reasonable or logical to assume that any woman would falsely accuse someone of a serious crime like rape, thereby jeopardizing her own dignity and the honor of her family, and neglecting an important life milestone such as the S.L.C. examination, without any valid reason. It appears that, due to mental distress following the incident, the victim was unable to

⁷ *Mukesh & Anr v. State for Nct of Delhi* (2017) 6 SCC 1

⁸ *Plaintiff Nepal Government vs. Opponent/Defendant Saroj Hingmang et.al.*, Nepal Law Reporter 2067, Unit 9, Decision No. 8469, pg. 1610

⁹ *Appellant/Defendant Deepak Rawal vs. Opponent/Plaintiff Nepal Government*, Nepal Law Reporter 2075, Unit 5, Decision No. 10007, pg. 874

appear for the remaining S.L.C. examinations. Under Section 10 (1) (a) of the Evidence Act, 2031, the law provides that: “the statement made by the victim must be accepted by the court as direct evidence.” Accordingly, the statements made by the victim in the present case must be taken as evidence.

11. In India, following the Nirbhaya Rape Case, the **Justice Verma Committee, 2013**, in its *Reports of the Committee on the Amendments to Criminal Law*, analyzed that: *“It is well settled that the evidence of the victim of rape is on the same footing as the evidence of an injured complainant or witness. Her testimony alone is sufficient for conviction. In prosecutions of rape, the law does not require corroboration. It is only by way of abundant caution that the court may look for some corroboration so as to satisfy its conscience and rule out any false accusation”*¹⁰. Therefore, to establish the offense of rape, the testimony of the victim alone is sufficient. The victim herself appeared in court and gave a detailed account of the incident in her statement, which was corroborated by the FIR filed at the time of the occurrence. Furthermore, the medical examination report of the victim, conducted immediately after the incident, noted bruises on various parts of her body, which confirms that the act was committed without the consent of the victim.” In Appellant/Plaintiff Pattu B.K. (name changed) Nepal Government vs. Opponent/Defendant Basudev Sawad, the court had established that the first link of evidence in a rape incident is the victim herself, and the next link is the medical examination of the victim¹¹. It is evident that the accused, Sagar Bhatt and Amar Raj Awasthi, committed the act of rape on the victim “Gha” Kumari, as confirmed by the FIR provided by the victim, and further corroborated by the statement made in court after her health improved following mental treatment.
12. Although the accused, Sagar Bhatt and Amar Raj Awasthi, have submitted denial statements before the court, asserting that they did not commit the act of rape, there is no evidence to suggest that the victim filed the complaint against them due to any prior animosity. In the absence of any proof indicating a premeditated motive to falsely accuse these respondents, the victim’s FIR and her statement given before the court must be treated as credible and cannot be disregarded. Although the accused submitted denial statements before the court, during cross-examination they admitted to meeting the victim on the date of the incident (QA 4). Moreover, according to the testimony of Chaman Bhandari, who was acquainted with the parties, the accused normally closed their shop at 7 p.m., but on that day it was closed as early as 3 p.m., as corroborated by the documents attached to the case file. In such circumstances, the denial statements of the accused alone cannot be relied upon to discredit the victim’s statement, the medical examination report attached to the case file, or the fact that human semen was found on the victim’s clothes.
13. The learned advocate on behalf of the defendants had argued that the defendants should be acquitted since the medical examination report from the Central Forensic Science Laboratory, mentions finding of unconfirmed blood group of the human semen and hairs that could not be compared owing to lack of facilities. However, upon consideration, the mere inability to determine the blood group or to perform a comparative analysis of the hairs does not constitute a valid ground for the accused to be absolved of the charges. In cases of rape, the victim’s

¹⁰ Reports of the Committee on the Amendments to Criminal Law, Justice Verma Committee, 2013, p.78.

¹¹ Nepal Government vs. Basudev Sawad, Nepal Law Reporter 2074, Unit 9, Decision No. 9879, pg. 1577

testimony is considered more significant than other evidence. Where the victim has recorded a written statement asserting that the accused committed the rape, the mere fact that comparative analysis of hairs found on the victim's clothing could not be carried out does not provide the accused with a benefit of doubt in cases of gang rape, nor can it serve as a valid ground for acquittal. In this regard, it has been observed in *Bir Bahadur Tamata versus the Government of Nepal* that the principle stating that an accused is entitled to the benefit of doubt merely because the act of rape has not been conclusively established is a misinterpretation and misapplication of criminal justice principles, and cannot be used to acquit the accused¹². Even though human semen was found on the victim's clothing, the accused have denied that it belonged to them. In this context, it is evident that the victim has disclosed the involvement of two accused in the incident. Since the semen of both individuals was deposited on the clothing, it is not possible for the sample found on the clothing to be conclusively matched with the samples of the accused through comparative analysis. It appears that it was not possible to separately collect the semen found on the victim's clothing. Additionally, due consideration must be given to the geographical remoteness of the district where the incident occurred, as well as the limitations in the available facilities and resources of the testing laboratory.

14. Now, while considering whether the offense committed by the accused constitutes gang rape, it is observed that No. 3 (a) under the Chapter of Rape of the then *Muluki Ain* (Country Code) does not specify the number of perpetrators required for an act to be classified as gang rape. The provision merely states that 'anyone who commits rape on a woman in a group shall be punished with an additional five years of imprisonment'. Since the legislature has not specified a number in the law, any act committed by more than one person can be considered as having been committed jointly. Therefore, it is established that the accused, Sagar Bhatt and Amar Raj Awasthi, in collusion and by mutual agreement, committed rape on the victim, confirming that the act constitutes gang rape. In this regard, this court, in a case of rape and aggravated theft against Appellant/Defendant Deepak Chand versus the Opponent/Plaintiff Government of Nepal, the court has observed that 'when it is conclusively established that more than one person was collectively involved at the time of committing the rape, and the act was not voluntary but forced, the actions of the accused constitute an incident of gang rape¹³. The principles established by these precedents also indicate that, for an act to constitute gang rape, it is not necessary to specify the exact number of perpetrators; if one or more individuals among a group commit the rape, the act is considered an incident of gang rape.
15. Thus, when it is conclusively established that more than one person was collectively involved with the intention to commit rape against the victim's will, such an act qualifies as an incident of gang rape. In the present case, as it is evident that both accused committed the act with the intent to carry out the offense on the victim, the actions of the accused constitute gang rape. Therefore, based on the above-discussed grounds, evidence, and reasoning, the nature of the offense of gang rape is distinct from other crimes. The mere discrepancies in the victim's complaint and her court statement, as well as the denial statements of the accused, cannot justify acquitting the accused. Consequently, the decision of the Appellate Court, Mahendranagar, dated 2071/01/15 (corresponding to 28 April, 2014) which overturned the decision of Baitadi District Court dated 2069/11/22 (corresponding to 5 March, 2013) and

¹² Nepal Government vs. Bir Bahadur Tamata Nepal Law Reporter 2066, Unit 4, Decision No. 8127, pg. 632

¹³ Deepak Chand vs. Nepal Government Nepal Law Reporter 2072, Unit 9, Decision No. 9472, pg. 1709

acquitted the accused, is found to be erroneous. Accordingly, this court through its decision dated 2076/07/07 (corresponding to 24 October, 2019) hereby establishes that the accused, Sagar Bhatt and Amar Raj Awasthi, committed the offense against the victim “Gha” Kumari as per Sections 1 and 3 (a) under the Chapter of Rape of the *Muluki Ain*.

16. Since it has been established that the accused committed offenses under Sections 1 and 3 (a) under the Chapter of Rape Chapter of the *Muluki Ain*, and since there is a claim for punishment under Section 3 and additional claim for punishment under Section 3 (a) as well as a claim for compensation under Section 10, this court taking into account the aggravating and mitigating circumstances of the offense, through its order 2076/7/7 (corresponding to 24 October, 2019), hereby notifies the accused and the Office of the Attorney General to appear before the court on 2076/8/2 (corresponding to 18 November, 2019) for determination of sentencing pursuant to Sections 8, 9, and 10 of the Criminal Offense (Sentencing and Execution) Act, 2074.

Pronouncement of Sentence

17. On 2076/07/07 (corresponding to 24 October, 2019) having established that the accused committed the offense as per the charges, the present case has been brought before this court for pronouncement of sentence, determining what punishment the accused shall receive pursuant to Sections 8, 9, and 10 of the Criminal Offense (Sentencing and Execution) Act, 2074. In this proceeding, learned Joint Government Attorney General Mr. Uddhav Pudasaini, appearing on behalf of the complainant the Government of Nepal argued that the objectives of sentencing must be duly considered before imposing the sentence. In this case, for the purpose of sentencing, consideration must be given to deterring the offender and others from committing similar offenses, ensuring the safety of society, providing justice to the victim including appropriate compensation, and facilitating the rehabilitation of the offender. Accordingly, the punishment for the accused should be determined by taking the midpoint of the statutory sentencing range as the base point and imposing the maximum sentence within that framework, in accordance with the law. Furthermore, regarding the claim for compensation, it was argued that since both accused belong to a middle-income economic background, they should be directed to provide to the extent they are able to bear a reasonable compensation to the victim, 'Gha' Kumari, sufficient to cover her educational expenses to date and support her living needs.
18. On behalf of the defendant, learned Senior Advocate Mr. Raman Kumar Shrestha argued that although the court has already convicted the accused, the evidence establishing their guilt is insufficient to warrant a severe sentence. He further argued that when imposing imprisonment, the court should not simply take the midpoint of the statutory sentencing range as the base point, but rather determine the minimum sentence based on the discretion of the judge. There is no evidence revealing the financial condition of the accused, nor does the charge-sheet indicate any moral turpitude, and therefore, such factors cannot be considered in sentencing. It is noted from the documents attached with the case file that the accused, Sagar Bhatt and Amar Raj Awasthi, run a stationery and photo studio. No property has been discovered in their names during the investigation; hence, they are not obliged to pay compensation. Additionally, it was submitted that since Amar Raj Awasthi is married and has children, these circumstances should be taken into consideration and minimal sentence should be awarded to him.

19. Although the accused were notified to be present on the day of sentencing, they did not appear before the court. The purpose of sentencing includes making the offender realize the gravity of their wrongdoing, allowing them to present their perspective regarding the circumstances of the incident and their social and physical condition, and providing an opportunity for them to voluntarily offer compensation or participate in rehabilitative measures. Since the accused failed to appear, there was no scope to consider these aspects.
20. After hearing the arguments presented by the learned legal practitioners appearing on behalf of the appellant, Government of Nepal, and the accused, and upon examining the documents attached to the case file, it is evident that the court must consider what sentence should be imposed on the accused and the quantum of compensation to be awarded to the victim.
21. Although Section 25 of the Victim Protection Act, 2075 provides for the submission of a Victim Impact Report, it appears that this legal provision becomes applicable only after the occurrence of the incident, investigation, and prosecution. In this context, since it was not possible to obtain such a report, the determination of punishment must be made based on the existing laws, principles of sentencing, and the documents attached to the case file.
22. While determining the appropriate sentence based on the evidence presented in the case file, the court must thoroughly examine the nature of the crime, the circumstances in which it was committed, the offender's level of responsibility, and the harm inflicted upon the victim. The sentence imposed must serve the dual purpose of deterring potential offenders from committing similar crimes in the future and preventing the convicted individual from repeating the same offence. Furthermore, it aims to rehabilitate the offender and transform them into a law-abiding citizen, thereby protecting the interests of society at large¹⁴. As crime is a product of society, and both the offender and the victim are members of that same society, every system of justice must aim not only to prevent crime and safeguard society but also to ensure justice to the victim through appropriate compensation, while facilitating the rehabilitation and reintegration of the offender into the community.
23. According to the law, while determining the sentence of an accused, the overall security of the society and the social and personal impact suffered by the victim and the victim's family as a result of the offence committed by the accused must be duly assessed. Likewise, due consideration must also be given to the character of the offender, whether good or bad, and to his prevailing circumstances. While determining the sentence, it is imperative that the proportionality between the gravity of the offence and the punishment prescribed by law must be duly considered. In the present case, the act of gang rape committed upon a young woman who had come to appear in the S.L.C. examination must be regarded as a grave and heinous offence. Therefore, it appears appropriate that the punishment be imposed in a manner that conveys a strong message of deterrence against such offences, while at the same time affording the offender an opportunity for reformation.
24. While determining the sentence of an offender, the foremost consideration must be the purpose and objective of punishment. In offences committed against women, the purpose of punishment is not only to penalize the offender and deter violence against women, but also to

¹⁴ P.J. Fitzgerald, *Salmond on Jurisprudence*, Sweet and Maxwell, London, 1985, p.94

uphold and protect the dignity and social esteem of women, and to ensure that the State guarantees their security and freedom from fear. While analyzing the factors to be considered by the court in determining the appropriate sentence and the underlying objectives thereof, the Supreme Court of India, in *Mukesh & Anr. v. State (NCT of Delhi)*, 2017 (the Nirbhaya Rape Case), observed “Question of awarding sentence is a matter of discretion and has to be exercised on consideration of circumstances aggravating or mitigating in the individual cases. The courts are consistently faced with the situation where they are required to answer the new challenges and mould the sentence to meet those challenges. Protection of society and deterring the criminal is the avowed object of law. It is expected of the courts to operate the sentencing system as to impose such sentence which reflects the social conscience of the society. While determining sentence in heinous crimes, Judges ought to weigh its impact on the society and impose adequate sentence considering the collective conscience or society’s cry for justice. While considering the imposition of appropriate punishment, courts should not only keep in view the rights of the criminal but also the rights of the victim and the society at large¹⁵.” Similarly, in *Mohfil Khan and Anr. v. State of Jharkhand* (2015), the Supreme Court of India observed that “Another significant development in the sentencing policy of India is the ‘victim-centric’ approach... It has been consistently held that the courts have a duty towards society and that the punishment should be corresponding to the crime and should act as a soothing balm to the suffering of the victim and their family¹⁶.” Thus, it is evident that the Court adopted a victim-centric perspective in the determination of sentence. In the present case as well, the concept of victim-centric justice has been taken as the central basis while determining the appropriate punishment.

25. With regards to the range of imprisonment prescribed for the present offence, it is noted that Section 3 on the Chapter on Rape of the then prevailing *Muluki Ain*, prescribes imprisonment from five to eight years. Therefore, while determining the appropriate sentence, the court must ensure that the punishment imposed remains within the lower and upper limits prescribed by the legislature, and decide the quantum of sentence that would be just and reasonable in the circumstances of the case. While determining the sentence in such a manner, it is necessary to ascertain the midpoint within the prescribed range of punishment and to analyze the *aggravating* and *mitigating* factors that may increase or reduce the gravity of the offence. Among the aggravating factors generally considered are: the offender’s intent, abuse of authority, the degree of physical, mental, or economic harm caused to the victim, the victim’s age and condition, the offender’s prior criminal record, the use of weapons, recidivism, and the number of offenders involved. Conversely, mitigating factors may include: the offender’s character prior to the commission of the crime, genuine remorse, good conduct after arrest, voluntary compensation to the victim, voluntary surrender before the competent authority, and considerations relating to the offender’s age, health, and social circumstances.

26. In analyzing the aggravating and mitigating factors relevant to sentencing in the present case, it appears that the accused committed the offence against a young (female) student who had come from her village to the city to appear for the S.L.C. examination. As a result of the offence, the victim suffered mental trauma and disruption during a crucial stage of her education, which could have lasting adverse effects on her personal and professional

¹⁵ *Mukesh & Anr v. State for Nct of Delhi* (2017) 6 SCC 1

¹⁶ *Mohfil Khan and Anr. v. State of Jharkhand* (2015) 1 SCC 67

development. Such circumstances must, therefore, be duly taken into consideration while determining the appropriate sentence. On the basis of the foregoing analysis, it appears that imposing only the minimum sentence upon the defendants would amount to an underestimation of the harm suffered by the victim. Conversely, imposing the maximum sentence could unduly hinder the objective of rehabilitating the accused within society, particularly considering their age and circumstances. Therefore, it is deemed appropriate and consistent with the purpose of the law to impose a sentence corresponding to the midpoint between the lower and upper limits of punishment. Accordingly, each of the defendants Sagar Bhatt and Amar Raj Awasthi is sentenced to six years and six months of imprisonment. Furthermore, since the said defendants jointly committed the offence of gang rape against the victim, they are each sentenced to an additional five years of imprisonment pursuant to Section 3 (a) under the Chapter on Rape of the *Muluki Ain*.

27. With regards to the issues relating to the amount of compensation to be awarded to the victim, the basis for determining such compensation, and the question of liability for its payment, it is relevant to examine the national as well as international legal provisions and principles.
28. The success of any justice system lies in its ability to adequately address the harm suffered by the victim, alleviate the fear and trauma caused by the offence, and instill in the victim a sense of justice. It also depends on ensuring the security of society, facilitating the reintegration of the offender, and maintaining peace, coexistence, and humanity within the community. Moreover, the effectiveness of the justice system should be measured not by the quantum of punishment imposed on the offender, but by the extent to which the harm caused by the offence has been redressed. As analyzed above, one of the important aspects that the criminal justice system must address is the provision of compensation to the victim. In the context of a serious criminal offence such as rape, the utility of compensation lies in restoring the victim to her pre-offence state that is *restitutio in integrum* and in alleviating the mental and physical suffering caused by the crime, thereby enabling her to continue a normal and secure social life. Recent legislation in Nepal has similarly embraced this principle. For instance, Article 21 (2) of the Constitution of Nepal provides that a victim of crime shall have the right to justice, including social rehabilitation and compensation in accordance with the law. Likewise, Article 38 (3) of the Constitution guarantees that in cases of any act of violence or exploitation against women, the victim shall have the right to obtain compensation in accordance with the law. Thus, the Constitution of Nepal, international law, and Nepalese national laws collectively recognize that the right to justice encompasses both social rehabilitation and compensation for the victim.
29. While the law recognizes the right of a victim to obtain justice accompanied by compensation, ordinarily such compensation is to be provided by the offender to the victim. However, in circumstances where the offender, due to financial incapacity or other reasons, is unable to provide immediate compensation, the State cannot be absolved of its responsibility. This principle has been expressly embraced by recently enacted legislation. For example, Section 41 of the Criminal Offense (Sentencing and Execution) Act, 2074 provides that compensation must be paid immediately, and in the event that the offender fails to make such payment, the offender's property shall be attached and utilized to provide compensation to the victim. Similarly, Section 48 of the same Act provides for the establishment of a Victim Relief Fund to provide relief to victims from such offenses. According to Section 228 of the Criminal Code, a victim is entitled to receive reasonable compensation from the offender. However, in cases

where the offender has no assets and the victim is therefore unable to obtain compensation, and where a Victim Relief Fund has not been established under the prevailing law, the court may order the Government of Nepal, through the agency responsible for matters relating to women and children, to provide an appropriate amount as compensation to the victim. Upon such an order, the designated office is required to make the compensation immediately available to the victim.

30. Under Section 30 (1) of the Victims of Crime Protection Act, 2075, the court, while delivering the final judgment, may order the offender to pay a reasonable amount to the victim as compensation. Subsection (4) of the same Act provides that, notwithstanding anything contained elsewhere in this Section, where the offender has no assets and the victim is unable to obtain compensation, or where the offense is established but the offender cannot be located, or where the case related to the offense is returned in accordance with prevailing law, the court may order the appropriate amount to be paid to the victim from the Fund as compensation.
31. At the time when the incident had occurred, No. 10 under the Chapter of Rape of the *Muluki Ain*, provides “*that where it is established that any woman has been subjected to rape, the court shall order the offender to pay compensation to the woman, taking into account the physical or mental harm suffered, in an amount deemed reasonable. In determining such compensation, the court is required to consider the gravity of the offense, and where the offense results in the death of the victim and the victim leaves behind dependent minor children, the suffering endured by such children must also be taken into account in determining the compensation.*” Compensation for the victim has been claimed pursuant to this provision. The legal provision does not prescribe a specific amount of compensation, but entrusts the determination of the amount to the competent Bench. In order to determine a reasonable amount of compensation, the court is required to take a balanced approach, considering the gravity of the offense, the impact on the victim, and the financial capacity of the offender.
32. In considering international standards on the determination of compensation, it is necessary to examine the treaties and other international and regional laws ratified by Nepal. According to **the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979**, General Recommendation No. 35 on Gender-based Violence Against Women, 2017, paragraph 46, provides that: “*Reparation should include different measures, such as monetary compensation and the provision of legal, social, and health services, including sexual, reproductive, and mental health services, for a complete recovery, as well as satisfaction and guarantees of non-repetition. Such reparations should be adequate, promptly provided, holistic, and proportionate to the gravity of the harm suffered.*” Likewise, paragraph 19 on the **General Recommendation No. 44 on Women’s Access to Justice, 2015** prescribes the following: “On provision of remedies, the Committee recommends that State parties: (a) Provide and enforce appropriate, timely remedies for discrimination against women and ensure that women have access to all available judicial and non-judicial remedies; (b) Ensure that remedies are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered. Remedies should include, as appropriate, restitution (reinstatement); compensation (whether provided in the form of money, goods or services); and rehabilitation (medical and psychological care and other social services)”

33. Likewise paragraph 12 of the **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985** prescribes the following: “When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.” Likewise, paragraph 13 provides for the following: “The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.”
34. Upon studying and analyzing the aforementioned national and international legal provisions concerning compensation, it is noted that the payment of compensation should be made by adopting the following two methods:
1. Compensation shall be paid to the victim directly by the accused.
 2. Compensation shall be paid to the victim from the Fund established through government budget allocations, as well as collected fees and fines.
35. In the present case, the victim herself stated in her deposition (QA 8) before the court that: “It took me one month to regain consciousness after my mental condition deteriorated, and I underwent treatment for four months; I am now well. The treatment was provided at Patan Mental Hospital.” Moreover, her sister, Kamala Bista, stated in her deposition (QA 7) that “the victim began exhibiting abnormal behavior,” which further supports the conclusion that the victim’s mental condition was adversely affected due to mental trauma.
36. While determining compensation, the court must consider the victim’s physical, mental, emotional and economic circumstances and also take into account the victim’s condition after the incident as well as the medical and psychological examinations and treatment records attached with the case file. The court must also take into account that the victim, “Gha” Kumari, as a result of being subjected to a serious crime such as rape, was adversely affected in her education, including the crucial moment of the S.L.C. examination. During the course of the arguments, the learned Joint Government Attorney stated that the victim, “Gha” Kumari, faced weak economic conditions and is currently pursuing her legal education. Likewise, considering the financial circumstances of the accused, it appears that no clear disclosure of their financial status was made at the time of investigation or filing of the charge-sheet. Apart from the statements that one of the accused, Sagar Bhatt, owns a stationery shop and the other, Amar Raj Awasthi, owns a photo studio, there is no other basis to ascertain their financial position. **It is the responsibility of the State to conduct effective investigations and to collect the financial details of both the victim and the accused. However, the victim should not be deprived of compensation due to any failure to record such details or any shortcomings during the investigation. Likewise, the State’s inaction cannot be a reasonable basis for reducing the amount of compensation.**

37. In appellant/defendant Lok Bahadur Karki versus opponent/plaintiff Nepal Government regarding the case of human trafficking, child marriage and rape, the court laid down that “compensation provided to a victim of a crime must restore or rehabilitate the victim to the condition they were in prior to the harm. Therefore, it is not sufficient merely to enact laws concerning compensation; such laws must themselves be appropriate and effective, and their implementation must be both effective and realistic¹⁷”.
38. The right to justice, including rehabilitation and compensation, must be recognized as an inherent right of the victim of a crime. It is the duty of the court to implement this right in a practical manner, and likewise it is the obligation of the State to provide justice to the victim in accordance with the court’s order. In fulfilling its obligation to identify the broad impact of a crime on the victim, the State also assists the victim in experiencing the healing process, that is, the process of remedy. It appears appropriate to note the significant role of the State in providing justice to the victim, as highlighted in the **Report of the Justice Verma Committee, India, 2013**, which states: “the victims can and ought to recover like any other victims from an accident, but that is possible only when there is a due discharge of the functions by the State¹⁸.”
39. The legal system and procedures for establishing an offense must now also recognize the pain and consequences suffered by the victim. In this regard, paragraph 17 of **CEDAW’s General Recommendation No. 35 on Gender-based Violence Against Women, 2017**, states: “...in making the determination of when acts of gender-based violence against women amount to torture or cruel, inhuman, or degrading treatment, a gender-sensitive approach is required to understand the level of pain and suffering experienced by women and that the purpose and intent requirement of torture are satisfied when acts or omissions are gender-specific or perpetrated against a person on the basis of sex.” This indicates that in understanding violence against women, a gender-sensitive approach must be incorporated in decision-making. Similarly, the Justice Verma Committee Report, 2013, states: “When a woman complains of rape, it is not the physical part of the woman which is directly the focus of attention. It is the offence and the offence against the bodily integrity of the woman as a person which is the offence in question¹⁹.” Rape is a crime that affects not only a woman’s body but also her personality. In the present case, the victim, who was participating in the S.L.C. examination, a crucial stepping stone in building her future was subjected to gang rape. As a result, she was unable to appear for the S.L.C. examination on time, delaying her educational achievements and adversely affecting her future prospects. In this situation, it is appropriate to determine compensation not only by considering the pain suffered by the victim but also the impact of the mental trauma caused by the fear and shock of the violence.
40. The effects of the crime can have long-term adverse consequences, potentially depriving the victim of opportunities for personal development. Moreover, in the traditional society of far-western (*Sudurpashchim*), the pain caused by social stigma must also be taken into account. Considering these factors, this bench finds it appropriate to determine compensation so as to assist the victim in rebuilding her life with educational, economic, and social empowerment.

¹⁷ Lok Bahadur Karki vs. Nepal Government, Nepal Law Reporter 2072, Unit 2, Decision No. 9346, pg. 263

¹⁸ Reports of the Committee on the Amendments to Criminal Law, Justice Verma Committee, 2013, p.103.

¹⁹ Reports of the Committee on the Amendments to Criminal Law, Justice Verma Committee, 2013, p.98.

Now, compensation must be determined based on the concept of what would be adequate, rather than merely what would be reasonable. Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, states: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." Therefore, in determining compensation, it is necessary to ensure not only fair compensation but also prompt and adequate compensation. Paragraph 3 of General Comment No. 3 of UNCAT states: "The right to prompt, fair and adequate compensation for torture or ill-treatment under article 14 is multi-layered and compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary." It further elaborates that compensation must take into account both economic and non-economic damages suffered by the victim and provide redress for all types of harm. Under the framework of compensation, not only the offender but also the State has the responsibility to establish and maintain institutional mechanisms to mobilize funds and resources to provide redress and support to the victim. The continuation of injustice cannot be tolerated due to the failure of the investigation or prosecution to establish the damage suffered by the victim, or because the offender's financial capacity is insufficient to provide compensation. Therefore, taking into account the victim's age, education, and means of livelihood to ensure her path to self-reliance, as well as considering the financial capacity of the defendants, it is hereby determined that the victim shall receive compensation of NPR 250,000 (Two hundred fifty thousand) from each of the defendants. Additionally, compensation of NPR 500,000 (Five hundred thousand) shall be provided by the Government of Nepal either from the Victim Relief Fund, if available, or, in its absence, from the Ministry of Women, Children, and Senior Citizens.

41. Regarding the claim of moral turpitude raised by the learned Joint Government Attorney during the sentencing arguments, it is necessary for this court to analyze whether moral turpitude can be recognized as an offense in the context of gang rape committed collectively. With regards to moral turpitude, the Indian Supreme Court in *Baleshwar Singh v. District Magistrate and Collector* AIR 1999 has laid down the following: "The expression "moral turpitude" is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and weakness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man²⁰." Although there is no universally accepted legal definition of moral turpitude, acts that are contrary to justice, integrity, civility, and morality can be considered as acts of moral turpitude.

²⁰ *Baleshwar Singh v. State of U.P.*, AIR 1999 All. 84.

42. With regards to moral turpitude, the Supreme Court of the United States of America in *United States v. Smith*²¹ had laid down the following “Act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man”
43. Although the Nepalese law does not provide a clear provision regarding moral turpitude, the Supreme Court, in the writ petition of certiorari/mandamus filed by Jyoti Lamsal Paudel against the Government of Nepal, Prime Minister and Council of Ministers, stated: “forcibly violating a woman’s bodily sanctity against her will through rape is not only unlawful but also a grave offense, and a civilized human society considers such an act to be morally depraved.” It is therefore relevant that such acts contrary to morality have been interpreted as criminal offenses of moral turpitude²². In the present case as well, a woman who had gone to purchase guess papers for her exam was forcibly raped by these two defendants without her consent. This act can be seen as not only a violation of the law but also contrary to humanity, personal dignity, and social morality. However, in the context of this case, since the charge-sheet filed by the prosecution does not mention or claim anything in this regard, there is no need to make any further observations on moral turpitude.
44. Women can attain true justice only when the laws enacted by the legislature are effectively implemented, the institutional structures provided by law are established, procedural safeguards are ensured, sensitivity to women’s rights is maintained, due diligence and appropriate oversight are exercised at all levels to combat violence against women, and necessary preventive measures are taken by discouraging the causative factors while ensuring a broad-based attitudinal change. In the context of the present case, while conducting the sentencing and determining compensation, to ensure a fair hearing and address the complexities in securing restorative justice, it is hereby deemed necessary to issue the following directive orders in the name of the Government of Nepal for systemic and institutional reform:
1. In cases of this nature, Section 12 of the Criminal Procedure (Sentencing and Execution) Act, 2074, provides that a pre-sentence report shall be prepared by a Probation Officer or Parole Officer to assist in sentencing, gathering evidence, applying correctional policies, and ensuring the seriousness and proportionality of the punishment. However, the learned Joint Government Attorney during the arguments pointed out that to date, this provision has not been actively implemented, which has also caused difficulty for the court in determining the sentence. Accordingly, a directive order is hereby issued in the name of the Government of Nepal to establish the required structure and allocate the necessary budget under this provision within three months. The Government shall be informed of this order in writing. Upon implementation of this order, subordinate courts shall appoint probation or parole officers within 15 days.
 2. The current law envisions justice with compensation, placing the primary responsibility of providing compensation on the offender, with the State stepping in only if the offender is

²¹ *United States v. Smith*, (1970) 420 F.2d 428, 431

²² *Jyoti Lamsal Paudel vs. Nepal Government Office of the Prime Minister and Council of Ministers et.al.*, Nepal Law Reporter 2067, Unit 11, Decision No. 8507, pg. 1903

unable to pay. Therefore, during the investigation and prosecution of the crime, arrangements shall be made to collect and analyze evidence of the physical, mental, social, and economic harm suffered by the victim, as well as collect details of the accused's movable and immovable property and income during the investigation, and keep the record attached to the case file. This directive shall be communicated in writing to the Police Headquarters through the Office of the Attorney General.

3. Special laws, and the National Criminal Code, 2074, and the Criminal Procedure (Sentencing and Execution) Act, 2074 envision a Victim Relief Fund, but even after one year of the law's implementation, there is no information regarding its establishment. Therefore, the Ministry of Law, Justice, and Parliamentary Affairs of the Government of Nepal shall be instructed in writing to establish the Victim Relief Fund immediately and provide information regarding its establishment.
4. It is important to make offenders realize the wrongfulness of their actions, facilitate their reform, and reintegrate them into society. Punishment is imposed for the crime committed, and the purpose of the State and the law is to prevent such crimes. Since those involved in the crime represent only the manifestation of the offense, their reform and reintegration into society constitute a fundamental aspect of the State's penal policy. Therefore, in order to fulfill the objectives of the law, corrective sentencing measures such as imprisonment, open prison, community service, and family reconciliation envisioned under the Criminal Offence (Sentencing and Execution) Act, 2074, must be implemented through the necessary legal and structural arrangements. These arrangements shall be prepared within one year from the date of receiving this order, and progress reports shall be submitted to this court's Monitoring and Inspection Division every three months. Directive orders in this regard are hereby issued in the name of the Government of Nepal, Office of the Prime Minister and Council of Ministers, and the Ministry of Home Affairs. Other matters shall be carried out as per the particulars.

Particulars

1. As stated above, since the defendants Sagar Bhatt and Amar Raj Awasthi have been sentenced to 11 years and 6 months of imprisonment each, the order shall be communicated in writing to Baitadi District Court to debit the period already served through the order of the Baitadi District Court and accordingly calculate the remaining term of imprisonment to be served.
2. Since it has been determined that the victim shall immediately receive compensation from the Government of Nepal, an amount of NPR 500,000 (Five lakh rupees) shall be made immediately available to the victim, "Gha" Kumari, from the Government of Nepal. This order shall be communicated in writing to the Ministry of Women, Children, and Senior Citizens.
3. In accordance with the judgment, the defendants shall each pay NPR 250,000 (Two lakh fifty thousand) as compensation to the victim "Gha" Kumari within 60 days. This order shall be communicated in writing to the Baitadi District Court.

4. It is hereby ordered to provide a copy of the judgment to relevant agencies and to the Office of the Attorney General for immediate implementation of the directive orders
5. It is hereby ordered to provide a copy of the judgment to the Judgment Execution Directorate and Monitoring and Inspection Division of this court to monitor as to whether the directive orders mentioned in the judgment are being implemented
6. It is hereby ordered to upload a copy of this judgment in the electronic system and to remove the case file from the registry and to submit the case file accordingly

Concurring with the above Opinion

Justice Hari Prasad Phyuul

Bench Officer: Dhan Singh Giri, Matina Shakya, Shreya Sanjel

Dated Year 2076 of the Month of Mangsir Date 2 Date 2

(Corresponding to Year 2019 of the Month of November Date 18 Day 2)