

Ram Krisan and anr. Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-23-1997

Reported in : 1998CriLJ3838

Judge : B.K. Sharma, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 363, 366, 376 and 506; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 1345 of 1980

Appellant : Ram Krisan and anr.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : V.P. Srivastava, Adv.

Judgement :

B.K. Sharma, J.

1. By his judgment and order dated 11-6-1980 Sri S.N. Saxena, the then Illrd Addl. District and Sessions Judge, Budaun in Sessions Trial No. 223 of 1979, State v. Ram Krishan and Rameshwar Dayal and in Sessions Trial No. 223 of 1979, State v. Ajudhya Prasad Sharma and Smt. Urmila, which were consolidated for a joint

trial of all the four accused for various offences, convicted accused Rameshwar Dayal and Ajudhya Prasad for the offences under Sections 363, 366 and 376, I.P.C. and sentenced Rameshwar Dayal accused-appellant to suffer R.I. for a period of three years for the offence under Section 363, I.P.C., R.I. for a period of six years for the offence under Section 366, I.P.C. and R.I. for a period of ten years for the offence under Section 376, I.P.C. All the sentences were ordered to run concurrently by the same judgment. He convicted accused appellant Ram Krishan for the offence under Section 376, I.P.C. and sentence him to undergo R.I. for a period of ten years for the said offence. He, however, acquitted Smt. Urmila accused appellant of the offence under Section 506, I.P.C.

2. Being aggrieved by the same, both Ram Krishan and Rameshwar Dayal accused-appellants have preferred this Criminal Appeal No. 1345 of 1980. A separate Criminal Appeal No. 1366 of 1980 was by Ajudhya Prasad Sharma accused appellant against his conviction and sentence is at the same trial.

3. Ajudhya Prasad Sharma accused-Aappellant died and consequently the appeal preferred by him was declared abated by this Court vide its order dated 24-2-1997. Rameshwar Dayal accused-appellant also died and consequently the present appeal has been declared abated to his extent by the order of this Court dated 1 - 12-997. So the present appeal remains only in respect of Ram Krishan accused-appellant against his conviction and sentence.

4. The prosecutrix of this case was Km. Sarita alias Pinki. The complainant in this case was Smt. Harnandni Devi, who resided in Mohalla Chahmir in Budaun town. The prosecutrix was the grand-daughter of the real brother of the complainant. The prosecutrix originally lived with her parents in Meerut. Ram Krishan and Rameshwar Dayal present accused-appellants were real brothers inter se being sons of Shiv Lal and were residing in village Baharipur, police station Aliganj, district Bareilly. Ayodhya accused-appellant was resident of another village Himmatpur, police station Bhamora, district Bareilly.

5. The prosecution story was as follows :

The prosecutrix was a minor girl, aged about 12 or 13 years. She lived with her parents in Meerut. Her father had gone insane and her mother was unable to maintain her three children properly. She, therefore, handed over her two children to Govt. Nursing Home and was about to hand over the prosecutrix also to Govt. Nursing Home. The complainant Smt. Harnandni Devi (PW 1) out of love and affection brought her (the prosecutrix) from Meerut to Budaun and since then she had been living with her the complainant. On 18-9-1977 complainant Smt. Harnandni Devi (PW 1) gave Rs. 2/- to the prosecutrix and asked her to go to the market to purchase oil. The prosecutrix returned along with the oil. The complainant suspected that it was short in quantity. She enquired from the prosecutrix who, however, replied that she had purchased the oil for Rs. 2/-. Smt. Harnandni Devi then asked her son Subhash to go to the shop keeper along with the prosecutrix and enquire from him if she had purchased the oil for Rs. 2/-. The shop keeper told Subhash that the prosecutrix had purchased oil for Rs. 1.75 paise only. Subhash then paid paise 25 more to the shop keeper and got the deficiency made good. Subhash then asked the prosecutrix to go home and told her that he would be reaching home after purchasing vegetables from the market. Subhash, however, on returning home found that the prosecutrix had not reached home. He and his family members, thereafter, searched in vain for her. In the evening at about 6 p.m. complainant Smt. Harnandni Devi (P.W. 1) went to P.S. Kotwali and narrated the story to the police there. The police advised her to make publicity in the town which she got done but the whereabouts of the prosecutrix remained in dark. The search for the prosecutrix continued and ultimately the complainant sent the above mentioned application, Ext. Ka-1, on 27-9-1977 to the Superintendent of Police Budaun.

6. Thereafter, the case was registereid at police station Kotwali, Budaun. The investigation was entrusted to Majid Ali (PW 8) who at that time was posted as S.I., P.S. Kotwali, Budaun. He tried to find out the whereabouts of the prosecutrix but did not succeed. On 25-11-1977 he submitted final report in the case as till then he had been unable to work out the case. He, however, even, thereafter, continued efforts for the search of the prosecutrix and in the month of April, 1978 came to know that she was in the house of accused Ram Krishan and Rameshwar Dayal in village Beharipur within police station Aliganj of district Bareilly. He then

obtained per mission to reopen the investigation and along with the police force left for village Aliganj on 5-4-1978. He collected public witnesses in village Beharipur and raided the house of the above named accused persons in the early morning on 5-4-1978. He recovered the prosecutrix from the house of accused Ram Krishan and Rameshwar Dayal and arrested accused Ram Krishan. Accused Rameshwar Dayal was at that time not present at the house. He completed the necessary formalities in village Beharipur and returned to police station Aliganj.

7. The prosecution story further was that Km. Sarita alias Pinki had got scared on 18-9-1977 when she found that her theft of 25 paise had been detected by Subhash, that she, therefore, left the shop of the oil seller but did not return home and went towards the old octroi post, that there she happened to meet accused Rameshwar Dayal and Ajudhi, that accused Rameshwar Dayal was employed in police department but some time prior to this incident had been dismissed from service, that accused Ajudhi talked with the prosecutrix who told him that she belonged to Meerut and had come to Budaun, as her grand-mother was living at Budaun, that accused Ajudhi assured her that he would escort her to her mother's house in Meerut. She believed him and then accused Ajudhi and Rameshwar Dayal along with her boarded a truck, that she (the prosecutrix) started weeping in the truck, upon which accused Ajudhi again tried to pacify her and assured that he would escort her to her mother's place in Meerut, that she was taken by accused Ajudhi and Rameshwar Dayal in the truck upto village Deochara where all of them got down, that accused Rameshwar Dayal and Ajudhi made the prosecutrix sit in a bullock-cart in Deochara and took her to village Himmatpur where she was kept in the house of Ajudhi accused, that she enquired from him as to why she was taken there upon which he told her that after 2 or 4 days they would escort her to Meerut.

8. The prosecution story further was that wife of Ram Autar (accused Smt. Urmila) was there in the house and she provided food to her, that in the night accused Ajudhi threatened her with a country made pistol and told her that he would kill her if she raised alarm, that Rameshwar Dayal also reached there and gagged her, that accused Rameshwar Dayal raped her, that the prosecutrix became unconscious, that some time, thereafter, she gained senses and accused Smt.

Urmila consoled her by telling her that it was normal affair, that she also told her not to disclose the aforesaid facts to any one otherwise she would be killed by them.

9. The prosecution story further was that the prosecutrix was kept in the house of Ajudhi in village Himatpur for 3 or 4 days where she was raped by accused Ajudhi and Rameshwar Dayal, that she then was taken by accused Rameshwar Dayal and Ajudhi to village Beharipur where she was kept in the house of accused Rameshwar Dayal, that after about 1 months of stay in the house of accused Rameshwar Dayal, she again was taken to his house by accused Ajudhi, that a dispute thereafter developed between accused Ajudhi and Rameshwar Dayal, that accused Rameshwar Dayal wanted to marry her to his younger brother while accused Ajudhi wanted to marry her himself, that she again was taken by accused Rameshwar Dayal to village Beharipur where she was raped by accused Ram Krishan, that on 5-4-1978 at about 4.00 a.m. the police reached there and recovered her. The police after receiving the report of the medical examination challenged the above named four accused persons.

10. The defence of accused Ajudhya Prasad accused-appellant was that the real culprit was another person named Ajudhi who also lived in the same village Himmatpur but being brother of a Sub-Inspector was not challenged by the Investigating Officer and instead he was falsely implicated. He further claimed that a litigation had already taken place between him and the police, due to which he was falsely implicated in this case.

11. The defence of Rameshwar Dayal accused-appellant was that he was formerly posted as a police constable that about 10 or 11 years ago the Investigating Officer S.I. Abdul Majeed Khan had taken a bribe of Rs. 1000/- from his Sarhu Munney for excluding him from a murder case, in which he has falsely implicated him, that a dispute, therefore, had taken place between him and Abdul Majeed resulting in Marpeet, that Smt. Pushpa who was mother of the prosecutrix resided in Meerut in the house of his brother-in-law Ved Prakash, who, however, had turned her out of the house, that he was at that time present in the house of his brother-in-law, that Smt. Pushpa, therefore, had got him falsely implicated and that

due to his enmity with the Investigating Officer, his brother Ram Krishan also had been falsely implicated by him in this case.

12. The present accused-appellant Ram Krishan claimed that the prosecutrix was not in his house and was not recovered there by the police. He further claimed that he had been falsely implicated due to enmity between the police and his brother. He further claimed that his father, brother and Ors. family members were present at the house but only he was arrested. He further claimed that the witnesses deposed against him due to parti-bandi as he had a quarrel with prosecution witness Babu Ram.

13. Accused Smt. Urmila also claimed that she had been falsely implicated. She stated that she used to live at her father's place in village Kalia within police station Wazirganj, that she was married in village Himmatpur, that she refused to let out her land to the Gram Pradhan, that as she refused to let out her land to the Gram Pradhan namely Ram Bharosey of village Himmatpur, therefore, the Pradhan got her falsely implicated in this case.

14. The medical examination of Kmr. Sarita was made by Dr. Sunita Gupta (PW 3) on 6-4-1978 at 3.30 p.m. Her material observations were as follows :

Height 4'6". Weight 26 Kg. Teeth 6 plus 5/5 plus 5. One IInd premolar erupting. Canine of both side are not present.

Axillary hair - thin sparse,

Pubic hair - thin sparse.

Breast - Small under developing stage.

External genital Organs - no mark of injury over external genital organs.

Internal genital organs - Hymen torn old healed, tags present at 6 O'clock position.

The girl can be examined per vaginally by two fingers easily. Uterus - small in size.

Vaginal smear sent for pathological examination for evidence of dead or alive spermatozoa.

In her opinion : 1. It seems that attempts to penetrate some blunt objects has been done. It might be due to intercourse.

2. About age-Xray wrist and X-ray elbow advised.

15. The X-ray No. 122/189. dated 7-4-1978 showed that all epiphysis around the wrist joint had not united with their respective diaphysis and epiphysis of medial epicondyle, head of radius and upper end of ulna was not fused with their respective diaphysis.

16. The learned Sessions Judge held the prosecutrix to be a minor below the age of discretion having accepted the prosecution evidence about it. The learned Sessions Judge also accepted the prosecution case about the kidnapping and the abduction from place to place and the rapes and consequently convicted and sentenced the accused Ajudhya Prasad and Rameshwar Dayal and the present accused appellant Ram Krishan as aforesaid.

17. Regarding accused Smt. Urmila, the learned Sessions Judge did not accept the story narrated by her (Smt. Urmila) but found that the evidence against her was only that she had stated to the prosecutrix on her complaint to her of rapes by Ajudhya Prasad and Rameshwar Dayal accused-appellants that they were dangerous persons and may kill her and that this did not show that she had intimidated the prosecutrix to submit to the desire of the accused-persons for satisfaction of their carnal pleasure. There is no appeal against her acquittal.

18. As noted earlier this appeal is now confined to the extent of Ram Krishan accused-appellant.

19. However, despite it this Court cannot avoid having to refer and discuss the broad feature of the entire prosecution case including the defence of the co-accused because the case against Ram Krishan accused-appellant cannot be considered in isolation.

20. The age of the prosecutrix Km. Sarita has been testified by Smt. Harnandni Devi (P.W. 1) to be 11 to 12 years on the date of her kidnapping/abduction. She had the opportunity to have knowledge about the age of prosecutrix. Moreover she had not been cross-examined by any of the accused in the case on point of her age. So, the position is that her age is proved to be 11 to 12 years on the date of her kidnapping/abduction and is undisputed also. The age given by the Medical Officer based on X-ray was 13 to 14 years. That age has also not been challenged by the defence. There is no difficulty in acting upon the evidence of Smt. Harnandni Devi with 1998 Cri. L.J./17241 X which the medical evidence is also consistent. This being the position, the question of consent of the victim is wholly immaterial.

21. The law regarding the appreciation of the evidence of the prosecutrix in the case of a sexual offence where she is often the sole witness has been the subject of consideration in a large number of judicial decisions of the apex Court. One of the latest decisions of the apex Court was State of Punjab v. Gurmit Singh 1996 SCC (Cri) 316 : (AIR 1996 SC 1393). In this authority the apex Court has made the following observations which have to be kept in mind by us in dealing with such type of cases at page 1400 (of AIR):

The testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has

sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty.

22. There is absolutely no reason to doubt or discard the prosecution cases and the prosecution evidence. There is the uncontroverted evidence of Smt. Anandi Devi PW 1 about the incident relating to the purchase of oil by the prosecutrix for Rs. 2/- which was short in quantity and due to which she had sent her son Subhash to the oil seller along with the prosecutrix. Subhash had inquired from the oil seller who informed that the prosecutrix had purchased oil for Rs. 175 only and on this Subhash gave 25 paise from his side and got the deficiency of oil made good and then asked the prosecutrix to return to the house but the prosecutrix did not come back home and when Subhash came back to the house, he narrated to her as to what had transpired at the shop. She has not been cross examined on behalf of any of the accused persons.

23. The principal evidence is of the prosecutrix Km. Sarita alias Pinki. She testified about the oil matter. She deposed that she had been sent to purchase oil for Rs. 2/- but she purchased oil for Rs. 13/4 only. She further testified that Subhash asked her to go back to the house but there was fear of beating so she instead of going to the house, went to the Old Bhujji. where Rameshwar Dayal and Ajudhi co-accused met her, that Ajudhya inquired from her as to where she lived whereupon she told him that she belonged to Meerut and her mother was at Meerut,

whereupon Ajudhi accused had assured her that he would carry her to Meerut and then Ajudhi and Rameshwar co accused seated her in a truck along with themselves and took her to Deocharam where, she was taken down from the truck and seated in a bullock-cart and taken to Himmatpur at the house of Ajudhi co-accused and on inquiry by her as to why they had brought her there, she was asked to stay there for 2 to 4 days on the assurance that then she will be taken to Meerut. She further testified that she was intimidated with Tamancha and then Ajudhi and Rameshwar co-accused committed rape upon her and due to which she became unconscious and when she complained to the wife of Ram Avtar who has met her on that house she consoled her by telling her that it is a normal affair and also told her not to make mention to others as these co-accused would finish her if they learnt that she was making complaint. She further testified for 3-4 days she was kept in that house of Ajudhi co-accused in Himmatpur and repeatedly raped by both these co-accused, that alter it these co-accused took her to Beharipur and kept her there at the house of Rameshwar co-accused for about one and half months and then Ajudhi co-accused took her back to Himmatpur, that later on a quarrel took place between Ajudhi and Rameshwar co-accused as Rameshwar co-accused said that he would marry her to his younger brother while Ajudhi co-accused wanted himself to marry her that then she was taken to the house of Rameshwar co-accused in Beharipur from where she was recovered by the police. She claimed that Ram Kishan accused-appellant had also been arrested from there along with her. She testified that Ram Kishan accused-appellant had committed rape with her in that house. The transaction narrated by her extended over a long period which culminated in her recovery and the arrest of Ram Kishan accused-appellant from the house of Rameshwar Co-accused and Ram Krishan accused-appellant. It cannot be believed that a young girl of that age would concoct a story to implicate all or any of these accused persons. She has suggested that she and her mother lived in the house of Ved Prakash in Meerut, that her mother was evicted from that house by Ved Prakash, that Rameshwar accused was brother of the wife of Ved Prakash and due to this enmity Rameshwar was falsely implicated in this case. She refuted these allegations. She claimed that they lived at the house of Hari Dutta. She pleaded ignorance to the suggestion that Ved Prakash was nephew of Hari Dutta. The defence suggestion

to her was simply hopeless because her mother never lodged F.I.R. against Rameshwar accused. Then suggestion was made to her that her mother used to be visited by many people. She refuted this suggestion also. She also refuted the suggestion that she! was living in easy virtue at her mother's house. She also refuted the suggestion that she had eloped with some-body in Badaun but that person abandoned her and that after that she went back to her mother and she had concocted this false case.

24. One material fact corroborating the prosecution story was the recovery of the prosecutrix from the house of Rameshwar co-accused and Ram Krishan accused-appellant by the police. In this regard, there is evidence of PW 8 Abdul Majid Khan, the then S.I. P.S. Kotwali. There was absolutely no reason to doubt his evidence about the recovery. His testimony was corroborated by the evidence of the prosecutrix herself and the evidence of Jawala Singh S.I.P.W. 9 who had accompanied him while going for the recovery. None of these two police officers had any enmity with any of these accused persons. The mere fact that they were police witnesses would not make their evidence suspect. In the general diary of the police station, there was entry of departure from the police station and there was also entry of arrival of the police station after making the recovery which entries corroborate' their evidence. Further more, though the public witnesses of the recovery namely Pooran PW 2 and Babu Ram PW 4 have turned hostile but the evidence of recovery of the prosecutrix does not thereby get belied. Both these witnesses resided in village Beharipur of which Rameshwar co-accused and Ram Krishan present accused-appellant were also residents and so it is not surprising that they had turned hostile. The point of importance is that even these hostile witnesses have testified at the trial that they had seen a girl with the accused-appellant Ram Krishan in the custody of the police near the house of accused Ram Kishan in the early morning hours on the day of recovery. Pooran PW 2 has testified that the girl was sitting in a bullock-Tonga (Lehru), Babu Ram PW 4 similarly stated that the girl was in the Lehru which was under the Pakar tree infront of the house of Rameshwar co-accused and Ram Krishan accused-appellant. Both these witnesses stated that the police officer had obtained their thumb impression on a paper. The photo of the prosecutrix Exb. 1 was shown to Pooran PW 2 and on seeing the same, he had testified before the trial Court that

the girl whom he had seen sitting in the Lehu resembled it to some extent. So even their evidence lends corroboration to the prosecution case about the recovery of prosecutrix from the house of Rameshwar co-accused and Ram Krishan accused-appellant and also the arrest of Ram, Krishan accused-appellant from the house. In his statement under Section 313, Cr.P.C. Rameshwar co-accused made a denial about the factum of recovery and claimed that Ram Krishan was arrested from Rasta due to his enmity. The enmity set up by him was that Abdul Majid S.I. had released his Sarhu Munncy taking Rs. 1000/- and instead of Munney implicated him (Rameshwar co-accused) in that murder case falsely. He also claimed that due to the said implication in a murder case, a 'Marpit' has taken place between him and Abdul Majid S.I. and further that his sister's husband Ved Prakash had evicted the mother of the prosecutrix and on this a quarrel had taken place on which time, he himself was present and due to this enmity, the prosecutrix has falsely implicated him. The trial Court has rejected this plea of enmity and there was no reason to doubt his view. His case incidentally comes for mention because his case is inextricably woven with the entire prosecution story and so while considering the case against Ram Krishan accused appellant, the case against Rameshwar co-accused cannot be totally left out of sight. Ram Krishan accused-appellant himself has stated initially in his statement under Section 313, Cr.P.C. that the prosecutrix was not arrested from his house but that he was implicated due to the enmity with his brother. However, in reply to the question No. 14 under Section 313, Cr.P.C. he (Ram Krishan) accused-appellant replied that there was enmity of the police with his brother, that his brother, his father and all other family members were present at the house but only he was arrested. He also claimed that a quarrel had taken place with Babu Ram. These replies do not help him at all. As noted earlier, Babu Ram PW 4 has turned hostile and, therefore, there was no question of Ram Krishan being implicated on account of Babu Ram PW. 4. Infact, the reply of Ram Krishan accused-appellant aforesaid in the case that the police had enmity with Rameshwar accused is belied by the fact that the police did not arrest him (Rameshwar accused) from the house. The prosecution story, however, is that Rameshwar accused-appellant was not present at the house at that time and so he was not arrested and Ram Krishan accused-appellant was present at the house and so he was arrested. The statement of

Ram Krishan accused-appellant was that other inmates of the house were present but only he was arrested by the police. If the police were acting due to enmity with his brother Rameshwar it could have implicated the other inmates of his house as well. The fact that only he was arrested at the time of the recovery of the prosecutrix showed that the police had no enmity with his brother or even with him. I have no hesitation in accepting the evidence of the recovery of the prosecutrix from the house of Rameshwar accused and Ram Krishan accused-appellant and the arrest of the accused-appellant Ram Krishan from his house.

25. Once this recovery from that house is accepted it itself becomes a very strong circumstance which goes to corroborate the testimony of the prosecutrix against Ram Krishan accused-appellant about the rape with her.

26. Much argument has been advanced by the learned counsel for the accused-appellant in regard to the testimony of the prosecutrix about the rape by Ram Krishan accused-appellant. It has been said that she could not give the topography of the house correctly when asked about it. However, it had to be kept in mind that the recovery had been made from the house on 5-4-1978 and she was examined before the trial Court on 14-4-1980 and on subsequent dates. Memory fades with passage of time and the prosecutrix had hardly any reason to remember the details of the different parts of the house in which she had been kept and ravished. It is not possible to reject her testimony about her recovery from there or the factum of rape with her by the discrepancy about the details of the house where she had been kept nor it is material that she was not able to give the names of all the intimates of the house. There was absolutely no reason why she should have claimed falsely that she was kept in this house and raped in this house.

27. It has been argued that in the entire transaction, the role has been scribed to only Ajudhi and Rameshwar co-accused and the only allegation against Ram Krishan accused-appellant is about a single act of rape with the prosecutrix. The fact that she has not tried to exaggerate his role in the occurrence rather lends assurance to her evidence against him. She was a girl of just 12-13 years of age who belonged to a very poor family and if she has been kept at the house from

where she has been recovered, with her honour safe, she would be the last person to falsely implicate any member of that house. In fact, and that even she would have been all praise for them to have provided her with food and drink. Her testimony against Ram Krishan accused-appellant accusing him of rape with her simply cannot be brushed aside for the reasons set out by the learned defence counsel.

28. It is argued that if Ram Krishan the accused-appellant had not committed rape upon her during the period of a month or more when she was kept at the house why should he commit the rape upon her one day before the date of recovery. As noted earlier, if she has not been raped by the accused-appellant, Ram Krishan she would not be falsely implicating him. It was not such type of case in which the police will go out of its way for the sake of the complainant party.

29. It has been argued on the basis of the cross-examination of the prosecutrix available at page 44 of the paper book that when the rape was committed by Ram Krishan accused-appellant, bleeding had taken place and her clothes had got soiled but she had not shown these clothes to the I.O. because Ram Krishan accused-appellant had taken the same with him and had made her to go out from the house in another set of clothes and the statement of the I.O. PW 8 that when she had recovered her from (the verandah of the house where she was resting at a cot and that she was arrested in these very clothes which she was wearing and that he had not got her clothes changed and that he had not found any semen or blood stains on the clothes which she was wearing and that the prosecution case should be rejected for this reason against this accused-appellant. In the circumstances of this case, this discrepancy was immaterial. It is not a case where the question is whether the intercourse with the girl was with her consent or without her consent. As noted earlier she was not of the age of giving consent. Even if her statement that bleeding had taken place at the time of rape is ignored it would make no difference. After the arrest the accused might have managed to get her clothes changed by him before her going from the house. It is also immaterial that the report about the vaginal smear was in the negative. Such reports usually come in the negative as perhaps no care is taken in taking a proper smear. Then there is also a time gap until the time of taking vaginal smear.

30. We have already placed on record the medical evidence in this case. She had been raped during the long period of about 6 1/2 months from time to time and so even though she was a very immature girl it was natural for her to become used to sexual intercourse on account of repeated rapes. So the medical evidence as it is on record was fully consistent with her testimony at the trial. One could not expect signs of resistance on her body even at the time of the first rape. She being a helpless girl of tender years could not be expected to offer any resistance at all to an act of rape with her and then there is evidence that she had been intimidated in the very beginning and she was all along at the mercy of her kidnappers and rapers so it is not surprising that she would be meekly submitting to the rapes being committed on her body.

31. Here I may also mention an argument advanced by the learned counsel for the accused appellant that when there were several inmates in the house from where she was alleged to be recovered and it has come in her evidence that in the room in which she used to sleep, the mother of Ram Krishan accused-appellant also used to have her cot nearby it was improbable for Ram Krishan accused-appellant to commit rape with her (prosecutrix). This argument is misleading. The site plan prepared by the I.O. in this case indicates that there was plurality of rooms in the house and then the statement aforesaid of the prosecutrix did not mean that the mother of Ram Krishan accused-appellant used to sleep on the adjoining cot all the time. It is not a case where in a house with many occupants one would expect hue and cry from the victim of rape. In the circumstances of this case, this helpless girl had no option than to submit before her kidnappers and rapers. Moreover, the facts and circumstances of the case make it clear that the inmates of the house were reconciled with the keeping of the prosecutrix, all the house by Rameshwar co-accused and Ram Krishan accused-appellant and the illicit intercourse with her by Rameshwar accused-appellant. In these circumstances one would not expect any objection or resistance by the inmates of the house to the committing of rape with this helpless girl by Ram Krishan accused-appellant while Rameshwar co-accused had been carrying on rape with her in the house all along. There was nothing improbable in Ram Krishan accused-appellant taking advantage of the situation and availing of an opportunity to commit rape upon her as testified to by her. It was nobody's case that she was being kept there out of charity or humane

considerations.

32. Considering the evidence and circumstances of the case, there is no reason to differ from the finding of guilt given by the learned Sessions Judge against the accused-appellant Ram Krishan.

33. The learned counsel for the accused-appellant has made submission on the question of sentence. The sentence awarded is 10 years. In my view, considering the entire facts and circumstances, the sentence of 5 years R.I. would have been sufficient to meet the ends of justice.

34. For the reasons aforesaid, the appeal is partly allowed. The conviction of the accused-appellant Ram Krishan for the offence under Section 376, I.P.C. is maintained. However, his sentence is reduced from 10 years R.I. to 5 (five) years R.I. He is on bail from the Court. His bail bonds are cancelled. Let the C.J.M. get him arrested and sent to the District Jail concerned to serve out his sentence according to law.

35. Let a copy of this judgment be certified to the Sessions Judge concerned for information and compliance. The compliance report shall be submitted to this Court within a month from today. The record of this appeal shall be laid before this Court on 29-1-98 along with the compliance report.

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