

Ram Gulam Vs. the State

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Court : Delhi

Decided On : Apr-27-1979

Reported in : 16(1979)DLT249

Judge : Prithvi Raj, J.

Acts : [Evidence Act, 1872](#) - Sections 27

Appeal No. : Criminal Appeal No. 208 of 1978

Appellant : Ram Gulam

Respondent : The State

Advocate for Pet/Ap. : S.N. Mehta and; K.K. Sharma, Advs

Judgement :

Prithvi Raj, J.

(1) Ram Gulam was tried by Shri R. L. Gupta, Additional Sessions Judge, under Section 366, Indian Penal Code for having kidnapped Pushpa a minor aged 7 years and also under section 376, Indian Penal Code for having committed rape upon her. The trial Court by its impugned judgment dated 29th June, 1978, found the appellant guilty under the aforesaid sections and convicted him accordingly. After

(2) Feeling aggrieved by his conviction and sentence the appellant has filed the present appeal. Relevant facts For disposing of this appeal are as under:

(3) Om Parkash (Public Witness 4) father of the minor Pushpa who at the relevant time was working as a mate in the Railways stated that eight or nine months prior to the recording of his statement on 2nd March, 1978, Pushpa was found missing at about 9.30 p.m. He searched for her in Chankyapuri and other places but remained unsuccessful. The next day also along with two or four other persons he searched for her but in vain. He made enquiries from the appellant who was working under him as a mate and resided near his residence. The appellant told him that he did not know anything about the whereabouts of Pushpa. He was not satisfied with the reply given by the appellant and suspected him of having taken away his minor daughter. He made a report in Police Station Chankyapuri on 20th about the missing of his daughter. On the 23rd Om Parkash along with Harcharan and RamSagar, PWs. 19 and 8 respectively, were going towards the police station with a view to lodging a report against the appellant. On their way to the police station on the asking of Harcharan, Om Parkash peeped into a circular concrete pipe wherefrom he heard the slow sound of weeping. He entered that pipe and found his daughter Pushpa. She was weeping very feebly and was not conscious of her body. He found that she was only wearing her frock which was stained with blood. Her underwear was missing. He took her to the Safdarjang Hospital where the doctor told him that Pushpa had been raped. He further stated that the police recorded his statement. Exhibit P.W.4/A, and took into possession the frock. Exhibit P/1. of Pushpa vide memo. Exhibit Public Witness .4/B which was converted into a sealed parcel.

(4) Shanti (Public Witness 5) mother of Pushpa corroborating the testimony of her husband Om Parkash to the effect that their daughter Pushpa aged 6-1/2 years was found missing in the month of Jeth at about 6 p.m., stated that she was residing with her husband in Sarojini Nagar near New Railway Bridge. She further stated that there were four tents in all there. She and her husband along with their children had been residing in one of those tents. Pushpa at that time was wearing a frock and an underwear, A report was lodged about her missing by her husband after making enquiries from , the neighborhood. Pushpa was found on the 7th day

from a Nallah by her husband and two others. The appellant, she stated, was apprehended by neighbours and beaten. He admitted having taken Pushpa to a Nallah and after committing rape on her had thrown her there. She identified frock, Exhibit P/1, that Pushpa was wearing. She also stated that since the time of her recovery Pushpa was mentally almost unsound.

(5) Ram Sagar (Public Witness 8) who was examined on 3rd March, 1978, stated that last year in May, he was working on the New Railway Bridge in Sarojini Nagar. Four tents were fixed near the work site where persons working on the construction of the Bridge were living, Om Parkash, father of Pushpa with his wife and children was living in one of those tents. The appellant also lived in those tents. Harcharan (Public Witness 19) also lived in those tents. He further stated, at about 9 p.m., on 19th of the '5th month of last year' Pushpa was found missing. Search was made for her but she was not found. Her father made a report in the police station about her missing. After three or four days of the missing of Pushpa, Marehara told her father in his presence that he had seen the appellant taking away his daughter near Chankya Cinema. Enquiries were made from the appellant but he did not admit that fact. He corroborated the testimony of Om Parkash regarding the recovery of Pushpa from the Nallah. He and Harcharan after 3/4 days of their having made enquiries from the appellant accompanied Om Parkash to the police station to lodge a report that they had suspicion on the appellant. On their way to police station Harcharan told them to see the girl in the Nallah which fell in the way. Om Parkash entered that Nallah and called out his daughter by name whereupon some feeble voice was heard from the Nallah. Om Parkash entered that Nallah. They also followed him. From that Nallah the girl was found with a frock on her body. Her underwear was missing. Om Parkash took the girl to the hospital while they came back to their tent.

(6) On coming back Harcharan abused the appellant and asked him to disclose the whereabouts of the girl. The appellant told them that after taking liquor he had committed rape upon the girl and thrown her in the Nallah. The appellant was then tied with a rope. After about 1-1/2 hours police arrived there. The police arrested the appellant and took into possession his underwear. Exhibit P/4, and Pyjama, Exhibit P/3, vide recovery memo. Exhibit Public Witness .8/A. The clothes were

converted into a sealed parcel. On 24th May, 1977, he went to Safdarjang Hospital. From there he went to the police station where appellant was also present in custody. On interrogation the appellant made a disclosure statement Exhibit Public Witness . 8/B that he had concealed the underwear in a gutter. The appellant then led the police party and took out the underwear from the gutter. The underwear. Exhibit P/2, was taken into possession vide memo. Exhibit Public Witness . 8/C and was converted into a sealed parcel. The police then proceeded to the Nallah where from the girl was taken out. He and a police officer entered that Nallah with a torch The police lifted blood stained earth and sample earth from the Nallah and sealed the same into a parcel and took them into possession vide memo. Exhibit P W. 8/D. Ram Sagar supports the testimony of sub inspector Hem Raj (Public Witness 23) regarding the disclosure statement made by the appellant and the recovery of kachi. Ex. P2, made in pursuance thereto. The investigating officer moved an application Ex. Public Witness Public Witness 12/A before Shri J. P. Sharma, Metropolitan Magistrate (Public Witness 12) for holding identification proceedings of the case property. Shri Sharma held proceedings in his chamber. Sub Inspector Hem Raj produced before him one sealed parcel with the seal 'HRB'. The seal was intact. Four other small underwears were also produced before him which were mixed with the underwear taken out of the sealed parcel, Om Parkash (Public Witness 4) was called in and asked to identify the underwear belonging to his daughter. He correctly identified the underwear taken out from the sealed parcel, belonging to his daughter, Om Parkash was then sent out and his wife Smt. Shanti Devi was called in. She also correctly identified the underwear taken out of the sealed parcel belonging to her daughter, Pushpa. The underwear identified by the said witnesses was then sealed by Shri Sharma in a parcel who affixed the seal of 'MP' on it. Harcharan (Public Witness 19) corroborated the statements of Om Parkash, Smt. Shanti Devi and Ram Sagar. He deposed that 9/10 months prior to the recording of his statement in court, he had seen Pushpa going with the appellant towards the cinema. Next day Om Parkash told him that his daughter was missing and he had been searching for her throughout the night. He told Om Parkash that he had seen Pushpa going with the appellant last evening.

(7) Dr. (Mrs.) Manorama Singh (Public Witness 9) examined Pushpa on 23rd May, 1977, at about 6.15 p.m. at Safdarjang Hospital and found her semiconscious responding only to deep stimuli. She could not express herself. There were multiple abrasions on left side of her cheek, on both sides of her chest, abdomen and both iliacapines. Her vaginal examination revealed a first degree perineal tear about quarter inch long in the mid-line posteriorly. There was no bleeding. Her vagina admitted one finger loose and there was no tear at the vault of the vagina. The hymen was ruptured.

(8) Dr. Satinder Aneja (Public Witness 17) who was called by Dr. Manorama Singh and jointly examined the minor supported the findings of Dr. Manorama Singh, noted above.

(9) Dr. Mool Chand Maheshwari (Public Witness 24) had examined Pushpa. He found her to be a patient of hyposic encephalopathy. The clinical examination revealed that there was impairment in the recognition and the child was unable to speak except few words. The child was conscious but was unable to obey commands. He proved the detailed report, Exhibit Public Witness Public Witness 24/A, of Dr. Anil Kumar Sobti Senior Resident in Neurology, Safdarjang Hospital, who, he stated, had left the service of the hospital.

(10) Dr. Ashok Kumar Bachawat (Public Witness 21) of Police Hospital, Delhi, examined the appellant on 24th May, 1977, at 2,15 p.m. On physical examination he found his external genitals normally developed. The doctor found the appellant fit for sexual intercourse.

(11) Hem Chand (Public Witness 22) Sub-Inspector of Police Station Chankya Puri, New Delhi, made an application Exhibit Public Witness . 20/A before Shri J. P. Sharma, Metropolitan Magistrate, New Delhi, for taking blood sample of the appellant. After obtaining the order, blood sample of the appellant was taken by Dr. H K. Arora of Willingdon Hospital. Hem Chand took into possession the blood sample of the appellant vide memo. Exhibit Public Witness PW22/B. Blood sample of Pushpa was also taken. Both the blood samples were sent to Central Forensic Science Laboratory. According to the report of the Director of the said Laboratory, Exhibit Public Witness Public Witness 2 /D, human semen was detected on the

underwear. Blood was also detected on the frock worn by the minor.

(12) The Trial Court accepting the testimony of the prosecution witnesses by its impugned order, as already noted above, convicted and sentenced the appellant.

(13) Shri S. N. Mehta, learned counsel appearing for the appellant, challenged the credibility of the prosecution witnesses contending that there were inherent improbabilities in the prosecution version, which on its face, was not acceptable. It was contended that if Harcharan is to be believed, the day next to the day when Pushpa was found missing from her house, he had told Om Parkash that he had seen Pushpa going with the appellant 'last evening' but Om Parkash in his report. Exhibit Public Witness Public Witness I/A, lodged on 20/21-5-77 at 8.15 a.m does not make a mention of it. On the contrary, the report was with regard to the missing of his daughter, Pushpa. It was contended that Harcharan admits in his cross-examination that his tent was near the tent of Om Parkash and any noise in his tent or in the tent of Om Parkash would be audible to each other. Pushpa on being found missing there must have been commotion and yet, it was submitted, it was strange Harcharan had not come to know about the missing of Pushpa during the night she was missing and neither Om Parkash had told him about the said fact. It was accordingly contended that the testimony of Harcharan that he had seen Pushpa with the appellant going towards the Cinema was an embellishment.

(14) The submission is devoid of any merit. No question in cross-examination was put to Harcharan to discredit his testimony regarding his having seen the appellant with Pushpa going towards the Chankya Cinema. Besides, Om Parkash on coming to know from Harcharan that he had seen the appellant with his daughter going towards the Cinema had made enquiries from the appellant who pretended ignorance. The appellant was working as Mate under Om Parkash. There was accordingly no reason for Om Parkash to doubt the veracity of the appellant's ignorance in regard to the whereabouts of Pushpa. He, therefore, while lodging the report about the missing of his daughter rightly did not put his suspicion on the appellant.

(15) It was then submitted that it was indeed intriguing as to how when Om Parkash, Harcharan and Ram Sagar were proceeding towards the police station

for lodging a report, Harcharan all of sudden should ask Om Parkash to see the girl in [he Nallah. This suggestion by Harcharan, it was argued, was indicative of the fact that Harcharan himself was in the culprit.

(16) I do not agree. Harcharan in his cross-examination has deposed that his suggestion to Om Parkash was intuitional. It was natural when they were passing by the Nallah to search it, no motive can be attribute to Harcharan in making that suggestion. He is seventy years old person and was not inimically disposed towards the appellant to create evidence to falsely involve him in the case.

(17) The testimony of Ram Sagar was sought to be discarded on the ground that he has no compunction in readily lending his services to be a witness in supporting every aspect of the prosecution case. It was submitted that he is a witness to the recovery of the girl, to the extra-judicial confession alleged to have been made by the appellant, to the disclosure statement alleged to have been made by the appellant and the recovery of the Kachha of the minor. I am not impressed by this argument. There are only four tents at the place where Om Parkash was living near the site of New Railway Bridge, Sarojini Nagar, which was under construction. Ram Sagar was living in one of those tents. Being a neighbour of Om Parkash, he was rightly asked by Om Parkash to accompany him to the police station when he was going there for lodging the report. If in the way by intuition at the asking of Harcharan they looked for the minor in the Nallah wherefrom she in fact was recovered, no stigma would be cast on the testimony of Ram Sagar. It being a colony of four teats, the presence of Ram Sagar at the time they were making enquiry from the appellant, who also lived in one of the tents, was natural. The strata of society to which Om Parkash and Ram Sagai belong are inquisite about the events happening to each other. It was for this reason that Ram Sagar went to the police station 'to enquire about the girl'. It was contended that Ram Sagar is not a reliable witness in that his statement regarding his visit to the police station was self-contradictory, besides the investigating officer gives wholly different version in that regard. It was submitted that Ram Sagar in his examination-in-chief has stated that on 24th May, 1977, he went to Safdarjang Hospital from there he went to the police station where the appellant was also present in custody and on interrogation the appellant made a disclosure statement

that he had concealed the underwear in a gutter. But in his cross-examination he says that he had gone to enquire about the girl to police station but from there he did not go to the hospital because at that time the appellant was being interrogated and he had made a statement in his presence. The divergence pointed out above does not impinge on the veracity of his visiting the police station and the appellant making discovery statement in his presence. It was then contended that the Investigating Officer, Sub-Inspector Hem Raj, has given a different version about Ram Sagar visiting the police station. According to Investigating Officer, the purpose of Ram Sagar visiting the police station was to enquire in which ward the prosecutrix was admitted because her mother wanted to see her. This the learned counsel submitted was an absurd position on the face of it. The father and mother of the minor, it was contended, had been visiting the hospital and knew in which ward their child was kept and as such there was no occasion for them to make an enquiry from the police station by deputing Ram Sagar, who, if he is to be believed had gone to the police station to enquire about the girl. It is no doubt true that there is a variance in the version of the Investigating Officer and Ram Sagar regarding the latter's visit to the police station but that would not be enough to hold, as was sought to be urged, that the appellant made no discovery statement. I will, however, return to this aspect when I deal with the discovery statement and the recovery made in pursuance of the said statement. My attention was invited to certain contradictions in the testimony of Ram Sagar to contend that he is not reliable in his memory in that either he unduly supports the prosecution or he feigns for loss of memory. The contradictions pointed out are inconsequential and do not impair the credibility of the witness.

(18) The learned counsel then contended that the first information report was not a spontaneous version. The police was already at the spot and had made investigation at the spot. The first information report was recorded after the police had made enquiries and collected information which had been incorporated in the said report. There is no substance in this submission. The investigating officer (Public Witness 23) on receipt of copy of report, Exhibit Public Witness Public Witness 2/A, stating that Pushpa daughter of Om Parkash was found in an unconscious condition and was admitted in Safdarjang Hospital, proceeded to the hospital for investigation. There he recorded the statement of Om Parkash Exhibit

Public Witness . 2/A and sent the same to the police station with his endorsement Exhibit Public Witness . 10/A for registration of the case. It was thereafter that he proceeded to the spot where constable Mohd. Iqbal, through whom 'ruqqa' was sent for registration of the case, had also reached. Obviously, the first information report was recorded on the basis of the statement of Om Parkash made prior to conducting the investigation in the case. There was no delay in recording the first information report, neither was it the result of pre-consultation or pie-investigation. It is, therefore, futile to contend that the first information report is not a spontaneous document.

(19) The appellant is stated to have made an oral extra-judicial confession of his guilt in the presence of Shanti (Public Witness 5), Ram Sagar (Public Witness 8), Harcharan (PW 19). The learned counsel for the appellant, however, contended that no reliance should be placed on the so-called extra-judicial confession. He urged three grounds for discarding the extra-judicial confession. Firstly, that it is a very weak type of evidence, secondly, that the extra-judicial confession had been extracted by belabouring the appellant and thirdly, there are glaring discrepancies in the testimony of witnesses in this respect. It was submitted that according to Shanti (Public Witness 5), the appellant was apprehended by neighbours and beaten and then the appellant said that he had taken Pushpa to a Nallah and after committing rape on her, had thrown her there. Ram Sagar, it was contended, has a different version to give. According to him, after Om Parkash had taken Pushpa to the hospital, he and Harcharan had come back to their tents. Harcharan abused the appellant and asked him to disclose whether he would give the whereabouts of the girl or not. The accused then said that after taking liquor he had committed rape upon the girl and thrown her in the Nallah. Harcharan's version, it was urged, goes contrary to what Ram Sagar has said. Harcharan's version is: that when he returned to his tent, he came to know that the appellant had a hand in the affair. The appellant had been caught bold of by the people. The appellant then confessed that it was his mischief in that after taking liquor he had committed rape upon her. It is true that the witnesses are making discrepant statements as to who asked or threatened the appellant to disclose the whereabouts of the girl Pushpa but the fact remains that all of them have deposed that the appellant admitted having told them that he had committed rape on her and thrown her in the Nallah

wherefrom she had earlier been recovered. The witnesses have no enmity with the appellant to involve him falsely. Together with other acceptable evidence on the record, the oral extra-judicial confession would be relevant for basing a conviction though by itself alone it may not be sufficient to record a conviction against the appellant.

(20) There are other circumstances on the record that strengthen the truthfulness of the oral extra-judicial confession. Shanti (Public Witness 5) has stated that she came to know about the missing of her daughter Pushpa at about 6.30 p.m. and that at that time the appellant was missing from his tent. The appellant was seen sitting with a small girl in a Nallah by Radhe Sham (Public Witness 18) at about 10 p.m. when Pushpa was missing from her house. Radhe Sham is a natural witness being the resident of the area. He had gone to purchase 'Bidi' near the bridge of Chankyapuri. Radhe Sham was threatened by the appellant that if he disclosed to anybody that the girl was with him he would thrash him. Despite a lengthy cross-examination his testimony emerges unscathed. Radhe Sham had known the appellant for about one year prior to the occurrence. He is not inimical to the appellant.

(21) The most important circumstance in the case is the discovery statement, Exhibit Public Witness Public Witness 8/B, made by the appellant leading to the recovery of the Kachha, Exhibit P/2, belonging to the minor Pushpa which she was wearing when she was found missing from her house. The said statement reads as under:

'In the presence of the witnesses mentioned below Ram Gulam s/o Raghlinandan present in police custody of his own free will state that he had thrown the Kachha of Pushpa after committing rape on her in the 'Nalli'. I can point out that 'Nalli' and get the Kachhi recovered. I have heard my statement which is correct. Accordingly the discovery statement has been recorded'.

The statement is signed by the investigation officer, Sub-Inspector Hem Raj, Constable Mohd. Iqbal and thumb marked by Ram Sagar (Public Witness 8). It does not bear the signatures or thumb impression of the appellant. It is true that the whole of the statement is not admissible. The trial Court should not have

exhibited the incriminating portion 'he had thrown the Kachhi of Pushpa after committing rape on her in the Nalli'. Eliminating the said portion the rest of the statement, namely, 'I can point out Nalli, and get the Kachhi recovered' is admissible. The part of the statement could be exhibited. Section 27 of the Evidence Act is an exception to sections 25 and 26 which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a magistrate. Section 27 allows that part of the statement made by the accused to the police -whether it amounts to a confession or not-which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under section 27. It is only that part which distinctly relates to the discovery which is admissible (See K. Chinnaswamy Reddy v. State of Andhra Pradesh and another, : [1963]3SCR412).

(22) It is well settled that the fact deposed to and the fact discovered must be relevant. The fact or thing discovered would be relevant only if it is connected with the offence of which the accused is charged and the confession made should pertain to the offence charged.

(23) Now the fact discovered in this case, namely, that the appellant could get recovered the Kachhi from the Nallah is a relevant fact and the Kachhi discovered is a material object in the case.

(24) The appellant in pursuance of the discovery statement led the police party and got recovered the Kachhi, Exhibit P/2, from the Nallah. The learned counsel for the appellant challenges the veracity of the statement, Exhibit Public Witness Public Witness 8/B, and the recovery as well. It was contended that the appellant had already Confessed his guilt in the presence of the police and nothing remained to be discovered For this submission reliance was placed on the testimony in cross-examination of Snanti and Ram Sagar that police was there at the time appellant had disclosed about the fact that he had thrown Pushpa in the Nallah after raping her. This argument overlooks the fact that the appsllant at that time had made no mention of the Kachhi. On the contrary Harcharan in his cross-

examination has categorically stated that the appellant had not made any statement about the Kachhi of Pushpa when he was beaten by the people.

(25) It was then contended that the discovery statement was not voluntary. The appellant had been beaten by the people before he was handed over to the police. Naturally he was under a fear that if he did not make a statement at the behest of the police he would be given Further thrashing. It was contended that not only the witnesses admit having beaten the appellant, Sub-Inspector Hem Raj also admits that at the time Harcharan Chowkidar produced the appellant before him, he had been tied with ropes by the people. There is no merit in this submission. The appellant who was represented by a counsel makes no such grievance in his statement recorded under section 313 of the Criminal Procedure Code. When asked to explain the incriminating circumstance of his having made a disclosure statement, Exhibit Public Witness Public Witness 8/B, to the police in the presence of witness to the effect that he had concealed the Kachhi in a gutter and that he could get the same recovered, the answer of the appellant was a denial simpliciter that it was incorrect. He makes no grievance that the statement was not voluntary or that he was made to say so under fear of being beaten.

(26) The learned counsel for the appellant submitted that the discovery statement does not bear the signature of the appellant which detracts from its reliability and authenticity. He further submitted that the said statement . recites that the appellant made the same of his own free will. If it was so, what prevented the Investigating officer from obtaining the signatures or thumb impression of the appellant who would have been too willing to oblige in doing so, as he is alleged to have made the statement willingly. do not agree. It has to be borne in mind that Kachhi Ex. P 2 was recovered in consequence of the information received from the appellant. When the statement made by an accused person in police custody is confirmed by the recovery of property, the discovery statement made by the accused cannot be held to be false. Section 27 is based on the view that if a fact is actually discovered in consequence of the information given, guarantee is afforded thereby that the information given by the accused was true. The recovery of the Kachhi Ex. P 2 is a circumstance which is consistent with the guilt of the appellant and wholly inconsistent with his innocence. It is, therefore, futile to contend that

the witnesses to the discovery statement and of the recovery made in pursuance to the said statement are not reliable.

(27) It was sought to be contended that discovery statement Ex. Public Witness PW. 8/B is not the statement made by the appellant as according to Public Witness Public Witness Ram Sagar the appellant had appended his signatures on his statement while apparently the statement Ex. Public Witness PW. 8/B does not bear any signatures. Obviously Ram Sagar is under some confusion, besides the Investigating Officer was not asked that the appellant had sign the discovery statement. The appellant in his statement under Section 313 of the Criminal Procedure Code makes no grievance in this respect.

(28) No argument can be built on the Hypothetical contention as to what was the necessity for the appellant to throw the kachi in a different place and that he could have very well allowed Pushpa to wear it again and thus get rid of an incriminating place of evidence. As to how an accused person acts in a given situation, it is for him to explain. No hypothetical argument can be built on that basis.

(29) It was then submitted that Harcharan Public Witness PW. in his examination-in-chief has categorically stated that when Om Parkash took out Pushpa from the pipe, she was wearing a frock and a kacha. It was contended that was the truth and that the Investigating officer in his anxiety to secure a conviction has enacted the drama of recovering a kachi with the help of persons who were readily willing to oblige him. Harcharan is an old man of seventy years. He appears to have made the above statement in examination-in-chief under confusion. He had corrected himself in the cross-examination by stating that his earlier statement that Pushpa was wearing kacha was wrong and that she was naked from below. No suggestion was put to the Investigating Officer that the recovery of the kachi was a command performance at his behest.

(30) The mere fact that according to the report of the Central Forensic Science Laboratory the Kachi Ex. P 2 was having blood and semen marks would not be enough to hold that Pushpa was wearing the kachi at the time when she was recovered from the Nallah, when there is direct evidence of the witnesses to the contrary.

(31) The next submission was that the place of recovery was accessible to all and, therefore, no sanctity could be attached to the recovery. I express my inability to subscribe to this submission. The Investigating Officer has categorically stated in cross-examination that the place of recovery was not a thoroughfare. Although one can reach that place but it is not a common place. The place of recovery is situated on the back of the petrol pump but the same was not used by the people as the passage from the front side of the petrol pump to the wall is intercepted by the barbed wire. The fact that many persons were pass in that way on cycles and scooters etc. and the Investigating Officer did not ask any of them to join the investigation would not detract from the testimony of Ram Sagar Public Witness PW. 8 and Mohd. Iqbal Public Witness PW. 10. The minor discrepancies between the statement of the Investigating Officer that the kachi was lying at the mouth of the pipe and that of Ram Sagar that he could not say whether the underwear was lying just near the entrance of the gutter or deep inside is of no consequence. The fact remains that the appellant led the police party to the gutter and in the custody of a constable the appellant landed in the gutter and took out the kachi Ex. P 2 from a pipe of the gutter. In view of this evidence it would be a reasonable inference to draw that the appellant had hidden the kachi in the pipe and got it recovered. The appellant does not say that he was made to pick up the kachi from the pipe having been placed there earlier by the police.

(32) Lastly, the learned counsel contended that the sentence of 7 years' rigorous imprisonment awarded to the appellant under Section 376 Indian Penal Code was rather excessive On a conspectus of all the facts and circumstances of the case, I am inclined to agree with the learned counsel. I am of the opinion that ends of Justice would be met if the sentence under Section 376 Indian Penal Code is reduced to 3 years rigorous imprisonment. Accordingly, maintaining the conviction of the appellant under Section 366 and 376 Indian Penal Code and maintaining his sentence of three years under Section 366, I reduce the sentence of 7 years rigorous imprisonment awarded to him under Section 376 I P.C. to three years rigorous imprisonment. The two sentences, however, shall run concurrently. The appeal stands disposed of in terms of the above order.

(33) The appellant who is in jail be informed of the result of the appeal.

(34) Before parting with this appeal, I place on record my appreciation for the assistance given by Shri S.N. Mehta, Advocate, who argued the case for the appellant as amicus curiae.

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