

Rameshwar Dayal Vs. State of U.P. (Now State of Uttarakhand)

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Court : Uttaranchal

Decided On : Jun-24-2010

Judge : B.C. Kandpal and; Nirmal Yadav, JJ.

Appellant : Rameshwar Dayal

Respondent : State of U.P. (Now State of Uttarakhand)

Advocate for Pet/Ap. : Mr. Parikshit Saini

Disposition : Appeal dismissed

Judgement :

Nirmal Yadav, J.

1. Abovementioned appeals are being disposed of by this common judgment as both the appeals are arising out of the same judgment and order dated 27.02.1996 passed by the 1st Additional Sessions Judge, Haridwar in Sessions Trial No. 172 of 1993. Appellants-Rameshwar Dayal, Ramesh Kumar stood trial for the offences under Sections 376, 392 and 411 of the Indian Penal Code, 1860 (in short I.P.C.), while accused Yasin was tried for the offence under Sections 392 and 411 of the I.P.C. Accused Rameshwar Dayal and Ramesh Kumar have been convicted and sentenced under Section 376 of the I.P.C. to life imprisonment and convicted and sentenced under Section 392 of the I.P.C. to ten years rigorous imprisonment each and a fine of Rs. 10,000/- each. In default of payment of fine they have

further been ordered to undergo two years rigorous imprisonment. Accused Yasin was convicted under Section 392 and sentenced to ten years rigorous imprisonment and a fine of Rs. 10,000/-. In default of payment of fine he has further been ordered to undergo two years rigorous imprisonment. Appeal on behalf of accused Yasin stands abated vide order-dated 16.11.2009.

2. Brief facts of the case as culled out from the record are that Katherine Eldridge D/o David Eldridge, R/o U.S.A. was known to Vimla Starjal cousin sister of Dr. Pratap Singh R/o Roorkee. Said Vimla had given reference of Dr. Pratap's Nursing Home at Roorkee to Katherine Eldridge so that she could go and stay with him. She had told Katherine that she could ask the address of Pratap Nursing Home from any Rickshaw puller. After visiting several countries Katherine Eldridge landed at Delhi Airport on 12.02.1993 on tourist visa. On 27.02.1993 she proceeded for Roorkee by bus at 3:15 p.m. Accused Ramesh occupied the seat next to Katherine Eldridge while Rameshwar Dayal and his another companion sat on the back seat. Ramesh tried to broach the conversation with Katherine Eldridge but she did not understand Hindi language, therefore, Ramesh tried to make her understand with gestures that she could stay in his guesthouse but she refused. Accused Rameshwar wrote his address on a plain paper in a book with Katherine Eldridge, which is Ex. Ka-1. The bus reached Roorkee at 8:30 p.m. Ramesh picked up the backpack of Katherine Eldridge and put the same in a rickshaw parked near the bus. Katherine Eldridge mistook that accused Ramesh was trying to help by getting the conveyance arranged for her. Katherine Eldridge told the rickshaw puller that she wanted to go to Pratap Nursing Home. Said rickshaw puller was accused Yasin. Accused Ramesh also boarded the rickshaw with her. Katherine Eldridge thought that Ramesh was also going in the same direction, therefore, she enquired as to whether they were going to Pratap Nursing Home to which Ramesh replied with a nod. Accused Rameshwar Dayal and his other companion boarded another rickshaw and followed Katherine Eldridge's rickshaw. Both the rickshaws were going on the side of canal. They stopped the rickshaws at a very secluded place. Where Katherine Eldridge was forcibly taken out of the rickshaw by accused Ramesh and Rameshwar Dayal and then Ramesh uttered the words 'I am your death'. Thereafter Ramesh and Rameshwar took her to a place where there were no trees or shrubs and no houses nearby. The third

companion of these accused took away the backpack and searched the belongings of Katherine Eldridge in the backpack. Thereafter accused Rameshwar forcibly stripped Katherine Eldridge of her clothes and committed forcible sexual intercourse with Katherine Eldridge against her consent. When Rameshwar was committing rape upon her, accused Ramesh was holding her from both the hands and was kneeling over her chest from top and sucking her cheeks. When Rameshwar completed the act of intercourse, he joined other two companion who were opening her backpack and thereafter the third companion who had accompanied Rameshwar from Delhi in the bus also committed forcible sexual intercourse upon Katherine Eldridge against her wishes. He then returned near the backpack, which was at a distance of ten meters from Katherine Eldridge. Thereafter accused Ramesh committed rape upon Katherine Eldridge against her wishes. During the course of intercourse Katherine Eldridge received bruises on cheeks and thighs. Thereafter she was made to put on her dress. Katherine Eldridge went near her backpack and found that the accused persons had taken out the articles from her backpack, which constituted three thousand rupees of Indian Currency, seven hundred American dollar, seven hundred American travellers cheque of the denomination of one hundred dollar each, one Nikon camera with zoom lense, one wristwatch, one walkman with head phone, one mouth harmonica, one bath-pack containing toothbrush etc, one small purse containing identification paper and exchange receipts, one bamboo flute (Bansuri), one pen, one small knife, one cigarette lighter and some other articles. The aforesaid articles were distributed by the accused amongst themselves and few articles, which could not be distributed and her clothes, shampoo etc were put back in the backpack. She was taken back in the same rickshaw up to the bridge to the canal by the accused persons, where Ramesh and Rameshwar and their third companion asked accused Yasin, the rickshaw puller, to take her to Pratap Nursing Home and they all left in the opposite direction. Thereafter accused Yasin took Katherine Eldridge in his rickshaw for a distance of 100 yards and refused to take her further, and asked her to go on foot. Meanwhile a jeep came as the jeep driver had seen the rickshaw puller fighting with Katherine Eldridge, he enquired as to what was the problem. Katherine Eldridge disclosed to him that she had been raped and robbed. The jeep driver took her and rickshaw puller Yasin to the

police station but he dropped her outside the police station and went away. Katherine Eldridge went inside the police station alongwith Yasin. She disclosed all the facts to the police officials who asked her to put her version in black and white; thus, she recorded her version on a paper, which is Ex. Ka-2. On the basis of Ex. Ka-2, Chick F.I.R. Ex. Ka-17 was recorded on 28.02.1993 at 5:00 a.m. G.D. entry in this respect is Ex. Ka-18. The underwear of Katherine Eldridge was taken into possession by the lady police vide memo Ex. Ka-3. Thereafter Katherine Eldridge was taken to the hospital where she was medico legally examined by Dr. Anjali Srivastava PW-2, the report is Ex. Ka-4. On the basis of pathology report and report of radiologist, she submitted her supplementary report Ex. Ka-5.

3. As per the report of the doctor (Ex.Ka-4), on local examination, pubic hair was present, labia fully developed and the victim was conscious, oriented, fully coherent and talking. The following injuries were found on the person of Katherine Eldridge:

- (i) 1 inch x 1 inch contusion just lateral to right angle of mouth.
- (ii) 1 1/2 inch x 1 inch contusion of 2 c.m. lateral to left angel of mouth.
- (iii) 2 inch x 1 inch contusion of left eyebrow.
- (iv) Few scratch marks present on the internal aspect of right thigh.
- (v) Scratch marks about 1 inch long present just behind the anus on right side.
- (vi) Scratch mark about 1 inch long present 1 1/2 inch postero lateral to anus on right thigh.
- (vii) Scratch marks 1 inch long about 6 inch lateral to anus on right thigh.
- (viii) Scratch mark 1 inch long 4 inch postero lateral to anus.

4. Introitus was admitting two fingers easily. Hymen found torn and heeled. Uterus normal size formices was found clean. In an area of about 1 inch x 1/2 inch matting was present in bunch of pubic hair on right side just lateral to introitus. All the injuries were fresh and caused by blunt object. Injuries on thigh were also

found fresh and caused by sharp object.

5. As per the pathological report Ex. Ka-16 given by Dr. S.P. Ahuja PW-10, the Pathologist, dead spermatozoa were found in the vaginal smear of Katherine sent by Medical Officer (Female Section) Civil Hospital, Roorkee. As per the Radiologist report Ex. Ka-15, age of Katherine Eldridge was about 19 years. After considering the report of Pathologist, Dr. Anjali Srivastava submitted her supplementary report Ex. Ka-5 and opined that the pathology report is suggestive of sexual intercourse and the patient was used to sexual intercourse. She further opined that all the injuries on the person of Katherine Eldridge could possibly be caused on 27th February 1993 in between 9:00 p.m. to 11 p.m. The injuries No. 1 and 2 on her face could be by sucking and injury No. 3 could be caused by striking some hard object. The scratch on the right thigh could be possible by scratching of nails.

6. Investigation was undertaken by Inspector Shailendra Bhardwaj. On the basis of address written on piece of paper Ex. Ka-1 handed over by Katherine Eldridge, Sub Inspector R.K. Sharma was sent to Delhi in search of accused Ramesh and Rameshwar Dayal. Investigating Officer Shailendra Bhardwaj inspected the place of occurrence where he found some articles belonging to complainant Katherine Eldridge, lying there. He came back to the hospital and recorded the statement of Katherine Eldridge. Thereafter he went to the place of occurrence accompanied by the complainant. He took into possession the articles lying at the place of occurrence. Investigating Officer Shailendra Bhardwaj could not continue with the investigation as he was admitted in the hospital being sick, therefore, rest of the investigation was conducted by S.S.I. Gopal Singh. On the pointing out of the complainant, site plan Ex. Ka-36 of the place of occurrence was prepared.

7. On 5th March 1993 on receipt of secret information that one person having some foreign currency and a camera, was trying to sell the same, the police reached Shankaracharya Chowk and joined public witnesses, namely, Isam Singh and Om Pal. Accused Rameshwar was seen coming and on the pointing out of the secret informer after some chase, he was apprehended and disclosed his name as Rameshwar. On his personal search one Nikon camera, three camera rolls and

three notes of one hundred dollar each and two travellers cheque of one hundred dollar each and signed as Katherine and two notes of one hundred each of Indian currency were recovered. All the above articles were taken into possession vide memo Ex. Ka-9, copy of which was given to the accused and he was directed to keep his face muffled.

8. On 9th March 1993 Sub Inspector Dharm Pal Singh, posted at Roorkee and was in search of accused in this case, reached Bahadarabad and received secret information that accused Ramesh was staying with his brother in village Jawalapur and would be boarding bus at bridge Jathwada. Two independent witnesses, namely, Rakesh and Mahak Singh were joined in the police party. The police party reached near bridge Jathwada and after some time accused Ramesh was seen coming. He was encircled by the police party and apprehended. On his personal search two traveller cheques of one hundred dollar denomination and having signature of Katherine, one note of hundred dollar and 140 Indian rupees, one coin of nine cent and two coins of five cent, four quarter dollar and one dime, six Thai bath, and one wristwatch without chain were recovered from him and were taken into possession vide memo Ex. Ka-6. The face of the accused was muffled and he was directed to remain with muffled face.

9. On 10th March 1993 at 2:00 p.m. Sub Inspector R.K. Sharma was informed by security guard Control Room 9, of Roorkee University that one person had approached for exchanging one foreign currency in University Branch of State Bank of India. On receipt of the information police party went and stood near welfare center gate of the University. On the way two public witnesses Madan Mohan Singh and Pooran Singh were joined. On the pointing out of the secret informer accused Yasin rickshaw puller was apprehended. On his personal search one traveller's cheque of 100 dollar having signature of Katherine was recovered from him and was taken into possession vide Ex. Memo Ka-11. On the basis of statement of Rameshwar third companion accused Rajendra was searched but he was not found. The Investigating Officer prepared the site plan with regard to the place of arrest of all the three accused namely, Rameshwar, Ramesh and Yasin which are Ex. Ka-38, 39 and 40 respectively.

10. On 12th March 1993 test identification parade was conducted before the Magistrate and complainant Katherine Eldridge correctly identified accused Ramesh and Rameshwar. Articles recovered from two accused persons were also identified in the presence of the Magistrate. The proceedings under Section 82-83 of the Cr.P.C. were undertaken against accused Rajendra.

11. On completion of the charge sheet, final report under Section 173 of the Cr.P.C. was put in the court. Accused Ramesh and Rameshwar were charge sheeted for commission of the crime under Sections 376, 392 and 411 of the I.P.C. while accused Yasin was charge sheeted under Sections 392 and 411 of the I.P.C., to which they pleaded not guilty and claimed trial.

12. The prosecution in order to prove its case examined complainant Katherine Eldridge as PW-1, the victim herself. PW-2 Dr. Anjali Srivastava medico legally examined the victim while PW-9 Anil Kumar is the Radiologist and PW-10 S.P. Aahuja is the Pathologist who examined the vaginal smear of Katherine and found the spermatozoa vide his report Ex. Ka-16. PW-5 Sub Inspector R.K. Sharma, who was authorized by the Investigating Officer to search for the occurrence, arrested accused Rameshwar on 5th March 1993 in the presence of PW-6 Om Pal Sharma, a public witness. He also arrested accused Yasin on 10th March 1993 in the presence of PW-6 Om Pal Sharma. PW-3 Sub Inspector Dharam Pal arrested accused Ramesh on 9th March 1993 in the presence of a public witness PW-4 Mahak Singh and one Rakesh. PW-14 Constable Ram Sharan, PW-15 Constable Ved Pal, PW-16 Constable Rishipal Singh and PW-13 Suresh Kumar are all the witnesses who have deposed that the accused were made to keep their faces muffled. They also proved G.D. report Ex. Ka-24, Ex. Ka-25, Ex. Ka-26, Ex. Ka-28 and Ex. Ka-29 with regard to the arrest and keeping Rameshwar with muffle face. PW-17 Sulekh Chand, PW-18 Constable Gajendra Singh also proved G.D. report Ex. Ka-30 and Ex. Ka-31 with regard to the arrest and keeping the face of accused Ramesh muffled. PW-12 Constable Ramesh Chandra proved that accused Rameshwar was produced before the Additional Chief Judicial Magistrate, Roorkee with muffled face on 6th March 1993 and in this respect G.D. report is Ex. Ka-20.

13. On 10th March 1993 accused Ramesh was produced before the Additional Chief Judicial Magistrate, Roorkee. G.D. report is Ex. Ka-22. PW-24 Constable Rambeer Singh has proved G.D. No. 42 to the effect that all the accused were kept with muffled faces in the police station. PW-8 Shreedhar Prasad is the Magistrate, who had got the identification parade of the accused conducted before complainant Katherine Eldridge. Identification memo is Ex. Ka-13. He also got the articles recovered from the accused persons identified by Katherine Eldridge vide memo Ex. Ka-14. PW-20 Bhullan Prasad is the person who had brought the articles identical to the articles which were allegedly recovered from the accused persons and produced those articles before the Magistrate on 12th March 1993 for identification of recovered articles. He did not allow any person to see those articles prior to the identification parade. PW-22 Raj Pal Sharma is the person who had produced the recovered articles before the Magistrate after the identification parade. He had submitted those articles in sealed parcel and deposited the same back in the Maalkhana. He proved the report Ex. Ka-35 in this respect. PW-11 Bhanwar Singh proved Chick report Ex. Ka-17 and general diary in this respect is Ex. Ka-18. He also proved the memo Ex. Ka-3 with regard to the underwear of complainant Katherine Eldridge being taken into possession. He also proved G.D. entry Ex. Ka-19 with regard to the arrest of accused Rameshwar on 5th March 1993 and keeping him with muffle face. He also proved G.D. entry Ex. Ka-20 for sending accused Rameshwar to jail on 6th March 1993 and G.D. entry Ex. Ka-21 vide which accused Ramesh was sent to jail on 10th March. He also proved G.D. No. 22 when he was produced before the court on 10th March 1993 from the jail and during this period he was directed to remain with muffle face. He also proved Ex. Ka-23 vide which the recovered articles were sent to the Maalkhana. PW-25 Inspector Shailendra Bhardwaj and PW-23 Gopal Singh Siddhu are the Investigating Officers.

14. PW-23 Gopal Singh Siddhu prepared the site plan of the place of occurrence Ex. Ka-36 and also proved the memo Ex. Ka-37 vide which the articles were taken into possession from the place of occurrence.

15. When examined under Section 313 Cr.P.C. the accused denied entire incriminating evidence put to them by the prosecution and pleaded false

implication. In defence the accused produced DW-1 Shadi Ram Chauhan, DW-2 Constable Ram Kumar, DW-3 Constable Chitamani, DW-4 Jaswant Singh, DW-5 Rakesh Kumar and DW-7 Head Constable Suraj Bhan, however none of these witnesses supported the accused in any manner. PW-6 Om Prakash is the brother of accused Rameshwar who stated that accused was arrested by the police on 4th April 1993 from his house.

16. We have heard Mr. Parikshit Saini, learned Counsel for appellant-Ramesh and Mr. Pankaj Miglani, who appeared as amicus curiae for appellant-Rameshwar Dayal, Mr. Nandan Arya, learned A.G.A. for the State and perused the material available on record.

17. The prosecution case mainly rests on the testimony of victim Katherine Eldridge PW-1, a young girl of 19 years who left her country on 12th February 1993 on Tourist Visa and landed in the capital of India after visiting some other countries. It is a matter of great regret that she had to undergo the most unfortunate experience of her life at Roorkee which is situated in the close vicinity of Haridwar, the most sacred place in India. The accused have committed the most heinous crime by violating the personal integrity and privacy of a tourist. In our culture a guest is considered like God as it is said 'वृष्टिं नमस्कृत्य भोजयति'. But, the accused have totally put to shame the culture and customs of our Nation and have acted in a most brutal manner by devastating the chastity of a foreign tourist who had come to visit Haridwar, where people come to wash their sins. However, before she could reach Haridwar she was ravaged in a most barbaric manner by the accused persons. Learned Counsel for the appellants argued that the prosecutrix is an American citizen and as per the standards of the American society having sexual relationship by an unmarried girl or a woman with any person is not considered to be illegal as it is looked upon in the Indian Society. Thus, it is argued that the trial court has not considered the testimony of the prosecutrix as per cultural standards of American Society. The argument of learned Counsel for the appellants does not appeal to us. In the present case, the prosecutrix in her deposition has been categorical, clear and unequivocal that the accused committed forcible sexual intercourse with her against her wishes.

18. PW-1 Katherine Eldridge has given the manner of occurrence in detail while deposing before the court. She has categorically stated that accused Ramesh, Rameshwar and their third companion (Rajendra) had followed her from Delhi in the bus. Ramesh tried to enter into conversation with her but due to language barrier she could only understand that he was asking to stay in guesthouse. Rameshwar had written his address on a plain paper in a book which Katherine Eldridge was carrying with her. Ramesh also gave his address to her, which was written by Katherine Eldridge in her own writing. The said writing is Ex. Ka-1 on the record. On the basis of the said information both the accused were traced by PW-5 R.K. Sharma who was posted as Duty Officer in Police Station Roorkee Kotwali and was authorized by Investigating Officer Inspector Shailendra Bhardwaj. Katherine Eldridge identified all the accused, namely, Ramesh as well as Rameshwar and Yasin during the identification parade before the Magistrate which was conducted in the jail on 12th March 1993. She also correctly identified all articles belonging to her recovered from the accused persons. This witness categorically stated that she had refused to take any help from both the accused Ramesh and Rameshwar. However, accused Ramesh himself arranged the rickshaw for her and boarded the rickshaw along with her. She did not suspect any foul play thinking that accused Ramesh was helping her to arrange the conveyance. She categorically explained to the rickshaw puller that she had to go to Pratap Nursing Home. Since accused Ramesh boarded the rickshaw with her, she thought that accused Ramesh had also to go in the same direction. She enquired from him that whether they were proceeding towards 'Pratap Nursing Home', then accused Ramesh replied with a nod. On his reply she got convinced that they were proceeding in the right direction. Accused Rameshwar and other companion Rajendra also followed Katherine's rickshaw. Both the rickshaw started going by the side of a canal, the accused stopped the rickshaw at a deserted and secluded place and forcibly de-boarded the victim from the rickshaw. They took her forcibly to a deserted place and thereafter accused Rameshwar stripped Katherine Eldridge of her clothes and committed rape upon her. During that time accused Ramesh was kneeling over her and started sucking her cheeks. Thereafter third companion i.e. Rajendra committed forcible sexual intercourse upon her and lastly accused Ramesh committed rape upon her against her

wishes.

19. From her statement, it is evident that a helpless lonely foreign young girl who was unaware of the surroundings of the area, was taken to the deserted place under a conspiracy by the accused as she was all the time under the impression that they were helping her to reach to the destination i.e. Pratap Nursing Home. The intention of accused Ramesh is also revealed from the fact when he stated that 'he was her death'. All the three accused raped her one after the other which is certainly very inhuman and barbaric act on the part of the accused persons. There is not an iota of evidence nor any circumstance has been pointed out by the learned Counsel for the appellants that the sexual intercourse with the prosecutrix by the accused was done with her tacit consent.

20. We have gone through the entire statement of the prosecutrix and we do not find any contradictions or discrepancy in her statement. Her statement is fully corroborated by the medical evidence as several injuries have been found on her face, thighs and other parts of the body including nail scratch marks. As per the supplementary report of Dr. Anjali Srivastava PW-2, spermatozoa were also found in the vaginal smear. The pathologist report Ex. Ka-16, has clearly suggested of sexual intercourse.

21. Learned Counsel for the appellants argued that as per the statement of Dr. Anjali Srivastava PW-2, the prosecutrix was habitual to sexual intercourse, therefore, no credence can be given to her statement that the accused committed sexual intercourse against her wishes. The argument of learned Counsel for the appellants is without any basis as the prosecutrix herself admitted that she was used to sexual intercourse since the year 1989. She also admitted that before arriving in India, she had sexual relationship with three boys, however she categorically denied that she had any sexual relationship with any one during her visit to Bangkok and India. She has not made any false statement nor she has tried to hide the factual position with regard to her sexual relationship. She has admitted the truth but she is categoric in her statement that the accused had exploited the situation as she was not aware of the surroundings of the place and was led to a deserted place by the accused and subjected to forcible sexual

intercourse against her wishes. The evidence of the prosecutrix when read as a whole inspires confidence. Moreover, she has no enmity with the accused persons nor had an axe to grind against the accused persons.

22. While evaluating the evidence of the prosecutrix, we are conscious of the fact that in a case of rape no self respecting woman would come forward to report the matter to the police or approach the court just to make a humiliating statement against her honour. The testimony of the prosecutrix in such a case is vital unless there are compelling reasons, which necessitate looking for corroboration of her statement. The court find no difficulty to act on the testimony of a victim of sexual assault alone to convict the accused if her testimony inspires confidence and is found to be reliable and trustworthy. The Apex Court in the case of Radhu v. State of M.P. reported in 2008 (2) SCC (Cri) 207 observed as under:

6. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary.

23. In so far as present case is concerned, we find that the testimony of victim is corroborated by the medical evidence and proves the prosecution case beyond reasonable doubt. The testimony seeking corroboration of the statement of the victim would amount to adding insult to injury. We cannot view with doubt and disbelief or suspicion the evidence of a girl who has made complaint of rape or sexual assault. Though the courts while appreciating the evidence of a victim may look for some assurance of her testimony to satisfy its judicial conscience since she is a witness who is interested in the outcome of the charge levelled by her. However, the evidence of the victim of sexual assault stands almost on par with the evidence of an injured witness, rather the testimony of such a witness is more reliable. In such an incident not only the victim's privacy and personal integrity is

violated but it causes serious psychological and physical harm to her, therefore, the evidence of a victim of sexual assault is entitled to be given great weightage. The corroboration for judicial reliance on her testimony is not a requirement of law but a guidance of prudence only. We cannot lose sight of the fact 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 suspicion. The present one is a case of gang rape where a girl unknown to environment of the area she was visiting, had been subjected to the sexual assault by not only one but three persons and those persons also robbed her articles from her backpack.

24. The prosecutrix correctly identified all the accused persons during the identification parade conducted in the presence of a Magistrate. It has also come in the evidence that the accused persons were kept with their faces muffled during the entire period they remained in the custody. There was no occasion for the prosecutrix to identify them prior to the date of identification parade. She also correctly identified the articles recovered from the accused persons, which belonged to her and were robbed by the accused persons from her backpack on the date of occurrence. She also correctly identified accused Ramesh and Rameshwar in the court who committed rape upon her, however, she categorically denied that accused Yasin had committed rape upon her. She further stated that the third companion who had committed rape upon her, was not present in the court; however, that was the person who had travelled with the other accused in the bus from Delhi. She has not made any mistake in identifying the accused persons who were involved in the sexual assault and has not falsely implicated any of them.

25. Learned Counsel for the appellants further submitted that the prosecutrix had the opportunity to raise an alarm while she was being taken in the rickshaw and she could also run away from the spot. The argument appears to be misconceived. The prosecutrix categorically stated that she was under the impression that she was being taken to the right direction i.e. towards Pratap Nursing Home. She was not aware of the topography of the place; therefore, she did not object or raise any alarm on the way. However, when they took her to a

deserted and secluded place where even if she had raised an alarm no one would have come to her rescue. Moreover accused Ramesh threatened her by saying that 'he is her death'. Everything was done forcibly with the connivance of all the three accused and the rickshaw puller. Moreover the accused could be traced on the basis of address which was given by accused Rameshwar in his own writing and the address given by Ramesh to the prosecutrix which she had written in her handwriting otherwise it was not possible for her to know their names and their whereabouts.

26. From the evidence of the prosecutrix, we are of the considered opinion that she has been a victim of sexual aggression. We are of the view that statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. No self respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore it is not necessary to look for corroboration of her testimony. Thus in the case of such crime conviction may be based on sole testimony of the prosecutrix.

27. The Apex Court in the case of State of Punjab v. Gurnit Singh and Ors. reported in : 1996 (2) SCC 384 made the following observations with regard to the evidence of a victim of sexual assault:

21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable

prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

28. Learned Counsel for the appellants at a last resort submitted that the sentence awarded by the trial court for life imprisonment to the appellants is highly excessive. It is argued that accused Rameshwar and Ramesh were about 25 and 26 years of age respectively at the time of the occurrence and the occurrence pertains to the year 1993, as such, 17 years have passed since the date of occurrence. The accused appellants have their own family and it would be difficult for the accused persons and their family to face the society, if at this stage they are sent back to jail.

29. On the other hand Mr. Nandan Arya, learned A.G.A. submitted that the sentence of life imprisonment awarded by the trial court to the accused appellants for the offence punishable under Section 376 of the I.P.C. and ten years of rigorous imprisonment and a fine of Rs. 10,000/- for the offence under Section 392 of the I.P.C. are justified as the accused appellants have besmirched our National Pride and made us look down in the eyes of the World. In our culture women are respected by men like their mother and sister and the tourists and guests are always treated as incarnation of God. The barbaric act of the accused is against the entire womanhood. He further pointed out that an American woman, who was visiting our country and more so she had come to visit the most religious place like Haridwar, was subjected to sexual assault in a most barbaric manner showing little concern of her honour. It surely projects sad reflection on the attitude and indifference of the accused persons towards the society and violation of human dignity of the woman in particular. It is well said that a rapist not only violates the victim's privacy and personal integrity but causes serious psychological and physical harm to her. In such circumstance, the accused appellants do not

deserve to be shown any leniency.

30. Taking into consideration the overall aspects of the matter, we do not consider desirable to interfere or tamper with the sentence awarded by the trial court. Accordingly, we find no merit in the appeal and the same is dismissed. Conviction and sentence awarded by the trial court against the appellants is affirmed. The appellants are on bail, their bail bonds are cancelled and sureties are discharged. They shall be taken into custody forthwith to serve out the sentence awarded by the trial court.

31. The office is directed to send back lower court record for compliance of the order.

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