

[1] Crl. Appeal.No.17/2001

MAHESH CHANDER Petitioner
Through: Mr.D.B. Goswami, Advocate

\$ STATE (NCT OF DELHI) Respondent.
Through: Mr.O.P.Saxena, APP for State

ANIS Petitioner
Through: Mr.D.B. Goswami, Advocate

\$ STATE (NCT OF DELHI) Respondent.
Through: Mr.O.P.Saxena, APP for State

ANIL KUMAR Petitioner
Through: Mr.D.B. Goswami, Advocate

\$ STATE (NCT OF DELHI) Respondent.
Through: Mr.O.P.Saxena, APP for State

HON'BLE MR. JUSTICE G.S.SISTANI

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| 1. | Whether reporters of local papers may be allowed to see the Judgment ? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

1. It was observed that *“rape is an accusation easily to be made and hard to be proved and yet harder to be defended by the*

party concerned”, Kelleher Vs. Queen, reported at 1974 (3) Commonwealth Law Reporter 534.

2. The present appeals have been filed by the appellants Mahesh Chander, Anis and Anil against the judgment and order on sentence dated 07.12.2000 and 18.12.2000, respectively, passed by the Additional Sessions Judge, Delhi, in Sessions Case no. 27/96, FIR No.172/90, Sections 342/376/34 of the Indian Penal Code, 1860 (hereinafter referred to as , “IPC”), by virtue of which, the appellants were sentenced to undergo one year Simple Imprisonment (hereinafter referred to as, “S.I.”) for the offence punishable under Section 342, IPC and Rs.1,000/-, each, as fine and in default of the payment of fine to undergo S.I. for three months. Appellants were also sentenced to undergo Rigorous Imprisonment (hereinafter referred to as, “R.I.”) for a term of seven years for the offence punishable under Section 376, IPC and sentenced to pay a fine of Rs.2,000/-, each, and in default of the payment, S.I. for one year. Both the sentences were to run concurrently. It was also held that the benefit of Section 428, Code of Criminal Procedure, 1973 (hereinafter referred to as, “Cr.P.C.”) be also given to the appellants and the period of detention undergone by them during investigation or trial be deducted from this sentence.
3. The three appeals were heard together. Learned counsel for the parties submit that all the appeals should be disposed of by a common judgment.

4. The facts of this case, as noticed, by the learned Additional Sessions Judge, Delhi, are that: on 02.08.1990, prosecutrix (name withheld) travelled in Bus No. UHN-2484, which was being driven by the appellant, Mahesh Chander. Appellants, Anis and Anil, were conductors of the said bus. When the prosecutrix arrived at Delhi in the said bus from town Nanota via Saharanpur, she was stopped by the appellants on the pretext that conductor Anil Kumar would help her in reaching her destination at New Delhi. He carried her to the petrol pump of Gokal Puri in another bus. The above mentioned bus was already parked at that petrol pump. Appellants, Mahesh and Anis, were already present there. Ishtkhar, cleaner of the said bus was also there. They took the bus to a deserted place in the night. Appellants, Mahesh Chander, Anis and Anil Kumar, raped her against her wishes. After commission of rape they took the bus to 'Majnu-ka-Teela'. The prosecutrix escaped from there on the pretext that she had to respond to the call of the nature. The prosecutrix approached the police and she was taken to Police Station, Civil Lines where a case was registered on her statement. The case was then transferred to Police Station, Gokal Puri where FIR No.172/90 was registered. The search of the bus was made. Prosecutrix was sent to a Civil Hospital, MLC was prepared and her X-ray was also taken for the purpose of determination of her age. A sample of vaginal swab was also taken and sealed with the seal of Civil Hospital, handed over to police and the I.O. took it into his possession.

Underwear of the prosecutrix was also taken into possession after sealing it in a pulanda and was duly sealed with the seal of MD. The bus was also seized. Appellant, Mahesh Chander, was arrested on 03.08.1990. His personal search was conducted and a memo was prepared. His underwear was also taken into possession, sealed with the seal of RD and a seizure memo was prepared. Appellant, Anis was arrested on 05.08.1990. His personal search was conducted and memo was prepared. Appellant, Anil Kumar, was also arrested on that date. His personal search was conducted and personal search memo was prepared. Appellant, Mahesh, made his disclosure statement on 03.08.1990. He was also medically examined in GTB Hospital and his MLC was prepared. The underwear of appellants, Anis and Anil Kumar were also seized vide separate seizure memos and duly sealed with the seal of SRS. Appellants, Anis and Anil Kumar, also made their disclosure statements before the police which were recorded. These appellants were produced in GTB Hospital where they were medically examined and the MLCs were prepared. The samples were sent to the laboratory and after examination a report was obtained from CFSL. I.O. also prepared the site plan of the place of occurrence. Metropolitan Magistrate recorded the statement of the prosecutrix under Section 164 of the Cr.P.C. After completion of investigation, police filed a challan against all the three appellants for their trial for the offences punishable under Sections 376/342/34, IPC.

5. Learned counsel for the appellant submits that the learned Additional Sessions Judge has erred in convicting the appellants on the testimony of the prosecutrix, which is absolutely unbelievable and untrustworthy. Although, in her statement, made on 27.08.1991, the prosecutrix had supported the version of the prosecution, but in her cross-examination dated 20.05.1999 she has absolutely denied being raped by the appellants. However, on the application of the Public Prosecutor under Section 311 of the Cr.P.C, in her re-examination-in-chief on 04.11.1999, the prosecutrix has made a complete somersault and made out a new story of being kidnapped and threatened by the appellants, in the month of December, 1998, when she was coming by train from Saharanpur, to depose before the Trial Court.
6. It is contended by learned counsel for the appellant, that the Court below, erred in not asking for any proof of the prosecutrix being kidnapped or threatened by the appellants and further relying solely on her testimony. It is contended that there are material contradictions in the statement made by the prosecutrix, at the first instance; her statement recorded before the Metropolitan Magistrate under Section 164 of the Cr.P.C.; and, subsequently the testimony recorded in the Court. It is next contended by learned counsel for the appellant that the testimony of the prosecutrix is neither reliable nor trustworthy as it is quite evident from the evidence on record that the prosecutrix is a smart lady and

could not have been easily trapped by anybody. As per her statement, the prosecutrix, had gone to meet the SSP, Saharanpur, in connection with the murder of her sister and in the same connection she had met the Member of Parliament, Mr. Janardhan Dwivedi as well as one Col. Parishat.

7. It is submitted before this Court that taking these factors into consideration, it cannot be said that the prosecutrix was not aware where she was being taken by the appellants. Even otherwise, there was enough opportunity for the prosecutrix to have escaped from the trap of the appellants, which shows that if at all there had been any sexual intercourse with the prosecutrix by the appellants, it was with her consent. The appellants cannot be held guilty for rape. It is also contended that the evidence of the prosecutrix is wholly unreliable and even in case the Court comes to the conclusion that her evidence is partly reliable, an order of conviction could only have only been passed if her evidence was corroborated by some independent and reliable witness. Whereas in this case the Court has relied upon the testimony of PW-15, Ishtkhar, who is alleged to be the helper of the same bus in which rape is alleged to have been committed. Learned counsel also submits that there is contradiction in the statement of the prosecutrix and PW-15. Learned counsel further submits that while PW-15, Ishtkhar, in his statement before the Court, has stated that the appellants before committing sexual intercourse with the prosecutrix, had consumed liquor where as there was no

mention of consumption of liquor by the prosecutrix in her statement.

8. Learned counsel for the appellant has also strongly urged before this Court that the medical evidence does not support the theory of rape as, as per FSL report, there were no traces of semen found in the vagina of the prosecutrix. Counsel has also relied upon the Modi's Textbook of Medical Jurisprudence and Toxicology, Twenty-first Edition, according to which, "*the presence of spermatozoa in the vagina after intercourse has been reported by Pollak (1943) from 30 minutes to 17 days, by Morrison (1972) upto 9 days in vagina and 12 days in the cervix*".
9. Learned counsel for the appellant submits that in view of the medical evidence brought on record, it would show that there was no possibility of any rape on the prosecutrix. Learned counsel has strongly relied upon the case of **Sadashiv Ramrao Hadbe Vs. State of Maharashtra and Another**, reported at **(2007) 1 SCC (Cri.) 161**, in support of his submission, and more particularly paras 7 and 13 of the judgment, which are reproduced below:

"7. The doctor, who examined the prosecutrix at about 3. P.M., did not find any injury on her body. There was only swelling on the upper lip but the prosecutrix had no case that this swelling on the upper lip was caused during the course of the incident. There were no injuries on her private parts and the doctor who had examined her was unable to give any opinion about the sexual intercourse allegedly taken place. It is important to note that vaginal swab was collected by the doctor and it was sent for chemical examination. Exhibit 43 is the pathological

report and it shows that microscopic examination of the vaginal swab showed desquamated cervical cells and few co-oxalate crystals and fluid but no spermatozoa was found. The swab of vagina was taken on the same day and if any sexual intercourse had taken place in all probabilities, the vaginal swab would have contained some spermatozoa. The absence of these sperm casts a serious doubt on the prosecution version.

13. The Sessions Court as well as the High Court had not taken into consideration the absence of spermatozoa in the vaginal swab of the prosecutrix. It may also be noticed in the FI statement. In this case the prosecutrix had not given the full description of the incident allegedly taken place but when she was examined in Court she had improved her version."

10. *Per Contra*, learned counsel for the State has submitted that the evidence of the prosecutrix is trustworthy and reliable. Counsel further submits that besides the evidence of PW-1, the prosecutrix, PW-15, who was admittedly a cleaner in the same bus has also completely supported the version of the prosecutrix and, thus, the prosecution has proved its case beyond any shadow of doubt.
11. I have heard learned counsel for the parties, who have taken me through the records of this case. It would be useful to analyse the evidence of some of the material evidences.
12. PW-1, prosecutrix has deposed that she does not know her age. Last year in the month of August she was going to village Nanota to meet her maternal uncle, namely, Shri Choor Singh. She deposed that she reached her uncle's house in July last year and left his house on 2nd August for Saharanpur. She took bus No. 2484 for Saharanpur and reached there at noon time. From the bus stand she started for police lines as she had to go

to see the SSP. After meeting the SSP, she returned at about 3:20 pm and again took bus No. 2484 and reached Delhi at about 7:30 pm on the same day. She enquired about the way to Mayur Vihar from the conductor of the bus Anil. Appellant, Anis told her that appellant, Anil would leave her at Mayur Vihar and she went with him in another bus. She thought that the bus was for Mayur Vihar but later on she came to know that the said bus was for Ghaziabad. Anil asked her to get down at a petrol filling station after Gokalpuri and at the said petrol pump, bus No. 2484 was already parked. It was the same bus in which she had come to Delhi and appellant, Mahesh had brought bus No. 2484 from Saharanpur to Delhi. Appellant Anis was also in the said bus alongwith a young boy. Appellant, Anis told her that bus No. 2484 will drop her wherever she wanted to go. The bus was then taken away from the petrol pump and was driven at some distance from the petrol pump and then they stopped the bus. It was night time. Appellant Anis, Mahesh and Anil then raped her against her will on the floor of the bus No. 2484. PW-1 deposed that she could not raise any alarm because they had held her hands and appellant Anil had gagged her mouth and there was nobody around to hear her. They raped her turn by turn and while one was raping, the other was muffling her mouth, and preventing her from resisting physically. The fourth young boy who was about her age, however, did not rape her. Then the appellants took her in the same bus to a Gurudwara at the banks of Yamuna and stopped the bus outside it. Appellant,

Mahesh then asked her to sleep with him in the same bus, but she refused. Then another bus came whose number she did not know. The appellants had a chat with the driver of that bus and he too casted a bad eye on her. She at that time requested the appellants to allow her to go to attend the call of nature. Though appellant Anis objected, she somehow insisted and managed to get down. Then after turning, she approached the other bus and from there she ran away. Seeing her running away the appellants also fled in their bus. She then saw the board of a police post and went there and narrated the entire incident to the police officials present there. The police officials accompanied her to search for bus No. 2484, but they could not trace the said bus. The police officials then told her to leave them as they wanted to further search the bus. She then came to ISBT to look for the said bus. There another police official enquired from her as to whom she was waiting for and she narrated the entire incident to him. The police official took her to P.S., Civil Lines and where her report was recorded. Thereafter the police brought her to P.S., Gokal Puri and she pointed to the place where the bus was parked and she had been raped in the bus.

13. PW-1 deposed that when the appellants had raped her, they had forcibly removed her salwar and underwear. Later on she had again worn them. The next day, the police took her to a hospital, where she was medically examined. The doctor took into possession her under wear which the appellant persons had

forcibly removed and which she had worn after the rape had been committed upon her. PW-1 further deposed that the police of Civil Lines was with her when bus No. 2484 was seized at ISBT along with appellant, Mahesh, who was the driver of the said bus. Then they returned to P.S. Civil Lines and the police told her that the case actually pertained to P.S. Gokal Puri and stated that the case shall be transferred to that police station. The appellants Anis and Anil were produced by the owner of the bus No. 2484 and they were arrested on 5th August. PW-1 also deposed that the jamatilashi with respect to appellants, Anis and Anil was affected in her presence and memos Ex.PW-1/8 and Ex. PW-1/C were prepared and she signed the same. PW-1, deposed that her statement was recorded by the learned Magistrate vide Ex.PW-1/D and she signed the same on its every page. PW-1 has further identified her underwear, Ex. P-1, which she had worn at the time of the alleged incident.

14. In her cross-examination by learned counsel for the appellants, Anis and Anil, PW-1 deposed that she had not told the police that she was aged 18/19 years. She had come to 10, Janpath, Delhi, in connection with the case of death of her sister. She had told her maternal aunt that she was going to Delhi in connection with the death of her sister. Prior to this also she had come to Delhi to follow up her sister's case. PW-1 deposed that the place Jawahar Bhawan in Delhi was known to her and where she had come earlier. But 10, Janpath, was not known to her. At 10, Janpath, she had come to see Col. Parishat in

connection with the death of her sister. She also deposed that when she was getting down from the bus at ISBT, Delhi appellant, Anis asked her as to where she had to go and at which she replied that she had to go to New Delhi. She further stated that she was not compelled to board bus No. 2484 at the petrol pump, but appellant Anis had assured her that the bus would drop her wherever she wanted to go. PW-1 deposed that near Gokalpuri, she came to know that the bus was not going to New Delhi or Mayur Vihar and at that time her face was muffled by appellant, Anis. PW-1 deposed that she did not raise any alarm because she was afraid that she would be killed as appellant, Mahesh had even threatened her. PW-1 further denied the suggestion that she had a relationship with the appellant, Anis, prior to this incident.

15. On 20.05.1999, in the cross-examination, by learned counsel for appellant, Mahesh, PW-1 deposed that none had committed any forcible, illegal act or rape on her. The appellants were not arrested by the police in her presence. She deposed that it was also correct to say that she had earlier deposed in the Court at the instance of the police. Furthermore it was correct that today she was deposing at her own and without any pressure, force and influence from any side. It was correct that none had committed any wrong thing with her and so she did not wanted to proceed with the case any further.
16. On the subsequent date, in her cross-examination by learned APP, PW-1 deposed that it was correct that her statement was

recorded on 27.08.1991 in the Court and thereafter her statement was recorded in the Court on 20.05.1999. PW-1 deposed that in the statement recorded on 27.08.1991 she had deposed that the appellants had raped her against her will. PW-1 deposed that whatever she had stated on the subsequent date of 20.05.1999 was under the due threat extended by the appellants and so she had stated that none had forcibly raped her. PW-1 deposed that her statement recorded in the Court on 27.08.1991 was true and correct. Today, she was not under pressure from any side and was deposing before the Court on her own and stated that it was correct that all the three appellants had illegally raped her. At this juncture, PW-1 was cross-examined by learned counsel for the appellant, Mahesh and PW-1 deposed that on 20.05.1999, when she had come to the Court, she did not disclose that she had been threatened by the appellants and it was correct that she had not made any complaint in this regard to any authority. PW-1 stated that she was threatened by the appellants in the month of December, 1998, when she was coming to give her statement in the Court. She had taken a train from Saharanpur at about 3:30 a.m., but the exact date of December she did not remember. She was kidnapped by some persons at the instance of appellants on her way from Saharanpur to Delhi, but she did not know those persons who had kidnapped her. PW-1 further deposed that *"[n]ext day I got down from the train and leave me at my house by the GRP. GRP Police got down me at Sarsawa railway Station.*

At that time, I was not conscious. I cannot tell the time due to unconsciousness. Sarsawa does not fall on the way between Saharanpur and Delhi. Three persons followed me from the Railway Station to the train. I cannot say how many other passengers were in that railway coach. But there were other passengers present. Today I do not remember when I became unconscious. No conversation took place with those three persons before getting unconscious. I regained my consciousness after one day and till then I was remained at the Sarsawa Railway Station with the GRP. I was left at my residence by the Sarsawa Railway Station Master as he belongs to my village. I told him about my kidnapping and regarding the case in which I was coming to give my statement to the said Station Master. But due to my unconsciousness I did not tell this thing to GRP. I was informed next morning by the Railway Staff who were posted at the station as I was got down by the GRP at this station and I was unconscious. No statement was recorded by the GRP nor the Station Master called the police. I reached my house at Saharanpur by bus after taking food which was provided to me by Station Master at about 10 A.M. on third day. I had narrated about this to only my mother. I did not write any letter to this Court about this. After December, 1998, I attended this Court only in the month of May, 1999, on receipt of bailable warrant of Rs.1,000/- against me.” PW-1 further deposed that it was incorrect to suggest that she had

introduced a false story regarding her kidnapping and the threat extended to her.

17. PW-7, Dr. Rajesh Gupta, Civil Hospital, deposed that on 03.08.1990 at 3.15 pm he had examined the prosecutrix vide MLC No.627/90. On examination it was found that *“there was one abrasion on the right breast medially and horizontally with scab (Kharonch) reddish in colour of 4 cms. Secondly abrasions on left thigh about 1 cm longitudinal scab present”*. PW-7 deposed that the MLC prepared by him is Ex.PW-7/A and which bears his signatures at Point A. In cross-examination by learned counsel for the appellants Anis and Anil, PW-7 deposed that it was correct that it was not mentioned as to whether the injuries on the person of prosecutrix were old or fresh in nature. PW-7 deposed that it was correct to say that he has not recorded in the MLC as to how the injuries were received or who caused the injuries.
18. PW-11, Dr. Krishna Tiwari, Gynecologist Aruna Asif Hospital (Civil Hospital), deposed that on 03.08.1990 at 3:30 pm a case was referred to her by GDMO, Dr. Rajesh Gupta, for gynae check up of patient, prosecutrix d/o Molhar Singh with alleged history of rape. PW-11 deposed that on examination she had found that there was *“no fresh injury in vagina. P.V. examination – Vagina vulva normal, Hymen torn in multiple places, old torn edges. Vagina loose admits two fingers. Uterus antivertal, normal size, mobile, fornix free. No fresh bleeding.”* The report of the doctor is Ex.PW-11/A.

19. PW-15, Ishtkhar, s/o Abdul Hamid, r/o H.No. 223, Mohalla Rukansaraf, Buland Shahar deposed that he knew all the three appellants namely, Mahesh Chander, Anis and Anil Kumar and that he used to work as a helper with them on bus No. UHN 2484, which used to travel between Saharanpur and Delhi. PW-15 deposed that the appellant, Mahesh Chander, was driver of the said bus while appellant Anis and Anil were conductors on that bus. On 2.8.1990 that bus started from Saharanpur between 3 and 3:30 p.m., for Delhi. The said Bus reached at ISBT, Delhi at about 7:30 p.m. One girl, namely, prosecutrix was travelling in that Bus from Saharanpur to Delhi. All the passengers got down from the bus at ISBT and the prosecutrix stated that she had to go to New Delhi. Appellant, Anis asked appellant, Anil Kumar to take the prosecutrix to New Delhi and then the prosecutrix left ISBT with appellant, Anil Kumar. Thereafter, the bus was taken to the petrol pump at Gokul Puri, and driver, Mahesh Chander; conductor Anis and himself (PW-15) were in the bus. In the meantime Anil Kumar along with the prosecutrix also came there. PW-15 further deposed that all the three appellants took liquor in the bus and thereafter they committed rape upon the prosecutrix. They also asked him to commit the rape, which he refused. Thereafter the bus was brought to Majnu-ka-Teela and the prosecutrix was still in the said bus. PW-15 deposed that he slept on the roof of the bus and others slept in the bus. When he got up in the morning, the prosecutrix was not present there and all the three appellants

were still there. Thereafter he had gone to refresh himself and when he returned, he came to know that the bus had been taken away by the police.

20. In his cross-examination by learned counsel for the appellant Mahesh, PW-15 deposed that at the time of occurrence he remained outside the bus. He remained in the bus for about 10-15 minutes after the prosecutrix and the appellants had taken meals. He deposed that he did not go inside the bus. And further that although many buses were parked at 'Majnu-ka-Teela', he did not make a complaint to any staff member of those buses regarding this incident. PW-15 further deposed that the bus reached at ISBT, Delhi in the morning at about 7:30 a.m. And that it was correct to suggest that the police remains present at ISBT and that he did not make a complaint to any police official at ISBT.
21. The arguments of the counsel for the appellants can be summarized as under: (1) the testimony of the prosecutrix is not reliable and untrustworthy; (2) there are material contradictions in the statement of the prosecutrix made under Section 164 of the Cr.P.C. before the Magistrate and the testimony recorded in the Court; (3) the prosecutrix being a smart and confident lady could not have been trapped by the appellant; (4) there is no corroboration to the testimony of the prosecutrix, and thus, her evidence cannot be relied upon; (5) there are material contradictions in the evidence of prosecutrix, PW-1, and Ishtkhar, PW-15; and (6) the medical evidence does

not support the case of the prosecution as no semen was found in the vagina of the prosecutrix.

22. The arguments of learned counsel for the State can be summarized as: (1) the prosecution has been able to prove its case beyond any shadow of doubt; (2) the contradictions sought to be highlighted by the learned counsel for the appellant are neither material nor do they go to the root of the matter; (3) the evidence of the prosecutrix is ably supported by the evidence of PW-15, who is none else but a helper of the same bus; (4) the evidence of the prosecutrix is reliable and trustworthy; and (5) medical evidence is not a mandatory evidence in the facts of the present case.
23. In so far as the first submission of learned counsel for the appellants is concerned, I find no force therein. The incident of rape, in the present case, pertains to 2.8.1990. At the first opportunity available the prosecutrix ran away from the appellants and on seeing a police post, she went therein and narrated the entire incident to the police officers. She then accompanied the police officials and searched for the bus. Thereafter she came to ISBT, where she narrated the entire incident to another police officer, who took her to the Police Station, Civil Lines and where her report was recorded. The prosecutrix was then brought to Police Station, Gokul Puri. The prosecutrix pointed out the place where the bus had been parked in the night and that she had been raped on the floor of the said bus. After having analyzed the statements made by the

prosecutrix at various stages of the investigation and the trial, in my opinion, there are no material contradictions. What has been argued before this Court is that on 20.05.1999, during the cross-examination, the prosecutrix had stated that none had committed any forcible illegal act or rape on her, none of the appellants were arrested by the police in her presence and she had earlier deposed in the court at the instance of the police. She had also stated that none had committed any wrong thing with her and she did not want to proceed with the case any further. On the subsequent date, she however stated that the appellants had raped her against her will. Learned counsel for the appellants has submitted that in view of the fact that the prosecutrix had resiled from her statement, it goes to show that this witness is unreliable and the statement of such a witness cannot be the basis of conviction. At this stage, it may be noticed that regarding the statement recorded in the Court, on 27.08.1991, the prosecutrix had clarified that she had been threatened by the appellants that if she testifies against them, then she would have to face dire consequences. And it was under these circumstances that she had made a complete somersault and retracted from her earlier statement. The prosecutrix, further stated that whatever she had stated on 27.08.1991 regarding she having been raped by the appellants, was true. Barring the statement made on 20.05.1999, the prosecutrix has consistently deposed against the appellants, whether it be her statement before the police officials, the

statement recorded before the Magistrate under section 164, CrPC, or her testimonies recorded before the trial court. There is ample justification for the fact that in the cross-examination on 20.05.1999, the prosecutrix had not supported the case of the prosecution as she was under the fear and threat extended by the appellants. And on the next date, the prosecutrix boldly and courageously narrated the entire sequence of events before the Court. Thus, I find no contradictions in the version of the prosecutrix and in fact hold that the testimony of the prosecutrix is reliable and trustworthy.

24. The testimony of the prosecutrix finds support from none else but the evidence of PW-15, who was a cleaner of the said bus and an independent witness. There is nothing on record to show as to why he would support the case of the prosecution and against his very own associates. His testimony was completely unshaken during the cross-examination. I also do not find any material contradictions between what PW-15 has stated before the Court and the testimony of the prosecutrix. There is no contradiction which goes to the root of the matter.
25. Learned counsel for the appellant has strongly urged before this Court that the evidence of prosecution is belied by the medical evidence and thus the appellant is entitled to acquittal. In support of this proposition he has relied upon a decision of the Supreme Court in the case of **Sadashiv Ramrao Hadbe (supra)**. The paragraphs relied upon by learned counsel for the appellant have been reproduced above. No doubt the Apex

Court in the case of **Sadashiv Ramrao Hadbe (supra)** has held that the High Court had failed to take into consideration the fact that as per the medical examination, there was no trace of semen in the vagina of the prosecutrix and thus it casts a serious doubt on the version of the prosecution. However, it would be useful to look into the facts of the case of **Sadashiv Ramrao Hadbe (supra)**. While learned counsel has referred to paras 7 and 13 of the judgment, I deem it appropriate that for a complete understanding and interpretation of the judgment, the following paras 9 and 10 are also to be taken into consideration:

“9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.

10. In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbableise the prosecution version.”

26. The observations of the Apex Court are to be read in the light of facts of the case of ***Sadashiv Ramrao Hadbe (supra)***. The surrounding circumstances of the case were such that the sole testimony of the prosecutrix could not be relied upon. It was also observed that since many persons were present in the clinic, it was highly improbable that the appellant would have made a sexual assault on the patient, who had come to him for her examination. The Court was of the opinion that it was highly improbable that the prosecutrix could not have made any noise or get out of the room without being assaulted by the doctor. Besides that there were no injuries on her body and thus her version could not be relied upon.
27. Before going further, it would be expedient to refer to a decision in the case of ***Madho Ram and Anr. Vs. The State of UP*** reported at ***AIR 1973 SC 469***, wherein the Apex Court observed that:

“The only rule of law is the rule of prudence, namely, the advisability of corroboration should be present in the mind of the judge or the jury, as the case may be. There is no rule of practice that there must, in every case, be corroboration before the conviction can be allowed to stand.”

It would also be useful to reproduce the observations of the Supreme Court regarding a rape victim, in the case of ***State of Punjab v. Gurmit Singh*** reported at ***(1996) 2 SCC 384***. The Apex Court held:

“8. The courts must, while evaluating evidence, remain alive to the fact that in a case of

rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for *corroboration* of her statement, the courts should find no difficulty to act 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.....”

“21. 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, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. 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.”

“22. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as “discrepancies and contradictions” in her evidence.”

28. Learned counsel for the appellant has submitted that the absence of spermatozoa in the vaginal swab of the prosecutrix,

is a serious anomaly and casts a suspicion upon the prosecution's evidence. If the arguments of learned counsel for the appellant are accepted, then what would emerge is that the surrounding circumstances coupled with the medical examination would go on to show that no rape was committed on the prosecutrix. In my considered opinion, it would be apt herein to place reliance upon the case of **B.C. Deva v. State of Karnataka**, reported at **(2007) 12 SCC 122**, wherein the Apex Court observed:

"18. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though the report of the gynaecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted."

29. In the case of **B.C. Deva (supra)**, inspite of the fact that no injuries were found on the person of the prosecutrix, yet finding her version to be reliable and trustworthy, the Apex Court upheld the conviction of the accused. Thus to lay down a general proposition that where medical evidence does not support the version of the prosecutrix, a finding of acquittal is bound to be given, would be an incomplete interpretation of the law which has been laid down. Now, looking into the facts of this case, it is observed that not only has the prosecutrix

convincingly nailed the appellants, but also the report of the FSL shows that there was semen found on the underwear of all the three appellants. PW-7, Dr. Rajesh Gupta, Civil Hospital, has also deposed that there were abrasions on the breast and thigh of the prosecutrix. This fact lends credence to the version of the prosecutrix that she was raped against her will, by the three appellants one by one. The version of the prosecutrix is corroborated by the medical evidence. The presence or absence of spermatozoa in the vaginal swab of a rape victim is only one part of the medical evidence and this alone cannot discredit the other parts of the medical evidence and lead to an inference that no rape was committed.

30. In view of the fact that the evidence of the prosecutrix is trustworthy and reliable, the same having been duly corroborated by the evidence of PW-15, cleaner of the bus, who is an independent witness, and also taking into consideration the report of the FSL as well as the evidence of the doctor, which shows that semen was found on the underwear of the appellants and that there were injuries on the breast of the prosecutrix, I find no infirmity in the judgment dated 07.12.2000 and order on sentence dated 18.12.2000, passed by the Additional Sessions Judge, Delhi, in sessions case no. 27/96, FIR No.172/90, Sections 342/376/34, IPC.

31. The appeals are accordingly, dismissed. The appellants if on bail, be taken into custody immediately, so as to serve the remaining portions of their sentence.

**G.S. SISTANI
(JUDGE)**

March 2nd , 2009
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