

\$~5

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 09.10.2014

Judgment delivered on: 14.10.2014

+

CRL.A. 800/2002

MANMOHAN SINGH

..... Appellant

Through: Ms.Arundhati Katju and Mr.Abhyjoy
Banerjee, Advocates.

versus

STATE

..... Respondent

Through: Ms.Kusum Dhalla, APP.
ASI Mangal Ram, P.S.Rajouri Garden.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

%

09.10.2014

1. This appeal is directed against the impugned judgment and order of sentence dated 1.10.2002 and 3.10.2002 respectively, wherein the appellant has been convicted for the offence under Sections 354/451 of the Indian Penal Code, 1860 (IPC). For the offence under Section 354 of the IPC, he had been sentenced to undergo RI for a period of two years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo SI for one year; for the offence under Section 451 of the IPC, he had been sentenced to undergo RI for a period of one year and to pay a fine of Rs.40,000/- and in default of payment of fine to undergo SI for one year.

2. Nominal roll of the appellant reflects that as on the date when he was granted bail he had suffered incarceration for less

than about 4 days. It has been noted that after the release of the appellant, he had not been appearing inspite of notice and even after coercive steps having been taken against him, he has not put in appearance. Learned amicus-curiae has assisted the Court.

3. Record discloses that the incident is dated 24.7.1999. At about 4:00-5:00 am in the morning an information vide DD No.34 was received in Police post Rajinder Nagar that one Sardar came to roof of House No.271/272, Raghubir Nagar and had tried to molest a 12 year old girl. The statement of the victim/prosecutrix 'P' examined as PW-2 was recorded. The complainant was her uncle Pawan who was also examined as PW-4. The allegations in the complaint were that while PW-4 was sleeping with his niece (prosecutrix) on the roof of house No.272, he heard cries coming from PW.2; he woke up and found that the appellant Manmohan (neighbour) had opened the zip of his pant and he had removed the underwear of his niece and was seen attempting to kiss her. Accused tried to escape but he was apprehended on the spot by PW-4. The other family members of PW-4 also woke up. On the complaint made by him the present FIR was registered.

4. The MLC of the victim who was examined at 8:00 am on morning of 24.7.1999 reflected the alleged story as disclosed by PW-4. No fresh external injury was noted. Her vaginal smear was taken. Hymen was noted to be intact.

5. The accused was arrested at 9 am. This is evident from his arrest memo Ex. PW-4/C. He was medically examined at 1.30 pm vide memo Ex.PW-5/C. Relevant would it be to note that no injury of any kind was present, although the doctor had opined

that there was nothing to suggest that the patient was incapable of sexual act.

6. The fact of no apparent injury on the person of the accused becomes relevant in view of the defence which has been projected by the accused. The accused, in his defence at the time of the cross examination of the witnesses of the prosecution as also in his statement under Section 313 of the Cr.P.C stated that he has been falsely implicated. His contention was that he had been asked by his neighbour one Sh.Chanderpushp who was living in the adjacent house No.273, to check the water tank and so as to ensure that the water was being filled in the tank after the water pump had been switched on. It is for this purpose that he had gone to the roof top of house no.C-273 at about that time. It is admitted that there was no electricity in the area for 24 hours prior. Electricity had come back and after he had started the water pumping motor, when he peeped into the tank the electricity went off again. But soon after it came back. It is further stated that at that point of time since it was pitch dark; while trying to go down the stairs he fell off the roof. Site plan Ex. PW-5/F has reflected house No.272, although House no.273 has not been shown, yet PW-4 deposed that the height of the roof top of C-273 was higher than that of C-272. Be that as it may, in all practicality a person falling off from a roof top in the middle of the night when it was dark would have sustained some kind of an injury but none has been reported as per the appellant's MLC. This defence of the accused is also improbable in view of the statement of his mother who was examined as a defence witness (DW-2), apart from two

other witnesses who were also examined. She had deposed that her son had gone to check the water tank of the house of Chanderpushp (resident of 273) at 2.10 am. At that point of time the electricity went off and her son fell down. She heard cries of 'chor chor'. Alarm was coming from the house of Pinki (PW-2). DW-2 and her family locked up the house and went off to sleep; there were noises in the gali but they did not get up till 6.30 am when they went to call Chanderpushp from Tagore Garden and thereafter they themselves returned to the police chowki. It would be difficult to perceive a situation that a normal person who is innocent and does not have a guilty mind would go off to sleep coolly when there were noises coming from the adjacent house where admittedly the appellant/her son had gone to check the water tank. The most normal reaction of such a person would be to find out what was happening in the gali. The accused and his family however chose to evade the cries and went off to sleep.

7 The defence of the accused that he himself had surrendered in the chowki is also negated by his arrest memo (Ex.PW-4/C) which reflects his arrest from the spot i.e. adjacent house No.272, Raghubir Nagar at 9 am on 24.7.1999. The Investigating Officer PW-5 ASI Mahender Kumar has reiterated the position that the accused was apprehended at the spot; he has deposed that he was not allowed to leave and after registration of the case he was arrested vide memos PW-4/B and PW-4/C. This oral version coupled with the oral versions of PW-2, PW-4 and the arrest memo Ex.PW-4/B thus belies the defence of the accused that he had himself surrendered in the chowki. These pieces of evidence

establish that the accused was in fact apprehended at the spot. Oral versions can be variant but documents do not lie.

8. The submission of the learned counsel for the appellant that there were inherent contradictions in the version of the PW-2 and PW-4 has to be examined.

9. PW-2 was the victim. She had deposed that on 24.7.1999 when she was present in her house at night there was no electricity. She was sleeping on the roof with her uncle and her sister as also her grandmother. The accused is her neighbour and she knew him by name. While PW-2 was sleeping on the roof the appellant came there and tried to remove her underwear; she raised alarm; her uncle Pawan woke up. The accused was apprehended. She was medically examined. In her cross examination she admitted that the adjacent house is of Chanderpushp, an old lady; on the roof of this house tenants were residing. She admitted that the electricity came in the morning at about 3 am. She denied the suggestion that the accused had started the booster pump and had come to the roof of house No. 273 to check the water tank; she reiterated her stand that the accused had come to molest her. She admitted that she had raised alarm and the accused was apprehended. She denied the suggestion that the accused and her uncle (PW-4) had any quarrel earlier.

10. PW-4 the complainant (the uncle of the victim) has also deposed on the same lines. He reiterated the version as disclosed by PW.2. He deposed that on hearing the cries of her neighbour (PW-2) he woke up and saw the accused lying upon her and

trying to remove her underwear. The accused was apprehended. Alarm was raised. Accused was handed over to the police. In his cross examination he admitted that the house of Chanderpushp is double storeyed. The level of the roof of house No.273 and that of their house is just about 4 bricks higher meaning thereby that from the roof of house no.273, the roof of house No. 272 is easily accessible. He admitted that they have a common friend Gullu who is common to them and the accused and PW-4 had celebrated his birthday but that was about 3-4 years prior to the incident.

11. No contradiction has been pointed out by the learned amicus curiae in the versions of PW-2 and PW-4. No such contradiction is also emerging. Minor variations in the versions of the witnesses have necessarily to be ignored.

12. The evidence before this Court establishes the charge under Section 354 as also the charge under Section 451 of the IPC. The prosecution has been able to establish that the accused had gone to the roof of C-272 to outrage the modesty of PW-2. House trespass has been defined under Section 442 of the IPC. It necessarily entails entering into or removing in any building, tent or vessel used as a human dwelling. The commission of a house trespass in order to commit an offence is punishable under Section 451 of the IPC. Evidence establishes the ingredients of this offence as well. This offence is punishable with imprisonment which may extend up to two years.

13. As noted supra, the impugned judgment calls for no

interference on the point of conviction. However, on the point of quantum of sentence this Court notes that the appellant at the time of the offence was aged 24 years. Offence relates to the year 1999. More than 1½ decade has passed since that time. A long and protracted trial has been suffered by the appellant. This Court is accordingly inclined to reduce the sentence. The sentence of two years which has been imposed upon the appellant for the offence under Section 451 of the IPC is reduced to RI for one year. The conviction and sentence under Section 354 of IPC remains unaltered.

14. Appeal disposed of in the above terms. Bail bond cancelled. Surety discharged. The accused be taken into custody to serve the remaining sentence.

INDERMEET KAUR, J

OCTOBER 14, 2014

k