

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 3rd November, 2016
Decided on: 9th January, 2017

+ **CRL.A. 813/2016**

AJAY KUMAR Appellant

Represented by: Mr. Jivesh Tiwari, Adv.

versus

STATE Respondent

Represented by: Mr. Ravi Nayak, APP with
W/SI Surekha, PS Malviya
Nagar.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Convicted for offences punishable under Sections 354/324 IPC, Ajay Kumar challenges the impugned judgment dated 7th June, 2016 and the order on sentence dated 9th June, 2016 directing him to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹3,000/- for the offence punishable under Section 354 IPC and rigorous imprisonment for a period of two years for the offence punishable under Section 324 IPC.

2. Assailing the conviction, learned counsel for the appellant contends that there is no evidence on record to prove that the injuries were inflicted by the appellant even though his presence has been admitted. The conduct of the appellant reflects his innocence as he did not run away from the spot. There is difference in time with respect to the alleged incident in the version of the witnesses. The best witnesses of the case were the persons who were in the adjoining room but they were not examined by the prosecution. Both the

prosecutrix and her friend were drunk. The complaint was not in the handwriting of the prosecutrix though the investigating officer stated that the complainant noted the complaint, thus it was lodged at the behest of someone.

3. Learned APP for the State on the other hand submits that it was the courage of the prosecutrix that saved her. PW-6 Saurav Chakarvarty stated in his testimony that the appellant threatened them and ran away. There was recovery of knife from the appellant. The prosecutrix could not herself written the complaint as her hand was injured which was evident from the MLC. Lastly, it is submitted that the suggestion given to the prosecutrix in her cross examination is contrary to the stand taken by the appellant in his statement under Section 313 Cr.P.C.

4. Process of law was set into motion on receipt of DD No. 42B at 2:50 A.M. in the intervening night of 6th and 7th October, 2011 at PS Malviya Nagar informing that a man had tried to assault a girl in Room No. 404 of Hotel Justa Residence at Panchsheel Park and the girl has been injured. PW-9 SI Balister Singh along with other officials reached the place of incident and was informed that the lady was assaulted by a room attendant Ajay Kumar. He found that the room was ransacked and blood was lying here and there. The injured/prosecutrix was already taken to Trauma Centre. The prosecutrix gave a complaint Ex. PW-8/A on which she had put her thumb impression. On the basis of this complaint, FIR bearing no. 392/2011 was registered under Section 376/511 IPC. Ajay Kumar was arrested from nearby area of Justa Residency. Knife used during the incident and blood stained shirt was recovered at the instance of Ajay Kumar. PW-13 W/SI Seema

Singh seized the ear rings, broken glass, hair, blood stained bed sheet, shower curtains from the room.

5. PW-8, the prosecutrix deposed before the Court that on 6th October, 2011, she along with her colleague PW-6 Saurav Chakarvarty had come to Delhi for a photo shoot. She stayed in room no. 404 at Justa Hotel and PW-6 Saurav was staying in room no. 301. At about 12:30-12:45 A.M., Ajay Kumar came inside the room for room service as the AC was not working. Ajay Kumar took out his knife, pushed her and locked the door of the room. She tried to push and kick him, however, in the meantime, Ajay Kumar pulled off her top and pushed her inside the bathroom and locked the door of the bathroom. She broke the glass lying in the bathroom to defend herself and picked up that glass. There was a scuffle between the two and both her hands were badly injured. Somehow, she managed to come out of the bathroom. Ajay Kumar started giving her punches and even caught hold of her hair and dragged her. She screamed for help. Ajay Kumar threatened her that if she does not allow him to commit rape upon her, he would bring his friends to help him. In the meantime, somebody from the neighbouring room heard her screams and called at reception and they brought her colleague and his friend. She requested them to break the door from outside. After hearing the noises from outside, Ajay Kumar backed a little but prior to it, he was violent and tried to strangle her. When Ajay Kumar backed a little, she opened the door. Ajay Kumar was smelling of alcohol. PW-6 Saurav gave her his t-shirt and she went to another room. Ajay Kumar showed the knife to her colleagues, threatened them and ran away.

6. PW-6 Saurav Chakarvarty corroborated the testimony of the prosecutrix PW-8. He further stated that one of their local friends Mridul Sharma had come to the Hotel to meet them and stayed in his room.

7. PW-3 Dr. Suresh, Senior Resident, AIIMS was deputed on behalf of Dr. Kumud Tomar who had prepared the MLC of the prosecutrix. It was opined that the injuries were simple caused by a sharp weapon. During the cross-examination, he stated that the nature of injuries mentioned in the MLC would have required dressing of wounds. Following six injuries were mentioned in the MLC Ex. PW-3/A.

- “i. Incised wound on right index finger distal phalanx 1 cm*
- ii. Incised wound on right middle finger distal phalanx 1 cm*
- iii. Incised wound on right ring finger proximal phalanx 1 cm*
- iv. Incised wound on left thumb*
- v. Incised wound on left index finger 1 cm*
- vi. Incised wound on right thigh 2 cm”*

8. PW-12 Dr. Shruti, Senior Resident, AIIMS was deputed on behalf of Dr. Sweta who had prepared the MLC of the prosecutrix. As per the MLC EX. PW-12/A, injury marks were found over index finger of both hands and also on left thumb, sutures were applied. Minor laceration over finger. There were 3 to 4 inch laceration over right thigh and teeth bite injury over left cheek. The hymen was also found ruptured.

9. PW-11 Dr. Munish Sharma, J.R. Department of Forensic Medicines, AIIMS, who had examined Ajay Kumar on 7th October, 2011 at 11:55 A.M., prepared the MLC Ex. PW-11/A and found the following injuries:

- “i. Surgically stitched wound of size 4 cm is present over left lateral aspect of neck 4 cm below left mastoid tip.*
- ii. Multiple scratch abrasions of multiple sizes reddish brown in colour are present over anterior aspect of upper*

- chest in the midline.
- iii. Scratch abrasion size 1 X 0.5 cm is present over dorsal aspect of right hand (reddish in colour).
 - iv. Scratch abrasion reddish in colour of size 0.5 X 0.5 cm is present over dorsal aspect of right thumb.
 - v. Surgically stitched wound of size 4 cm is present over dorsal aspect of lower one third of left forearm 18 cm below left elbow joint.
 - vi. Surgically stitched wound of size 4 cm is present over dorsal aspect of lower one third of left forearm 20 cm below left elbow joint.
 - vii. Surgically stitched wound of size 4 cm is present over dorsal aspect of left forearm 3 cm above injury no. 'v'.
 - viii. Reddish brown abrasion of size 2 X 2 cm is present over dorsal aspect of left forearm in middle one third.
 - ix. Multiple abrasions of multiple sizes reddish brown in colour is present over dorsal aspect of left hand."

10. On cross-examination, PW-11 clarified that the abrasions of multiple sizes found on the chest of Ajay Kumar were fresh reddish brown.

11. PW-5 Naveen Vishan, Manager, Justa Residence, stated that Ajay Kumar was working as a room attendant in the house keeping department of the hotel. The copy of relevant record regarding the attendance of Ajay Kumar on 6th and 7th October, 2011 was seized by the police. Copy of attendance register was exhibited as Ex. PW-5/D showing that Ajay Kumar was on duty in the hotel on 6th October, 2011 from 23:10 hours to 2:30 A.M.

12. Considering the deposition of the prosecutrix duly corroborated by other witnesses, the MLC of the prosecutrix and the appellant, it is evident that the injuries sustained by the prosecutrix on her hands were caused by the glass which she broke and picked up in order to save herself from the clutches of the appellant. The injuries caused to the appellant were during the scuffle between the two.

13. Thus, I find no merit in the appeal. The judgment of conviction and the order on sentence are upheld. Appeal is dismissed. The bail bond and surety bond filed by the appellant are cancelled. The appellant will surrender to custody to undergo the remaining sentence.

14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

15. TCR be returned.

(MUKTA GUPTA)
JUDGE

JANUARY 09, 2017
‘ga’

