

\$~

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

% *Judgment reserved on : 03.12.2015*

Judgment delivered on : 10.12.2015

+ CRL.A. 1113/2013
MEHDUL

..... Appellant

Through Mr. Rajender Chhabra, Adv.
versus

STATE (NCT OF DELHI)

..... Respondent

Through Ms. Neelam Sharma, APP for the
State along with SI Pardeep
Kumar.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 22.02.2013 and 23.02.2013 respectively wherein the appellant stands convicted under Sections 376/511 of the IPC. He has been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.10,000/- in default of payment of fine to undergo SI for 3 months. Benefit of Section 428 Cr.P.C. had been granted to him.

2 Nominal roll of the appellant has been requisitioned. This reflects that as on date he has undergone incarceration of almost about 4 years & 4 months. His jail conduct has been satisfactory.

3 The first submission made by the learned counsel for the appellant is that the appellant be released on the period of incarceration already suffered by him. In the alternate, arguments have been addressed on merits.

4 The version of the prosecution was unfolded in the testimony of Neetu (PW-3) who is the mother of the prosecutrix. It was her complaint which had formed the basis of the FIR. Her version was that she has three daughters of whom 'P' is her middle daughter. She lived in house No. C-229 and this property was owned by her mother-in-law, Santra (PW-2). The first floor was given on rent to Mohd. Salim (PW-1). He had sublet this premise to Naim who was the father of the appellant. On 22.04.2012 at about 02:00-03:00 PM, the appellant had come to the second floor and taken two of her daughters 'C' and 'P' on the pretext of buying them a toffee. When the victim did not return, PW-3 started searching for them. She saw her daughter inside the room. The appellant was unzipping his pant and attempting to commit the unholy act of rape. PW-3 tried to apprehend the appellant. He pushed her and ran away. Police was informed. Investigation was set into motion.

5 In her cross-examination, PW-3 admitted that the first floor

comprised of one room and one kitchen and the second floor also comprised of one room, one kitchen and one toilet. Naim, the father of the appellant was living on the first floor since the last about 4-5 months. On 22.04.2012, the appellant was alone in his house as other members of the family had gone out. His father was a plumber by profession and his mother and sisters had gone to the market. She denied the suggestion that she wanted to vacate Naim (the father of the appellant) which was the reason for his false implication. In her cross-examination, she admitted that after the incident, she informed the neighbours who also rushed there. She did not know as to from where the accused was arrested. She denied the suggestion that when the accused was returning home from his work place at 09:00 PM, he was arrested and this is a case of false implication.

6 Santra (PW-2) the mother-in-law of PW-3 was the owner of the said premises. She had deposed that the first floor had been given to Mohd. Salim and Naim was residing there since the last 4-5 months. The second floor was in the occupation of her daughter-in-law.

7 Mohd. Salim was examined as PW-1. He had taken this premises on lease from PW-2. He deposed that this first floor had been given to

Naim by him since about 4 months and Naim was living there with his family. In his cross-examination, PW-1 admitted that a quarrel had taken place between PW-3 and the mother of the appellant. He also admitted that the father of the appellant had told him that PW-3 was pressurizing him to vacate the premises.

8 Relevant would it be to note that it has come on record in the version of PW-3 that after the date of the incident, Naim had vacated the premises.

9 Learned counsel for the appellant has drawn attention of this Court to the MLC (Ex.PW-11/A). His submission is that there is no injury on the victim and in fact Dr. Anit Garg (PW-11) in his statement has stated that the mother of the patient had refused an internal examination; the external examination of the victim reflects that there is no injury, no tenderness and no bruises noted on her body. The FSL report also does not support the version of the prosecution. It has vehemently been argued that this is a clear case of false implication and the fact that there was a landlord-tenant dispute between PW-3 and the mother of the appellant has been admitted by PW-1. It has also come on record that Naim (the father of the appellant) was living in this premises

since the last 3-4 months and PW-3 had asked them to vacate the premises. She had interest in the property as this property was owned by her mother-in-law.

10 These facts are borne out from the record.

11 Testimony of SI Kavita Rana (PW-9) is relevant. She was the Investigating Officer of the case. She had recorded the complaint of the mother of the victim. The victim could not be examined as she was not fit for examination; the Investigating Officer had produced her before the learned Magistrate but after a preliminary round of questions, the victim was not found fit for deposition; her statement under Section 164 of the Cr.PC thereafter could not be recorded. PW-9 in her deposition has admitted that the mother of the accused had met her in the gali; this was at 09:00 PM. At that time, the accused was coming from the front side and he was arrested at the spot. PW-9 did not make any inquiry as to from where the accused was coming. She denied the suggestion that the accused was coming from his work place.

12 In the statement of the accused recorded under Section 313 of the Cr.PC, his stand was that he had gone to the factory and while he was returning home, he was apprehended in the gali at the instance of PW-3.

This is a false case.

13 Two witnesses were examined in defence of whom his friend Vicky (DW-1) has supported the stand of the appellant and has stated that he was working in the factory on the fateful day; the appellant also attended the factory on that day; they had returned home at 08:30 PM. He also admitted that he was not on visiting terms with the appellant but he was his co-worker; he did not have any special friendship with the appellant. Smt.Gulshan (DW-2) was the mother of the appellant. She has deposed that in the evening when her son was returning from work, he was arrested by the police for a false reason. She had quarrels on earlier occasions with PW-3 on the point of rent. These quarrels had taken place 3-4 times. PW-3 was pressurizing her to leave the house.

14 In this background, this Court is of the view that the prosecution has failed to prove its case to the hilt. The defence set up by the appellant and which was consistent right from the inception i.e. at the stage of cross-examination of the witnesses of the prosecution and at the time when the statement of the accused under Section 313 of the Cr.PC was recorded to be followed at the time when he led evidence in defence was illegally ignored and not answered. The stand of the appellant being

that he was arrested when he was coming back from his factory at 09:00 pm does have force. Had he been guilty, he would have never come back to his house. All these submissions have force. Testimony of PW-9 is also relevant. She has admitted that the appellant was arrested at 09:00 PM when he was coming from the front side just outside the gali of his house. The fact that the father of the appellant and PW-3 shared a landlord-tenant relationship is also a matter of record. The fact that there was a quarrel between them is also in evidence. The non-examination of the victim by the doctor and the refusal of PW-2 on this score is also a piece of evidence noted by the Court to dent the version of the prosecution.

15 In this background, this Court is of the view that the prosecution has failed to prove its case beyond all reasonable doubts and the defence set up by the accused has in fact dislodged the version of the prosecution. Benefit of the doubt must accrue in favour of the appellant. Appeal is allowed. The appellant be released forthwith, if not required in any other case.

INDERMEET KAUR, J

DECEMBER 10, 2015/A