

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

% *Judgment Reserved On : May 17, 2016*
Judgment Delivered On : May 23, 2016

+ **CRL.A.58/2014**

RAVINDER KUMAR @ SADHU Appellant
Represented by: Mr.Harsh Prabhakar, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J.

1. Sent for trial for having committed offences punishable under Section 307/342/354/365/392/506 IPC, vide impugned judgment dated July 24, 2013 the appellant has been convicted for all the offences and following sentences have been imposed vide order on sentence dated July 29, 2013:-

(i) Section 307 IPC : 10 years RI with fine in sum of ₹10,000/-, in default to undergo SI for 06 months.

(ii) Section 365 IPC : 07 years RI with fine in sum of ₹5000/-, in default, to undergo SI for 03 months.

(iii) Section 342 IPC : RI for 01 year with fine in sum of ₹1000/-, in default SI for 01 month.

(iv) Section 392 IPC : RI for 07 years with fine in sum of ₹5000/-, in default to undergo SI for 03 months.

(v) Section 506 IPC : RI for 02 years with fine in sum of ₹2000/-, in default

to undergo SI for 02 months.

(vi) Section 354 IPC : RI for 01 year with fine in sum of ₹1000/-, in default to undergo SI for 02 months.

2. In returning the verdict of guilt the learned Trial Judge has relied upon the testimony of Rohit PW-2 and Kiran PW-6, and the argument advanced by learned counsel Sh.Harsh Prabhakar for the appellant at the hearing of the appeal on May 17, 2016 was that the learned Trial Judge has not even noted the inherent contradictions within the testimony of the two witnesses and the contradictions inter se.

3. To set the scene to appreciate the testimony of Rohit and Kiran, the historical facts to be noted would be that Kiran was brought by HC Krishan Kumar PW-17 in the PCR van to Deen Dayal Upadhyaya Hospital at 3.48 PM on April 18, 2012 because HC Krishan Kumar was the incharge of the PCR van 'Zebra 79' stationed at that time at Mayapuri Chowk and he received information over the wireless from the Police Control Room that a girl had been stabbed at lane No.3, Mahavir Enclave. As deposed to by him, on reaching the spot he saw a girl in an unconscious condition in the lane in a pool of blood with 5-7 bystanders around.

4. At the hospital Dr.Nitan Seth PW-7, a junior resident examined the injured and authored the MLC Ex.PW-5/A recording therein that the patient was drowsy, bleeding from the left ear and had the following injuries on her body:-

- (i) Punctured wound at **Rt.** knee joint. 1 x 0.8 cm.
- (ii) CLW below lower chin 2.5 x 0.5 cm
- (iii) Swelling at **Rt.** thigh
- (iv) CLW at **Rt.** perito region 2 in number 4.5 x 0.5 cm

- (v) CLW at **Rt.** perito temporal region 3 in numbers 4.5 x 1 x 0.5 cm; 3 x 0.5 cm and 2 x 0.5 cm
- (vi) CLW **Lt.** ocipital region 3 x 1 x 0.5 cm
- (vii) CLW at **Lt.** temporal region 3 x 1 x 0.5 cm
- (viii) CLW at lower lip inner aspect 1.5 x 0.5 x 0.5 cm
- (ix) Loosening multiple teeth upper and lower jaws
- (x) Pain, swelling at left side fact.

5. Dr.Nitin Seth advised x-ray of the skull, right thigh and hip-joint as also the knee joint to be taken and thereafter referred the unknown injured was thereafter referred to Neuro-plastic Surgeon, ENT, Dental, Ortho and Gynae Department for further examination. Dr.A.P.Naik examined the patient in the Plastic Surgery department and advised x-ray and made a writing to said effect on the MLC Ex.PW-5/A, proved at the trial by Dr.John Mohd. Mushtaq PW-18, because Dr.A.P.Naik was not available and Dr.John was familiar with his hand writing. A lady doctor, whose signatures are illegible and cannot be deciphered on the MLC, opined that there was no evidence of the girl being subject to a sexual assault. Her hymen was intact. Ex.PW-2/A from the x-ray department of DDU Hospital records that the x-ray of the right hip-joint, and of the skull of unknown patient revealed fracture of the right femur bone and depressed fractures of the right perito bone.

6. When the patient was being examined at the hospital, the Crime Team reached the spot because ASI Virender Singh PW-4 to whom DD No.31A was entrusted for investigation after the DD entry was recorded on wireless information received at P.S.Palam Village, which was also received by HC Krishan Kumar, and to which I have made a reference in the preceding

paragraph No.3, reached the spot and found blood on the cemented lane with broken concrete pieces, stones and a brick having blood thereon. ASI Khazan Singh PW-16 prepared the scene of the crime report Ex.PW-16/A, recording therein that the team was at the spot from 6.00 P.M. to 6.30 P.M. Photographs were taken from middle of gali No.4 and 5 behind house No.D-229, Mahavir Enclave- I, Delhi. two bricks, three cement stones, a hawai chappal and blood sample and earth control was lifted from the spot. The photographer HC Satpal PW-15 took 9 photographs Ex.PW-15/A1 to Ex.PW-15/A9 negatives whereof are Ex.PW-15/B1 to Ex.PW15/B9.

7. Along with the blood sample of Kiran the two broken pieces of bricks, and two concrete stone pieces and one concrete floor piece were sent for forensic examination and vide report Ex.P-XY Kiran's blood was detected on two concrete stone pieces. The photographs taken by HC Satpal show the two concrete stone pieces at a distance of about a foot and a half from each other. Statement of Kiran was recorded after two days of she being found grievously injured in the lane, because she was unfit to make any statement for around 48 hours of her admission in the hospital. She was also produced before a Metropolitan Magistrate on April 24, 2012 before whom she made a statement under Section 164 Cr.P.C.

8. In his testimony Rohit PW-2, inter-alia, deposed:-

“On 18.04.2012 at about 4:00 PM I was going on my motorcycle DL 4S BN 4309 from my house to towards Jaat Dharamshala to bring a Dosa for me when I reached near a lane at Mangla Puri-II. Accused Ravinder @ Sadhu (correctly identified by the witness) was present there along with a girl namely Kiran who had forcibly stopped me. The name of said girl Kiran and Ravinder @ Sadhu were already known to me and I am on visiting term with the

family of said Kiran. I asked accused Ravinder as to why he had stopped that girl the Ravinder Slapped me 2-3 times and thereafter I told him that in case mother of said girl came to know about this she will not spare accused Ravinder. Ravinder asked me to allow that girl who sit on my motorbike otherwise he will stab me and Ravinder snatched my motorcycle and he himself started driving the motorcycle and forcibly by threatening me and Kiran made us to sit on the said motorcycle. Thereafter, accused Ravinder take us to a flat in Gali No.5, Mahavir Enclave and parked the motorcycle there and get the keys with him and took Kiran and me to the second floor and thereafter took Kiran inside the flat and sent me on the stage and further threatened me that if I told this fact to anyone he will kill me. I got frightened and came there after about half an hour and I found when Police officials present at the narrow lane on the back side of the flat, many persons also present there.

9. On being cross-examined, inter-alia, Rohit said:-

“I saw accused Ravinder @ Sadhu and Kiran was standing there in a normal way and no quarrel was taken place there vol. They were talking normally. Accused Ravinder @ Sadhu stopped me by saying Oye. He is not my friend but I know him since long. When I stopped my motorcycle near Ravinder @ Sadhu and Kiran they were talking but I do not heard what they were talking. Accused Ravinder asked the girl Kiran to sit on motorcycle and after some time she sat on the motorcycle. There was no any hue and cry raised by the girl Kiran while sitting on motorcycle..... We reached Gali No.5 Mahavir Enclave within 15 minutes. The girl had not raised any hue and cry and had not raised any alarm during the visit to Gali No.5, Mahavir Enclave. When we reached there I remained at the parking place where the motorcycle was parked and Ravinder @ Sadhu and the girl namely Kiran went upstairs towards the flat of Ravinder @ Sadhu. The girl namely Kiran had not raised any alarm or any hue and cry at the time of going upstairs towards the

flat of Ravinder @ Sadhu. Ravinder @ Sadhu also carried the keys of my motorcycle and after that I leave the place and I do not know anything else.”

10. In her examination-in-chief, inter-alia, Kiran deposed:-

“On 18-4-2012, I was present at my house along with my brother and my mother had gone for her work. On that day, I had gone to purchase rice from a nearby shop at about 4 PM. Accused Sadhu present in the Court (correctly identified) was standing on the way. He called me and threatened me to press my neck. Accused caught hold of me and press my neck. In the meantime, one boy namely Rohit came there on his motorcycle. Accused stopped him and beat him and took the keys of his motorcycle and made me to sit on the motorcycle and asked said Rohit to sit behind me. Accused started motorcycle and took me to his room on second floor in the area of Mahavir Enclave. Accused Ravinder @ Sadhu sent that boy from there and also threatened to kill him. After taking me in the room, accused pushed me in the room and asked me to remove my clothes. Accused threatened me that if I would not remove my clothes he would kill me. Thereafter accused started teasing me forcibly. I sent accused in the kitchen to bring water and in the mean time, I saw that the latch of the door was at some height and it was bolted. I went towards balcony and jumped from there. When I was hanging outside by holding grill, accused came there with water and pushed me. I fell down on the ground and got fractured in my body. I could not stand up. Accused came there and he gave beatings on my head by piece of stone. Accused had given fist blows on my mouth and face.”

11. I note that in her statement Ex.PW-6/A recorded under Section 164 Cr.P.C. by Sh.Sachin Sangwan PW-7 MM Delhi, who has proved the proceedings conducted by him on April 24, 2012 as Ex.PW-7/B, Kiran has stated a slightly different version of the incident concerning Rohit’s conduct

on the day of the incident, but since she has not been confronted with the same during cross-examination, thereby denying her an opportunity to render an explanation, I take no cognizance of the same.

12. Contrasting Rohit's and Kiran's testimony it stares that whereas Rohit claims to have seen the appellant and Kiran standing together, whom he knew and was on visiting terms with the family, and he states that he stopped his motorcycle to ask the appellant why he had stopped Kiran, at which, appellant slapped him two-three times; as per Kiran, when she was going to the market the appellant accosted her. Threatened her and pressed her neck. Rohit happened to pass by on his motorcycle and the appellant stopped him and gave him a beating. There is thus a material contradiction between the two regarding the narrative of scene one of the drama. Apart from this contradiction between the two, Rohit contradicts himself, when during cross-examination he said that when he was driving past he saw the appellant and Kiran talking normally. He said that the appellant stopped him saying 'Oye'. Regarding scene two, wherein events of how the three sat on Rohit's motorcycle and drove away are disclosed, as per Rohit, the appellant asked Rohit for his motorcycle to take Kiran with him under threat that he would harm Rohit. He speaks a little blurred when he says that the appellant snatched his motorcycle and started driving the motorcycle, followed by saying that forcibly under threat to him and Kiran he made both to sit on the motorcycle. As per Kiran the appellant gave a beating to Rohit and took the keys of his motorcycle and made Rohit and her sit on the motorcycle. Regarding scene three i.e. when the three reached lane No.5, Mahavir Enclave, as per Rohit the appellant drove the motorcycle till the building on lane No.5, Mahavir Enclave and took Kiran and him to the

second floor and thereafter Kiran inside the flat, but Rohit was sent away, who got frightened and ran away. As per Kiran she does not speak of Rohit walking up to the second floor flat on the building in question. The testimony of ASI Jagdish PW-20 is to the effect that the motorcycle in question was seized, as recorded in the seizure memo Ex.PW-13/A, from the parking lot of the flat.

13. Now, Rohit admits in his deposition that the motorcycle did not belong to him and it belonged to one Ishwar Singh. It surprises me that Rohit who, perhaps had borrowed the motorcycle, was not made accountable by Ishwar Singh for the same. As per the prosecution the motorcycle was seized from the parking lot on April 21, 2012, and as noted above the incident had apparently taken place on April 18, 2012.

14. Now and again a case turns up which is a little more complex. When people find themselves in uncomfortable situation in a place where they have volunteered to reach, contrivance and concoction of events is the result; because human nature is to disclose half truth and weave lies - to hide a conduct from one's near and dear ones which against a social norm. Kiran and Rohit were answerable to their family members. Kiran found herself in a pitiable condition when she regained consciousness in the hospital. She had to explain to her parents how she reached the house of the appellant. She had obviously to say that she was forcibly taken there. Rohit had also to explain the loss of the motorcycle and thus even he had to tell his family members that his motorcycle was snatched. A perusal of Rohit's testimony and admissions in cross-examination show that neither he nor Kiran raised any hue and cry till the three reached lane No.5, Mahavir Enclave nor thereafter, when he and Kiran were led up to the second floor of the building

on the street by the appellant. Rohit's statement during cross-examination that he saw the appellant and Kiran talking, without a quarrel, and the appellant stopped him by saying 'Oye' (slang for look here) is proof of the fact that the appellant and Kiran were good friends. They were discussing something, which further events would show, was probably to be in seclusion in some place. The two saw Rohit, who was known to them. Rohit's motorcycle was the conveyance which they could use. Rohit obliged. All three went to the flat. They rode through crowded areas, and had there been any coercion by the appellant on Rohit and Kiran to go along with him, there was enough opportunity to raise a hue and cry. In her escapade with the appellant, Kiran probably was ready to have some fun - may be fondling and kissing - but no more. Things went out of control in all probability when the appellant demanded something more from Kiran to which she was not agreeable. The only escape was from the balcony. She hung herself down to save her honour and in all probability, being in a state of panic, fell down. The fall was a straight fall. Feet down head above. Rohit also panicked and ran away. Removing the web of lies weaved into the truth, this is the only nugget of truth which emerges because it rationally explains the conduct of the three.

15. The MLC of Kiran therefore assumes importance because in my opinion, written therein are the rules of deduction which are invaluable to arrive at the truth. Clarity is thrown on the rules of deduction, written in the MLC, by the x-ray report Ex.PW-2/A. Kiran's right femur was fractured, and this obviously is the result of the impact when she dropped like a stone from the second floor on to the cemented lane below. Thereafter, there are only two possibilities of she lying flat on the lane. Either she fell face down

or backward. If she fell face down, injuries would ensue on the face and the forehead, and if she fell backward in the occipital region.

16. I have noted in paragraph 4 above the injuries recorded in Kiran's MLC Ex.PW-5/A. The punctured wound at the right knee joint, the swelling at right thigh and linked thereto the x-ray report of the femur bone being fractured are all suggestive of Kiran dropping like a stone, legs down and head up, onto the lane. The clear lacerated wound below lower chin, loosening multiple teeth in the upper and lower jaw, a clear lacerated wound at the lower lip on the inner side suggest that as she hit the street, Kiran fell forward. But, there is a clear lacerated wound on the left occipital region, which means that with equal probability Kiran fell backwards. Now, it is impossible for even God to fall backward and forward at the same time, and Kiran was a human and thus she could not simultaneously fall on her face and on her back. It is thus apparent that after Kiran fell, if on her back, somebody hit her on the face; and if she fell face down, somebody hit her on the back of the head. The clear lacerated wounds in the right parieto temporal region are clearly indicative of she being repeatedly hit with force and the weapon was a blunt object. I repeat, the clear lacerated wounds and the fractures in the skull are certainly possible if Kiran fell on a hard object or was struck with force with a hard object, but she could not sustain all the clear lacerated wounds as a result of the fall. Either the injury in the occipital region can be attributed to the fall or the injuries on the face; certainly not both.

17. Kiran's testimony has the nugget of truth when she says that as she fell down, the accused came down and hit her with a piece of stone. The FSL Report Ex.P-XY is proof that her blood was detected on two concrete

stone pieces Ex.2a-2 and Ex.2a-3. The photographs to which I have made a reference to above show that the stone pieces are separated by a distance of a foot and a half and could not be splattered with Kiran's blood oozing out of her injuries as she fell. She was obviously struck by both the concrete pieces.

18. In view of the above conviction of the appellant for the offence punishable under Section 365 IPC, which has been returned by the learned Trial Judge on the finding that appellant kidnapped Kiran is set aside. Conviction for the offence punishable under Section 506 IPC is also set aside for parity of reasons concerning his conviction for the offence under Section 365 IPC. His conviction for the offence punishable under Section 342 IPC on the reasoning that appellant kept Kiran under wrongful confinement is also set aside. Conviction for the offence punishable under Section 392 IPC on the reasoning that appellant robbed Rohit of his motorcycle is also set aside. The sentences imposed for said offences are set aside. But appellant's conviction for the offence punishable under Section 307 IPC is maintained for the reason, knowing that Kiran was in a precarious condition as a result of the injury suffered when she fell down from the second floor balcony, the appellant struck her on the head thereafter with concrete stones. The obvious intention was to kill her because if she survived she could tell the world what was the cause of the injuries suffered by her. The target was her head. The x-ray shows a depressed fracture of the right parieto bone. In any case knowledge of the kind contemplated by the fourth part of Section 300 IPC has to be imputed to the appellant because he knew that Kiran was already in a precarious condition. The sentence for said offences is maintained. The sentences

would run concurrently and he would have the benefit of Section 482 Cr.P.C.

19. TCR be returned.

20. Copy of this order be supplied to the Superintendent Jail Tihar for updation of his record and for being supplied to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

MAY 23, 2016
skb/mamta