

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

Judgment Reserved on: August 23, 2016
% *Judgment Delivered on: October 18, 2016*

+ **CRL.A. 597/2015**

IZHAR SIDDIQUI Appellant
Represented by: Mr. Vikas Padora, Advocate.

Versus

STATE Respondent
Represented by: Ms. Rajni Gupta, APP for the
State with SI Mahesh Singh, PS
Pandav Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Convicted for offences punishable under Sections 366/376 IPC Izhar Siddiqui challenges the impugned judgment of conviction dated January 30, 2013 and the order on sentence dated February 04, 2013 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹1,000/- for offence punishable under Section 366 IPC and rigorous imprisonment for a period of seven years and to pay a fine of ₹2,000/- for offence punishable under Section 376 IPC.

2. Assailing the conviction, learned counsel for Izhar Siddiqui contends that though the learned Trial Court observed that the prosecutrix had been tutored, thus, her statement could not be relied upon however still convicted the appellant as above. As per the MLC and FSL report, there was no conclusive evidence to show that the appellant committed sexual intercourse with the prosecutrix. Thus,

there being no evidence against the appellant, he be acquitted.

3. Per contra learned APP for the State contends that the version of the prosecutrix is corroborated by independent witness PW-6 Dhananjay Gupta. The said independent witness is, in fact, the friend of the appellant. The appellant and the prosecutrix stayed in his room where the act of sexual intercourse was committed. MLC of the prosecutrix was conducted immediately after her recovery and as per the MLC Ex. PW 7/A hymen was torn which fortifies the fact that rape was committed upon the prosecutrix.

4. The sequence of events leading to the prosecution case are that on November 19, 2010, PW-2 father of the prosecutrix visited PS Pandav Nagar and informed PW-10 SI Praveen Kumar that on November 18, 2010 around 7:15 A.M., the prosecutrix aged 13 years studying in 8th standard had gone to J.D. Sarvodaya Kendriya Vidhalaya, Pocket – II, Mayur Vihar, Phase – I and when the school got over, she did not come back. In order to find her, he went to the school where the class teacher informed him that the class room keys used to be with the prosecutrix and on that day, the prosecutrix gave the keys to some other girl and went away. PW-2 stated that he had searched the prosecutrix at every possible place but still could not locate her. On the basis of the statement of PW-2, FIR bearing no. 406/2010 Ex.PW-4/A was registered under Section 363 IPC. On November 20, 2010, PW-2 along with PW-1 again went to the police station and informed that the prosecutrix had taken with her ₹2,000/- and Izhar Siddiqui who resided in the neighbourhood was also missing from his room and the room is locked. In the intervening night of 22nd

and 23rd November, 2010, PW-2 received a call from Bismillah, brother of the appellant, asking PW-2 to come to Videocon Tower, Paharganj where the prosecutrix would be handed over to him. PW-2 informed about the phone call to PW-10 and went to Videocon Tower along with his nephew Dheeraj and his brother Manoj. The prosecutrix was recovered and the appellant was apprehended. The prosecutrix was taken to LBS Hospital for medical examination. Her statement under Section 164 Cr.P.C. was also recorded by the learned Metropolitan Magistrate. During the course of trial, PW-8, Aruna Ghosh, MC Primary School, Kotla, furnished photocopy of application form Ex.PW-8/A, copy of affidavit Ex.PW-8/B and photocopy of admission and leaving register Ex.PW-8/C and stated that the date of birth of the prosecutrix, as per the school records, was 1st April, 1996.

5. PW-2 father of the prosecutrix deposed in sync with his statement made to the police. He further stated that 15-20 days prior to the incident, at night, he saw the appellant having caught the hand of the prosecutrix outside his room, closed her mouth with his hand and tried to push her in the room. He objected to it and tried to beat the appellant but the appellant locked the room and fled away. He also stated that after about 10 days, he came to know that the appellant used to roam about near the school where the prosecutrix was studying. He further stated that the other students of the school had told him that the appellant used to cover his face and talk to the prosecutrix.

6. PW-1 mother of the prosecutrix, deposed in sync with PW-2.

7. PW-3, prosecutrix, deposed that the appellant used to tease her

one/two months prior to the incident. About one week prior to the incident, the appellant called her to his room and touched her in obscene manner. The appellant used to offer her sweets and chocolates when he used to meet her outside her school and also told her that he would take her for an outing. She stated that the appellant had met her prior to November 18, 2010 and told her to meet him outside the school and he would take her around. The appellant had asked her to bring a dress and told that he would leave her before the school timing. On November 18, 2011, when the appellant met her outside the school, he took her to a room in Sadar Bazar where two of his friends used to reside. The appellant kept her for 2-3 days in the aforesaid room and once committed sexual intercourse with her in the absence of his friends. Thereafter, he took her to a rented room in Ballabhgarh where he kept her for one or two days and committed sexual intercourse with her. During her cross examination, she stated that she used to treat the appellant as her brother. She further stated that when the appellant took her to Ballabhgarh in metro, she did not raise alarm because the appellant had threatened to abduct her younger brothers. She denied the suggestion that she had gone along with the appellant with her consent. She stated that the appellant had enticed her to take her for an outing.

8. PW-6, Dhananjay Gupta, resident of Sadar Bazar, deposed that on November 18, 2010, the appellant along with the prosecutrix had come to his room and stated that he had been evicted from his room by the landlord for non-payment of rent and that the prosecutrix was his sister in relation. The appellant had requested to accommodate him

and the prosecutrix for two days in that room. They stayed for two days and thereafter, Bismillah, brother of the appellant, came from village and paid the rent after which the appellant along with the prosecutrix left his room.

9. PW-7, Dr. Kavita, CMO, LBS Hospital, deposed on behalf of Dr. Aparna Gupta who had prepared the MLC of the prosecutrix and had left the service. As per the MLC Ex.PW- 7/A, the hymen of the prosecutrix was found torn.

10. PW-11 Ms. Manisha Upadhyaya, Senior Scientific Officer (Biology), FSL prepared the biological report Ex. PW-11/A and serological report Ex. PW 11/B. As per the report, semen was detected on the shirt, salwar and underwear of the prosecutrix, cotton wool swab marked as Vaginal Secretion, cotton wool swab marked as Cervical Mucus Collection and underwear of the appellant.

11. Considering the cogent and convincing testimony of the prosecutrix, duly corroborated by the testimony of independent witness PW-6, Dhananjay Gupta, the MLC Ex. PW-14/A and the FSL report, I find no infirmity in the impugned judgment of conviction of the appellant for offence punishable under Sections 366/376 IPC and the order on sentence. Appeal is accordingly dismissed.

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

13. TCR be returned.

(MUKTA GUPTA)
JUDGE

OCTOBER 18, 2016
‘vn’.