

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

% Decided on: January 11, 2017

+ **CRL.A. 612/2001**

SHER SINGH

..... Appellant

Represented by: Mr. Sumit Goswami, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Hirein Sharma, APP for
State with ASI Ashwani, PS
Mehrauli.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Convicted for offence punishable under Section 376 IPC Sher Singh challenges the impugned judgment dated 13th July, 2001 and the order on sentence dated 2nd August, 2001 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹500/- for offence punishable under Section 376 IPC.

2. Assailing the conviction, learned counsel for Sher Singh contends that the application for medical examination of the prosecutrix was filed after 12 weeks from the registration of FIR and thereafter, the prosecutrix declined to undergo medical examination. Furthermore, the FIR was initially registered for offence punishable under Section 354 IPC, however, Section 376 IPC was added later, on the basis of a subsequent statement made by the prosecutrix. There is contradiction in the testimony of PW-1, mother-in-law of the prosecutrix and PW-2, the prosecutrix. PW-1 stated in her testimony that the prosecutrix was sleeping alone on the roof, however, PW-2 stated

that at the time of incident, PW-1 was also sleeping on the roof with her. PW-1 also stated that she saw the prosecutrix throwing bricks at Sher Singh, however, no bricks were recovered during investigation. Further PW-2 stated that PW-1 threw the bricks on Sher Singh. No injury was found in the MLC of the prosecutrix to fortify the allegations of rape. No pieces of bangles were recovered though the prosecutrix stated in her testimony that her bangles broke during the struggle. None of the neighbours who were sleeping on the roof as admitted by the prosecutrix were examined. No alarm was raised so that she could be rescued. Lastly, the prosecutrix was not sure about the identity of the assailant as there was no electricity.

3. Per contra learned APP for the State submits that the impugned judgment suffers from no illegality. The conviction can be based on the sole testimony of the prosecutrix which is cogent and convincing.

4. The prosecution case springs out from FIR No. 152/1995 registered at PS Mehrauli under Section 354 IPC on 14th May, 1995 at 15.30 hours on the basis of the statement made by PW-2 wherein she stated that in the intervening night of 12th May 1999 and 13th May 1999 around 2:00 A.M. when she was sleeping near her mother-in-law on the roof of the house, she felt some pressure on her mouth as a result of which she woke up. She saw Sher Singh was trying to muffle her face with his hand. She further stated that she managed to remove his hand from her mouth and raised alarm but Sher Singh opened the "Nara" (cord of her lower garment) and assaulted her modesty. PW-1 woke up on hearing the alarm, so Sher Singh ran away. Later on, the prosecutrix made a supplementary statement wherein she stated that she was not able to give full account of what happened to her in the earlier statement. She stated that on the relevant night when she was

sleeping, Sher Singh after removing her salwar committed rape upon her without her consent. The MLC of the prosecutrix was conducted almost after 12 weeks of the registration of the FIR. The lower garment (salwar) with broken string was taken into possession after almost 5 months from the date of incident. The statement of the prosecutrix under Section 164 Cr.P.C. was recorded after almost 7 months from the date of occurrence. Sher Singh was arrested by PW-11 SI Satish Kumar. Charge sheet was filed under Sections 376/506 IPC.

5. PW-2 prosecutrix deposed that during the relevant night when she was sleeping on the roof of her house, Sher Singh came to her, gagged her mouth and broke the nara (string) of her salwar. Thereafter, he committed forcible sexual intercourse with her. She also stated that when she raised alarm, her mother-in-law PW-1 who was sleeping on the nearby roof came there, however, Sher Singh fled away. During her cross examination, she stated that she was pregnant on the date of incident. Though she mentioned her pregnancy to be 6/7 months old, however, it was noted in the MLC that her pregnancy was less than 5 months on the date of the incident. She also admitted that neighbors were sleeping on the roof tops. On being questioned whether she knew Sher Singh prior to the incident, she stated that the father of Sher Singh was the cousin of her father-in-law.

6. PW-1, mother-in-law of the prosecutrix, stated that the prosecutrix was sleeping alone on the roof. When she heard the cries of the prosecutrix, she woke up and saw Sher Singh running away in haste. She further stated that, she picked up a brick and threw it on Sher Singh while he was running away.

7. Even though there is no merit in the contention of learned counsel for

the appellant that in the MLC of the prosecutrix no injuries were found, as the MLC was conducted belatedly after a period of 12 weeks from the registration of the FIR and was thus meaningless however, his other contentions merit consideration.

8. Though the alleged incident took place on the intervening night of 12th/13th May, 1999, the complaint was given only on 14th May, 1999 on which FIR was registered on the same day at 15.30 hours. The complaint was recorded on a detailed statement of the prosecutrix and in that the only allegation was of outraging the modesty by opening the “Nara” of the salwar. The allegations of rape cropped up for the first time in the supplementary statement recorded on 19th May, 1995. There is no reason attributed as to how the allegations of rape were not stated on 14th May, 1999. The version of the prosecutrix that her mother-in-law was sleeping with her on the rooftop is belied by the version of the mother-in-law who stated that the prosecutrix was sleeping alone on the rooftop. Despite several neighbours sleeping on the adjoining rooftops none of them was cited as witness and nobody heard the alarms of the prosecutrix which according to the mother-in-law she heard despite being not on the same floor. Admittedly, parties are related. The appellant being related to the father-in-law of the prosecutrix and there being disputes between the relatives has been proved by defence evidence.

9. In view of the aforesaid discussion this Court finds that though the version of the prosecutrix with respect to the allegation under Section 354 IPC is substantiated, as regards offence of rape the same is material improvement and to that extent the appellant deserves the benefit of doubt. Consequently, the conviction of the appellant is modified to one for offence

punishable under Section 354 IPC. When the sentence of the appellant was suspended by this Court pending hearing of the appeal, the appellant had undergone approximately four months imprisonment. Thus the sentence of the appellant is modified to the period already undergone.

10. Appeal is disposed of. The bail bond and the surety bonds are discharged.

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

12. TCR be returned.

(MUKTA GUPTA)
JUDGE

JANUARY 11, 2017
‘vn’

