

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

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Reserved on: 11th April, 2017

Decided on: 28th April, 2017

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CRL.A. 513/2015

RANJEET

..... Appellant

Represented by: Ms. Shivani Luthra Lohiya and
Mr. Prateek Yadav, Advocate.

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Ashok K. Garg, APP for
the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Ranjeet challenges the impugned judgment dated 13th February, 2015 convicting him for offences punishable under Sections 451 IPC and 376 IPC and the order on sentence dated 23rd February, 2015 directing him to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/- for offence punishable under Section 451 IPC and rigorous imprisonment for a period of seven years and to pay a fine of ₹10,000/- for the offence punishable under Section 376 IPC.

2. Assailing the conviction, learned counsel for the appellant submits that there are material improvements and glaring contradictions in the testimony of the prosecutrix. It is highly improbable that no neighbour heard the hue and cry raised by the prosecutrix. There was no other entry to the flat except the main door which was stated by the prosecutrix to be locked by her from inside. Even as per the evidence of the prosecution witnesses and the

site pan Ex.PW1/C, the appellant could not have entered the house of the prosecutrix. It was further highly improbable that the prosecutrix did not know the appellant who was residing in the same building for the last 20 years, however, she knew the brother of the appellant who did not reside there for more than one year. Lastly, it was pointed out that DW-2 Sunil Kumar, who was earlier cited as a prosecution witness, was given up by the prosecution and examined as defense witness later.

3. Learned APP for the State on the other hand submits the judgment and the order on sentence suffer no illegality. The conviction of the appellant can safely be based on the sole testimony of the prosecutrix.

4. Process of law was set into motion on 18th September, 2014 around 3:03 A.M. on receipt of a PCR call stating that "*H. No. - 33/34 No. 204 Bengali Colony, M Enclave caller ke ghar mein koi aadmi gus kar batameezi karne laga hai*". The aforesaid information was recorded as DD No. 8A and assigned to PW-10 SI Gaje Singh who along with Constable Ravi and PW-6 lady Constable Praveen Kumari reached the place of incident and met the Prosecutrix and PW-2 her daughter. On making inquiries, the prosecutrix stated that somebody entered her house and started misbehaving with her. PW-8 SI Kamlesh recorded the statement of the prosecutrix wherein she stated that she was staying as a tenant at the aforesaid address with her daughter for the last four years. Her husband had passed away in the year 1991. She had two children, her son, who was married, stayed in Kolkata and her daughter lived with her. In the intervening night of 17th and 18th September, 2014, her daughter had gone for her job at Gurgaon and she was alone at home. When she was sleeping in her flat after closing the door from inside, one man started assaulting and when she woke up and tried to save

herself, that man gagged her mouth, gave bite on her cheek, tried to rape her and inserted his finger into her vagina. When she pushed him, she recognized him due to light in the room. He resided at the fourth floor of the same house and was the brother of Sanjeev whom she had seen going and coming on the fourth floor but she did not know his name. Sanjeev had shifted from the fourth floor, however, his brother still lived on the fourth floor. Thereafter, that man ran away from her room and since she was scared, she noticed that the door of the house was open, which she closed and waited for her daughter to come. When her daughter came around 3:00 A.M., she narrated the entire incident to her who in turn called at the Women Helpline 1091. Thereafter, police from PS Dabri came to her place. She narrated the entire story to the police and police got that man from the fourth floor whom she identified as the one who misbehaved with her. She stated that she did not know how that man entered into her house. She further stated that the name of that man was revealed to her as Ranjeet through police. On the basis of her aforesaid statement, FIR No. 773/2013 was registered at PS Dabri under Sections 376/451 IPC. Medical examination of the prosecutrix was conducted at DDU Hospital. The appellant was arrested vide arrest memo Ex. PW-1/B and he was also taken to DDU Hospital for his medical examination.

5. PW-1 the prosecutrix deposed as per her statement made to the police. However, she also stated that when she woke up, Ranjeet was standing near the door. She did not know how he entered into her room as she had closed the door of her room from inside. She further stated that Ranjeet had given her a bite on her right cheek. She stated that she had made a call to 100 number and thereafter, the police reached her house. During her cross

examination, she stated that nobody can enter her room from window. After Ranjeet had left her room, she raised hue and cry but nobody came to help her. She further added that she did not mention about the hue and cry either in her statement recorded by the police or the one recorded by the learned Magistrate. She admitted that Ranjeet used to lock the door at the stairs leading to terrace and she used to object. She had objected once or twice and a petty quarrel had also taken place between them. Ranjeet was staying in this house before they shifted to the house. She did not know whether Ranjeet was residing in the said house for the last 12 years as a tenant.

6. PW-2, daughter of the prosecutrix, stated that when she reached her home, there was swelling on the right cheek of her mother. When she asked her mother, she stated that Sanjeev's brother misbehaved with her, tried to touch her inappropriately and also tried to insert his finger into her private part. During her cross examination, she stated that it was correct that her mother had told her that Ranjeet had inserted his finger into her private part. She further stated that her mother had told her that she had bolted the iron net door of the flat from inside but had kept the wooden door open. There was a small hole about 3 inches in diameter in the iron net fixed in the door. The hole was near the lock of the door.

7. PW-3 Dr. Gazal Garg, Senior Resident (Obes. & Gynae), DDU Hospital, stated that he had examined the prosecutrix on 18th September, 2014 and prepared the MLC Ex.PW3/A. He noticed swelling and a bruise on her right cheek.

8. PW-4 Dr. Khushwant Singh, Senior Resident (Casualty), DDU Hospital, had examined Ranjeet on 18th September, 2014 vide MLC Ex. PW-4/A. As per the MLC, no fresh external injury was noted at the time of

medical examination on Ranjeet.

9. Ranjeet, in his statement under Section 313 Cr.P.C., stated that he had been falsely implicated in the case. The prosecutrix used to quarrel with him almost daily and it was because of these quarrels and strained relations between them that she had filed a false complaint against him.

10. DW-1 Sushmita Bhattacharya stated that she resided on the first floor whereas Ranjeet lived on the fourth floor of the same house. She knew the prosecutrix who is a quarrelsome lady. The prosecutrix quarreled with Ranjeet twice or thrice in her presence as Ranjeet used to put lock on the door of the staircase leading from the fourth floor to the terrace.

11. The prosecution case revolves mainly around two important facts. Firstly, Ranjeet bit on the right cheek of the prosecutrix however as per the MLC she suffered a bruise on the cheek and not a bite mark. Secondly, though the prosecutrix had stated that she locked the door from inside, the issue remains how did Ranjeet enter the flat when it was locked from inside. As per the MLC of the prosecutrix, there was no bite mark on the cheek of the prosecutrix, rather there was a bruise and swelling on her right cheek. There is difference between a bite mark and bruise mark. It is admitted by the prosecutrix herself that there used to be quarrel between the prosecutrix and Ranjeet on account of locking of the door leading to the terrace. Ranjeet in his statement under Section 313 CR.P.C. also stated about the quarrels between the parties. The factum of quarrel has also been corroborated by DW-1 Sushmita Bhattacharya. Testimony of DW-2 Sunil Kumar, who was earlier cited as prosecution witness, however, dropped and was examined as a defence witness is not relevant as the same is hearsay. The bruise mark on the cheek of the prosecutrix probablises the quarrel between the prosecutrix

and Ranjeet and not sexual assault by Ranjeet.

12. Insofar as to the issue how Ranjeet entered the flat since the door was locked from inside is concerned, neither the prosecutrix nor her daughter could give a plausible explanation. However, PW-8 SI Kamlesh in her cross examination stated that the prosecutrix had told her that she had bolted only the iron door from inside and had kept the wooden door open. There was a two and a half inch cut on the iron net in the iron door near its handle but a person cannot insert his hand through that cut to open the bolt from inside. If a person tries to insert the hand through that cut, he would definitely get cut marks on his hand. Thus, if Ranjeet had opened the door by inserting his hand from that hole in the iron net on the door, he would have sustained some injury. However, as the MLC of Ranjeet Ex. PW-4/A, no fresh external injury was found. Thus, the allegation of the prosecutrix that Ranjeet entered the flat and misbehaved with her is not fortified by the other evidence on record.

13. A perusal of the record also shows that there are material contradictions in the testimony of the prosecutrix. Furthermore, the statement of the prosecutrix that she did not know Ranjeet is belied by the fact that he was staying on the fourth for the last 20 years and the prosecutrix was also staying on the second floor of the house for the last four years. Thus, the version of the prosecution that she did not know the appellant but his brother Sanjeev cannot be also believed.

14. From the evidence on record it can be safely held that the prosecution has failed to establish its case beyond reasonable doubt against the appellant. The impugned judgment of conviction and order on sentence are therefore set aside. Ranjeet is acquitted of the charges framed.

15. Appeal is disposed of. Appellant who is in custody be released forthwith if not required in any other case.
16. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.
17. TCR be returned.

(MUKTA GUPTA)
JUDGE

APRIL 28, 2017
‘v mittal’

