

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

% Decided on: 19th March, 2018

+ **CRL.A. 750/2017 and Crl. M.B. No. 1675/2017 (suspension)**

SIKANDAR @ BABU

..... Appellant

Represented by: Mr. Vipin Chandra and Mr.
Sanjeev Sarker, Advocates.

versus

STATE

..... Respondent

Represented by: Mr. Amit Gupta, APP for State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present appeal Sikandar @ Babu challenges the impugned judgment dated 11th May 2017, whereby he was convicted for the offences punishable under Sections 354/451/506(I) IPC and the order on sentence dated 12th May 2017 directing him to undergo rigorous imprisonment for the period of one year for the offence punishable under Section 354 IPC, rigorous imprisonment for a period of one year and to a fine of ₹1000/- , in default whereof to undergo simple imprisonment for a period of one month, for the offence punishable under Section 451 IPC and rigorous imprisonment for the period of one year for the offence punishable under Section 506 (I) IPC.

2. Assailing the conviction, learned counsel for the appellant contends that the appellant has been falsely implicated at the instance of father of the prosecutrix who was an alcoholic and used to fight with the father of the appellant. There are material contradictions and inconsistencies in the version of the prosecution witnesses. There are discrepancies qua the place

of incident. The appellant has not been connected with the offence. No overt act has been attributed to him, hence is liable to be acquitted.

3. Per contra, learned APP for the State submits that the prosecution has proved beyond reasonable doubt the offence committed by the appellant based on the testimony of material witnesses, that is, the victim and the complainant, hence the appeal be dismissed.

4. Process of law was set into motion on 26th December 2011 at around 6:20 P.M., when telephonic information was received from the control room stating '*H.No. 108, Sherpur Gaon, Shiv Mandir, ek aadmi ne 10 saal ki ladki ke saath galat kaam kiya hai*'. Aforesaid information was recorded vide DD No. 26A (Ex.PW-11/A) and was entrusted to SI Amit Prakash. He along with lady Ct. Aarti proceeded to the spot. Ct. Tejveer was also informed and was asked to reach the spot. On reaching Gali No.1, Village Sherpur they met the complainant (Aunt of victim) who produced her niece (victim herein). Statement of complainant was recorded wherein she stated that her Mausi resided near her house situated in Gali No.1, Sherpur Gaon on rent along with her son and his family. Her husband used to go for work and since she used to be alone at house she used to go to her Mausi's place for lunch. On 26th December, 2011 around 3:30 P.M. when she went to her Mausi's place to have lunch, she found that the door was closed but not latched. When she opened the door and went inside, she saw that one person Sikander @ Babu, whom she knew, was doing wrong act with her niece who was lying on the bed. On seeing her, Sikander @ Babu ran away and while running he threatened her that if she informs anyone she would face dire consequences. She consoled her niece since nobody was present at the house at the time. Thereafter, her Mausi came and she called on 100 number.

Aforesaid statement was recorded vide Ex.PW-7/A. On the basis of the aforesaid statement, FIR No.434/2011 (Ex.PW-4/A) was registered at PS Khajuri Khas for offences punishable under Sections 342/354/506 IPC.

5. Thereafter, W/Ct. Aarti along with Ct. Tejveer took the victim to GTB Hospital for her medical examination. In the meantime, parents of the victim also reached the hospital. Thereafter, SI Amit Prakash went to the place of the incident and prepared the site plan (Ex.PW-7/B) at the instance of the complainant Uma. He along with Ct. Tejveer and Uma conducted a raid at the house of Sikander @ Babu and apprehended him at the instance of the complainant. He arrested him vide memo Ex.PW-7/C, conducted his personal search vide memo Ex.PW-7/B and recorded his disclosure statement vide memo Ex.PW-7/E. On 27th December 2011, statement of victim was recorded under section 164 Cr.P.C. (Ex.PW-1/A).

6. On completion of investigation, charge sheet was filed under Sections 342/354/376/506/511 IPC. Vide order dated 16th September 2013, charge was framed for the offences under Sections 451/506 IPC and Section 376(2)(f) read with Section 511 IPC.

7. Victim was examined as PW-1. She deposed that on the day of the incident, when she was present in the house, one person came inside the house and pressed her mouth. She does not remember the name of the person. That person also tied her hands and feet and showed her a knife. He made her lie on the bed. Thereafter, that person removed her underwear and also removed his underwear and then lied down on her. In the meantime, her aunt came and he fled away. During her cross examination, she stated that she does not know any boy in the neighborhood by the name of Sikander. Her hands and feet were tied by the appellant using a string.

8. Complainant was examined as PW-7. She deposed in sync with her statement made to the police. She also stated that on the day of the incident she found the victim was lying on the cot and one male person was lying over her and his lower clothes were not on his body and there were also no clothes on the lower body of the victim.

9. Mother of the victim, who was examined as PW-2, stated that the victim used to go to school in the morning at 8.00 A.M. and used to come back around 1.00 P.M. At the time of the incident, she along with her husband were present at the work place of her husband. When they came back home their neighbor informed that her sister-in-law and the victim had gone to the police station and also narrated the incident to her.

10. Father of the victim (PW-16) deposed in conformity with the mother of the victim.

11. Chandani (PW-10) who used to stay in the house of Dharamveer in Gali No.1, Village Sherpur, stated that on the day of the incident, at about 1 P.M., she saw the victim returning from school and going inside the room. At that time, her grandmother and her parents had gone for their respective works and her younger brother had also accompanied his mother. After sometime she saw that the victim was crying and her bua was with her and was trying to console her. When she inquired about the reason they informed her that one person came inside the house of the victim and tried to commit rape upon her and also threatened her.

12. Dr. P. Ram (PW-14), CCM, GTB Hospital, Delhi, stated that he was deputed to depose regarding the MLC prepared by Dr. Munesh who was no longer working at the hospital and his whereabouts were not known. As per the MLC (Ex.PW-14/A), on local examination no fresh external injuries

were found. The victim was referred to Gynae Department for further examination.

13. Dr. Sanjeeta Behra (PW-13), CMO, Gynae Department, GTB Hospital, Delhi, stated that she was deputed to depose on behalf of Dr. Geetika Trivedi who had examined the victim and whose whereabouts were not known. She stated that she could identify the handwriting and signatures of Dr. Geetika Trivedi as she had worked with her. MLC prepared by Dr. Geetika Trivedi was exhibited as Ex.PW-13/A. As per the medical observations, there was no injury seen and the hymen was found intact. Parents of the victim had refused for internal examination of the victim.

14. Shatrughan Upadhaya (PW-15), Teacher, EDMC Primary School, Biharipur, Delhi stated that as per their record the date of birth of the victim is 10th March 2004. The copy of admission form is Ex.PW15/A (OSR), copy of admission and withdrawal register is Ex.PW-15/B and the affidavit of the mother of the victim in support if the date of birth is Ex.PW-15/C (OSR).

15. From the evidence on record it is proved that on the date of alleged incident the victim was a minor aged 7 years. In the first statement itself the appellant has been named. There are no contradictions in the testimony of the victim and her aunt, the complainant of the case. Though appellant claimed that he had been falsely implicated, however, contrary stands have been taken in suggestion to various witnesses therefore, not probablising the defence of appellant. Suggestion to the complainant was that the father of the victim used to quarrel with the appellant after consuming liquor and that on the day of incident a quarrel took place between the victim's father and son of the appellant over the issue of filling up the water. Suggestion to the victim and the mother of the victim was that the victim and the son of the

appellant had a quarrel few days before the incident, hence the appellant has been implicated to take revenge. In view of overwhelming evidence on record this Court finds no error in the impugned judgment of conviction and order on sentence.

16. Appeal is accordingly dismissed.

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

18. TCR be returned.

(MUKTA GUPTA)
JUDGE

MARCH 19, 2018

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