

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

% *Reserved on: 28th September, 2018*
Decided on: 4th October, 2018

+ **CRL.A. 981/2017**

SUMAN @ MOHD HASAN Appellant
Represented by: Ms. Naomi Chandra, Advocate

versus

STATE Respondent
Represented by: Mr. Ashok K. Garg, APP for
the State with SI Prity Bala, PS
New Friends Colony.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal, Suman @ Mohd. Hasan challenges the impugned judgment dated 29th August, 2017 convicting him for the offences punishable under Sections 452/506/325/366/354B and Sections 376/511 IPC and the order on sentence dated 8th September, 2017 directing him to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹5,000/-; in default whereof to undergo simple imprisonment for a period of three months for the offence punishable under Section 452 IPC, rigorous imprisonment for a period of one and a half year and to pay a fine of ₹3,000/- and in default whereof to undergo simple imprisonment for a period of two months for the offence punishable under Section 506 IPC, rigorous imprisonment for a period of three years and to pay a fine of

₹10,000/-; in default whereof to undergo simple imprisonment for a period of four months for the offence punishable under Section 325 IPC, rigorous imprisonment for a period of three years and to pay a fine of ₹7,000/-; in default whereof to undergo simple imprisonment for a period of four months for the offence punishable under Section 366 IPC, rigorous imprisonment for a period of three years and to pay a fine of ₹5,000/-; in default whereof to undergo simple imprisonment for a period of three months for the offence punishable under Section 354B IPC and rigorous imprisonment for a period of four years and to pay a fine of ₹10,000/-; in default whereof to undergo simple imprisonment for a period of six months for the offence punishable under Section 376/511 IPC.

2. Learned counsel for the appellant submits that there are variations in the testimonies of witnesses as to how the appellant entered the house at 1:30 A.M. There were two versions of the prosecution story, one that appellant threatened the husband of the prosecutrix and he ran away and the other that the husband of the prosecutrix chased the appellant. The two relatives have not been examined as prosecution witnesses. Since the prosecutrix became unconscious, she would not have known what had happened. Husband of the prosecutrix was the only eye witness, who purportedly saw the prosecutrix in a naked condition and the appellant lying on top of her. Though there were public witnesses when the prosecutrix was recovered in the aforesaid condition, however, they have not been examined. Injury was due to the fall and not due to sexual offence. Lastly, even on the basis of the evidence on record, no sexual offence has been made out.

3. Learned APP for the State submits that the statement of the prosecutrix that the appellant pushed her was corroborated by her husband

(PW-2). Further, the prosecutrix was found in naked condition in the godown and semen was found on the underwear of the appellant proving the case of the prosecution. There was recovery of knife and the appellant was apprehended at the spot. Thus the appeal be dismissed.

4. Police machinery was set into motion on 5th April, 2015 at 2:04 A.M. on receipt of information that one lady from Jhuggi No. 365, Taimur Nagar had been taken to the jungle. Aforesaid information was recorded vide DD No. 5A (Ex.PW-4/D) and was assigned to SI Janak Singh. He along with Ct. Mahender went to pahari No.2, Taimur Nagar and met the husband of the prosecutrix. He with the help of the husband of the prosecutrix and public persons tried to search the prosecutrix. When they reached the godown of Siraj, public persons present there told him that Suman @ Mohd. Hasan was lying on that lady in a naked condition and the clothes of the prosecutrix were also disturbed. Suman @ Mohd. Hasan was apprehended and at that time he was in his underwear only. The prosecutrix was without clothes. Suman @ Mohd. Hasan was taken to the police station and the prosecutrix was taken to the hospital. The doctor declared her unfit for statement. Her MLC was collected. Statement of husband of prosecutrix was recorded vide Ex.PW-10/A on which FIR No. 133/2015 (Ex.PW-4/A) was registered at PS New Friends Colony for offences punishable under 452/323/506/365/376 IPC.

5. SI Sajjan Kumar, Incharge Crime Team, along with SI Janak and W/SI Seema went to Taimur Nagar Jhuggi, inspected the spot and lifted the blood samples. A salwar of a lady was also found at the jhuggi. Thereafter, they went to the vacant plot where a pink colour upper garment of a lady and a yellow colour t-shirt of a man were found. Aforesaid articles were seized

vide seizure memo Ex.PW-13/G. One mobile phone of make Samsung was also recovered from the pant of Suman @ Mohd. Hasan which was also seized vide seizure memo Ex.PW-13/H. Spot was photographed vide Ex.PW-14/P1 to Ex.PW-14/P13 and a report on the spot was prepared vide Ex.PW-11/A.

6. Suman @ Mohd. Hasan was arrested vide arrest memo Ex.PW-2/B. His personal search was conducted vide Ex.PW-13/A and disclosure statement was recorded vide Ex.PW-13/B. Pointing out memo of the place of incident was prepared at the instance of Suman @ Mohd. Hasan vide Ex.PW-13/C. A knife was recovered from the godown of Siraj at the pointing out of Suman @ Mohd. Hasan which was seized vide seizure memo Ex.PW-13/E. On 13th April, 2015, the exhibits were sent to FSL.

7. On 17th April, 2015, an application vide Ex.PW-16/D was moved before the Magistrate for recording of statement of prosecutrix under Section 164 Cr.P.C. who got recorded her statement on 5th May, 2015, after another application vide Ex.PW-8/A was filed before the Magistrate for recording of her statement.

8. Prosecutrix (PW-1) stated that on 5th April, 2015 at about 1:30 A.M., when she, her husband and children were sleeping in the house, they heard the noise of knocking on the door. When they asked who was knocking, they got to know that he was the brother of her husband. Her husband opened the door. Suman @ Mohd. Hasan entered the house and bolted the door from inside. He was carrying knife and revolver. He asked her to remove the clothes and then threatened her husband with the knife. She started shouting from the room. Suman @ Mohd. Hasan made her fall on the ground and she became unconscious. Her husband ran away from the

house to save his life. She came into senses in the hospital. She stated that she came to know from people that she was lying naked near the nala of her house.

9. Husband of prosecutrix (PW-2), deposed in sync with the testimony of the prosecutrix. He further stated that when Suman @ Mohd. Hasan pounced upon his wife, she fell from the first floor to the ground floor and sustained injuries on the head. He escaped from the jhuggi and raised hue and cry to awake the neighbours. During search of his wife, she was found in a straw godown at pahari No. 1. When he saw her wife, she was in naked condition and Suman @ Mohd. Hasan was lying on her.

10. Dr. Indrajit (PW-3), SR Medicines, JPN Trauma Centre, AIIMS, Delhi deposed that he observed six injuries on the person of the prosecutrix which are noted below:

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|------|---------|---|
| i. | Wound 1 | Abrasion right forehead right temporal and maxillary region |
| ii. | Wound 2 | Laceration right fronto-temporal region 5 X 0.5 cm |
| iii. | Wound 3 | Other contusion over the right shoulder acromial process 3 X 3 cm |
| iv. | Wound 4 | Abrasion right knee small abrasion 2 X 1 cm |
| v. | Wound 5 | Abrasion right forearm flexor aspect linear abrasion 2 cm |
| vi. | Wound 6 | Swelling over the left wrist |

11. Injuries on the prosecutrix were opined to be grievous as she had suffered occipital sub dural hemotoma with occipital sub arachnoid hemorrhage. MLC was proved vide Ex.PW-3/A and discharge summary vide Ex.PW-3/B.

12. Ms. Imrana (PW-15), Sr. Scientific Officer (Bio), FSL Rohini, New Delhi stated that on examination, no male DNA profile could be generated from the source of Ex.1 and Ex.2 (vaginal slide and swab of prosecutrix) and Ex.10b (salwar of prosecutrix). Male DNA profile generated from the source of Ex.7 (underwear of appellant) was similar with DNA profile generated from Ex.4 (blood in gauze of the appellant). Detailed report was proved vide Ex.PW-15/A.

13. Jaunesh (PW-6) and Jeetu (PW-7), neighbours of the prosecutrix, were declared hostile.

14. Appellant has not been charged of the offence of rape but attempt to rape, hence non-accounting of the male DNA in the vaginal smear of the prosecutrix is immaterial. From the evidence of the prosecutrix it is evident that Suman @ Mohd. Hasan came to their house at midnight, threatened them making the prosecutrix fall down resulting in her becoming unconscious and receiving injuries. Further, offences committed by Suman @ Mohd. Hasan have been narrated by the husband of the prosecutrix who stated that he went out for help and when they came back, found her missing. When they searched her, she was found in a naked condition with Suman @ Mohd. Hasan lying on her. Version of the prosecutrix is corroborated by her husband and injuries received. Further version of the husband of the prosecutrix is corroborated by the recovery of the clothes of the prosecutrix from the place of incident as also the first PCR call made and proved as Ex.PW-4/D.

15. Contention of learned counsel for the appellant that there is variation in the testimony of the prosecutrix and her husband qua his running away from the spot has been duly explained by her husband who ran to call people

for help, one of whom made the PCR call. Further, because public witnesses have not supported the case of the prosecution, does not belie the version of the prosecutrix and her husband.

16. In view of the discussion aforesaid this Court finds no ground to interfere in the impugned judgment of conviction and order on sentence. Appeal is dismissed.

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

18. TCR be returned.

OCTOBER 04, 2018
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(MUKTA GUPTA)
JUDGE



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