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

+ CRL.A. 10/2017

RAJENDER KUMAR

.....Appellant

Through: Mr. Ravinder Narayan, Advocate.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Suman PS Sarita Vihar, New
Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

29.07.2025

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1. The present appeal has been instituted under Section 374 Cr.P.C. against the impugned judgment of conviction dated 28.11.2016 and order on sentence dated 06.12.2016 passed by the Ld. Addl. Sessions Judge – Special Fast Track Court, Saket Courts, New Delhi in the case arising out of FIR No. 237/2013 registered under Sections 452/376/307 IPC at P.S. Sarita Vihar, New Delhi.

Vide the aforesaid judgment, the appellant was held guilty for the offences punishable under Sections 452/354/308 IPC. Vide the aforesaid order on sentence, the appellant was sentenced to undergo rigorous imprisonment for 1 ½ years and pay a fine of Rs. 5,000/- for the offence punishable under Section 452 IPC, in default whereof he was directed to undergo simple imprisonment for 3 months. He was sentenced to undergo rigorous imprisonment for 1 ½ years and to pay a fine of Rs. 7,000/- for the offence punishable under Section 354 IPC, in default whereof he was



directed to undergo simple imprisonment for 4 months. He was further sentenced to undergo rigorous imprisonment for 2 years and pay a fine of Rs. 8,000/- for the offence punishable under Section 308 IPC, in default whereof he was directed to undergo simple imprisonment for 6 months. All sentences were directed to run concurrently and benefit of Section 428 Cr.P.C. was extended to the appellant.

2. Pithily put, the prosecution's case is that on 05.07.2013, the appellant committed house trespass by entering the prosecutrix's *jhuggi* without her consent, while she was alone, and inflicted injuries, including on her head, by repeatedly assaulting her, and further committed rape upon her.

When the prosecutrix's brother returned from work, he found her half-naked and bleeding from the head, whereupon the police was informed and she was taken to the hospital. On the brother's statement, an FIR was registered. Upon completion of investigation, the police filed a chargesheet, and the Trial Court thereafter framed charges, both under Sections 452/376/307 IPC. The appellant was, however, ultimately convicted under Sections 452/354/308 IPC.

3. The prosecution examined 26 witnesses in support of its case. PW-4, the brother of the prosecutrix, testified that upon returning home from work, he found the prosecutrix unconscious, half-naked, and bleeding from the head. The police was then contacted, and the prosecutrix was rushed to the hospital, where she was declared unfit to give a statement. The prosecutrix gave her first statement to the police on 22.07.2013, the day she was discharged from the hospital. A supplementary statement was recorded on 01.08.2013, followed by her statement under Section 164 Cr.P.C. on 07.08.2013. Her version of events, as recorded in all these statements, as



well as in her deposition as PW-2, remained consistent in identifying the appellant as the perpetrator of the offence. She stated that the appellant had entered her house and assaulted her, ultimately causing her to lose consciousness. The MLC of the prosecutrix (Ex. PW-24/B) confirmed blunt force injuries to her head, consistent with the assault described in her statements and testimony.

4. The statement of the appellant was recorded under Section 313 Cr.P.C., wherein he denied all allegations and claimed false implication owing to a prior land dispute with the prosecutrix's family. It was submitted that there were material contradictions in the prosecutrix's version, that no semen was detected on her clothes as per the FSL report, and that the medical evidence only indicated blunt force trauma. The appellant further relied on the testimony of defence witnesses DW-1 and DW-2 to support his plea of alibi and contended that his name was introduced belatedly at the instance of the prosecutrix's brother to falsely implicate him.

5. Upon a perusal of the record, it is clear that the charge under Section 376 IPC was held not proved beyond reasonable doubt by the Trial Court. The medical and forensic material does not establish penetrative sexual intercourse, as no semen was detected on the prosecutrix's clothes or gynaecological samples (Ex. PW-26/C). The record, however, proves that the appellant entered the prosecutrix's *jhuggi* without consent, assaulted her by repeatedly striking her on the head, tore her clothes, and left her half-naked, unconscious, and bleeding from the head, in which condition she was found by PW-4. The prosecutrix, who was acquainted with the appellant, identified him as the assailant once she had sufficiently recovered to make a detailed statement, and her various accounts are consistent and corroborated.



The testimony of the prosecutrix is corroborated by the medical evidence, including the MLC (Ex. PW-24/B), which records multiple lacerations on the scalp and a contusion on the neck, and by the CFSL report (Ex. PW-26/C) confirming that the seized bedsheets and towel bore human male blood. The appellant's theory of a land dispute has not been substantiated by any credible evidence and does not shake the consistent testimonies of PW-2 and PW-4.

6. At this stage, learned counsel for the appellant, on instructions from the appellant who is present in person and duly identified by the I.O., states that the appellant, being fully aware of the consequences, does not wish to challenge his conviction under the aforesaid sections; however, he prays that the sentence awarded to him be modified to the period already undergone by him.

7. Even otherwise, this Court, based on the material produced and keeping in mind that the appellant's role was consistently stated by the prosecutrix, and the corroborative medical evidence, concurs with the findings of the Trial Court and finds that no grounds to interfere with the same are made out. Consequently, the conviction of appellant is upheld qua the offences under Sections 452/354/308 IPC.

8. It is submitted that the appellant is an elderly man, about 60 years of age, with aged parents, a wife, and four children, who are all dependent on him. The offence in question pertains to the year 2013. Due to all sentences being directed to run concurrently and the benefit of Section 428 Cr.P.C. being extended to the appellant, he has already undergone 16 months of incarceration, as reflected in the order on sentence dated 06.12.2016, and only 8 months of his sentence remains unexpired. The learned APP states,



on instructions, that the appellant is not involved in any other cases. The appellant's sentence already stands suspended vide order dated 06.01.2017.

9. Keeping in view the aforesaid, the sentence of appellant is modified to the period already undergone. His bail bonds are cancelled and surety is discharged.

10. A copy of this order be communicated to the Trial Court as well as to the concerned Jail Superintendent.

11. The present appeal is disposed of in the above terms.

MANOJ KUMAR OHRI, J

JULY 29, 2025/rd