



2025:DHC:10827



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

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+ **CRL.A. 598/2024**

MUKESH KUMARAppellant

Through: Through: Mr. Aditya Wadhwa,
Advocate

versus

STATE (NCT OF DELHI)Respondent
Through: Mr. Pradeep Gahalot and Mr.
Nawal Kishore Jha, APPs for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred against the judgment dated 24.04.2024 and the order on sentence dated 04.06.2024 passed by the learned Additional Sessions Judge (Fast Track Court-01), Saket Courts, New Delhi, wherein the appellant was convicted for offences under Sections 452, 308, 354 and 354B of the IPC arising from FIR No. 374/2015 registered at Police Station Hazrat Nizamuddin.

2. Vide order on sentence dated 04.06.2024, the learned Trial Court sentenced the appellant to undergo rigorous imprisonment for a period of seven years for the offence under Section 354B IPC and imposed a fine of Rs.30,000/-, with a default sentence of simple imprisonment for three months. For the offence under Section 308 IPC, the appellant was sentenced



to rigorous imprisonment for seven years along with a fine of Rs.10,000/-, and in default, simple imprisonment for one month. For the offence under Section 452 IPC, the appellant was sentenced to rigorous imprisonment for three years and a fine of Rs.10,000/-, with a default sentence of simple imprisonment for one month. For the offence under Section 354 IPC, the appellant was sentenced to rigorous imprisonment for three years and a fine of Rs.10,000/-, with a default sentence of simple imprisonment for one month. The Trial Court directed that all substantive sentences shall run concurrently. Out of the total fine imposed, Rs.15,000/- was directed to be retained towards prosecution expenses and the remaining Rs.45,000/- was ordered to be released to the complainant as compensation. The appellant was also extended the benefit of Section 428 CrPC.

3. The prosecution case, in brief, is that on 27.05.2015 at about 8:30–9:00 p.m., the complainant, who was residing alone in a rented room on the 4th floor of House No.1, Church Lane,*, Delhi, was allegedly assaulted inside her room by the appellant. As per the written complaint, one identified boy entered into her premises while she was listening to music. He was carrying a rod and hit her on her head, after entering from the backside of the house. He hit her multiple times after which she briefly fell unconscious. She heard the sound of hitting and thought that her phone had burst. The appellant had torn her shirt and had come close to her, she shouted for help and he tried to shut her by putting his hand on her mouth. Hearing her, the landlord, residing on the third floor, came out and shouted, causing the assailant to flee. She gave his description as “*dusky, in his twenties and between 5’3 to 5’5, wearing navy blue t-shirt and a light beard*”. The complainant was taken for medical treatment at Jeevan Nursing Home and thereafter examined at AIIMS Trauma Centre, where her injuries



were recorded as simple in nature caused by a blunt weapon. She lodged a written complaint, and on the following evening identified the appellant near Church Road, upon which he was apprehended. The investigation resulted in the filing of a charge-sheet for offences under Sections 452, 308, 354 and 354B IPC.

4. During trial, the prosecution examined ten witnesses. The complainant was examined as PW-6. ASI Kuldeep (PW-7) and SI Narendra Sehrawat (PW-9) were the material police witnesses, who deposed regarding receipt of information, response to the scene, recovery of the iron rod, seizure of bloodstained articles, registration of FIR, arrest of the appellant, and further investigation. PW-5 and PW-8 proved the medical records from Jeevan Hospital and AIIMS Trauma Centre respectively. The remaining witnesses were formal witnesses relating to registration of the FIR, forwarding of exhibits and seizure memos.

5. The appellant was examined under Section 313 Cr.P.C., wherein he denied the allegations and claimed false implication. He stated that on the night of the incident, he was present at the house of his *bua* in Mahipalpur, his bike also malfunctioned at Vasant Kunj while returning home. The place of incident, i.e, House no. 1, was owned by his aunt, Shakuntala Devi. He came to House No. 4 for changing his clothes. The daughter of his aunt, Arti, informed him that the tenant had been beaten. The complainant was seen coming from third floor to fourth floor in injured condition, he checked the room but nobody was there and he picked up the rod. The police officers *Narendar* and *Kuldeep* came and told him to leave the rod. The girl was taken for medical treatment by his aunt and family. Next day, he was called to the police chowki where the complainant pointed at him across a glass window. Earlier that morning, the police officers had taken his pictures



when he had gone to visit his aunt, they probably sent that picture to the complainant, and that his how he came to be arrested.

The cousin of the appellant was examined as DW-1, who stated that the appellant reached the premises after the incident and had accompanied the family members in assisting the complainant, and that he had not committed the alleged acts.

6. The complainant (PW-6) stated in her examination-in-chief that on 27.05.2015, while she was in her rented accommodation on the fourth floor at House No.1, Church Lane, *, at around 8:30 to 9:00 PM, “*suddenly one boy entered my room and started hitting me with rod.*” She further deposed that she received injuries on her head, shoulder, leg and other parts of the body and due to bleeding, she lost consciousness. She stated that upon regaining consciousness she found that the assailant was attempting to remove her shirt and in the said attempt, the shirt was torn. She raised an alarm and stated that the landlord residing on the 3rd floor heard her and called for her, after which the assailant fled. She identified the appellant in court.

7. The complainant further stated that she was first taken to Jeevan Nursing Home, medically examined, and subsequently taken to AIIMS Trauma Centre. She handed over her blood-stained shirt, undershirt and towel to the IO on the following day. She further deposed that on 28.05.2015, while returning from work at around 9 PM, she saw the accused near Church Road and informed the police, after which the accused was apprehended.

In cross-examination, she denied the suggestion that since she had been living there for 2 years, she knew all the neighbours and other inhabitants. She denied knowledge that the appellant was the cousin of the



landlord and she said she only knew the landlord. She denied that the appellant and the daughter of the landlord also accompanied her to the hospital, she rather deposed that only the landlord went with her. She accepted that the first record prepared at Jeevan Nursing Home mentioned that she had been “*hit by unknown person from back side*”. She denied the suggestion that in her complaint that the appellant was known to her. She denied that the appellant got identified by the IO and stated that she herself identified him at Church Road and that the police officers were informed. She admitted that the IO had sent some photographs of some persons on WhatsApp. She denied that she suspected one person from the photographs on the basis of the colour of the t-shirt. She denied seeing/noticing the appellant before the date of the incident. She knew the landlord, his wife and daughter, but did not visit their room, nor did they visit hers. She denied any dispute with the landlord regarding rent or any matter. She denied suggestions of false implication.

8. PW-7, HC Kuldeep, deposed that upon receiving DD entry No. 30PP regarding a quarrel with a lady, he reached the spot and noticed blood on the stairs and at the 4th floor. He stated that the injured had gone to the hospital. He later accompanied the IO and the complainant to AIIMS Trauma Centre. He further stated that one iron rod lying on the spot was seized, and the blood stains were lifted.

9. PW-8, Dr. Nishant Singh from AIIMS Trauma Centre, proved the MLC. He stated that the complainant had a sutured wound over the left parietal region with abrasions and bruising on multiple parts of the body. He clarified that the injury was categorised as “*simple*” and caused by a “*blunt object*.”



10. PW-9, SI Narender Sehrawat, also stated about presence of blood stains on the staircase and room, the seizure of the iron rod allegedly used in the assault that was found lying in the premises itself, and the seizure of the complainant's clothing. He deposed that on the evening of 28.05.2015, he took the complainant along for a search of the alleged assailant and that she pointed out the accused while he was standing with three other persons at Church Road, following which the appellant was apprehended.

In cross-examination he submitted that no public witnesses were examined at the time of incident and arrest and that the statement of the landlord was not recorded during the investigation. The witness denied the suggestion that no such search was conducted and that the accused was, instead, called to the police station and arrested there. He also denied that any photographs of the appellant were clicked through HC *Kuldeep* and sent to the complainant on WhatsApp by him prior to the arrest.

11. The cousin sister of the appellant was examined as DW1, who identified the appellant as her cousin and stated that at the time of incident, he was with her. When the complainant received injuries and came downstairs, she and the appellant went upstairs. She and her mother got the complainant treated at Jeevan Hospital while the appellant was left on the spot.

In her cross-examination, she stated that her *bhabhi* and brother called her and she rushed to meet them, she asked the appellant to accompany him. Upon reaching, she was told by them that they heard noises from the top floor. Her brother and *Bhabhi* had not checked upstairs and she went with the appellant. She further stated that earlier they resided in the said room at



the top floor and the appellant used to visit and reside in the said room. She stated that there are two doors in the said room and if the rear door is open then anybody can enter the said room from the roof of the adjacent house. She denied the suggestion that she was called by her brother and bhabhi to “hush up” the matter. She denied that her being the sister of the appellant, is trying to save him.

12. Learned counsel for the appellant submitted that the conviction recorded by the Trial Court is unsustainable in view of serious inconsistencies concerning the identification of the accused. It was argued that the complainant initially described the assailant as an “*unknown person*” in the MLC, which contradicts her later claim of recognition. It was further submitted that the appellant was related to the landlord and was a familiar presence at the premises, making the initial claim of the assailant being unknown - doubtful. Learned counsel emphasised that no Test Identification Parade was conducted, despite the complainant claiming that she saw the assailant only momentarily during a sudden attack and subsequently lost consciousness. Reliance was placed on the complainant’s cross-examination, wherein she stated that the IO had sent photographs to her on WhatsApp prior to the arrest, a claim categorically denied by the IO in his deposition, thereby creating uncertainty regarding the fairness and reliability of the process of identification. It was further submitted that there are materially different versions regarding how the appellant came to be identified on 28.05.2015, whether the complainant independently recognised him while returning from work, as she stated, or whether the police took her along in search of the accused, as stated by PW-9. In the absence of a lawful and reliable identification procedure, and in view of the contradictions between



PW-6 and PW-9, it was argued that the identification of the appellant is doubtful and cannot form the sole basis for conviction.

13. Learned APP for the State opposed the appeal and submitted that the judgment of conviction does not warrant interference as the complainant's testimony has remained consistent on all material aspects and is duly corroborated by the medical evidence, seizure memos and arrest proceedings.

14. The complainant, in her initial statement, has in great detail described the incident. She has described the assailant entering her house from the backside, hitting her on the head with a rod multiple times, her falling unconscious briefly, and then finding that the assailant had torn her shirt off, her shouting and the landlord hearing, due to which the assailant fled. She has categorically deposed as to his physical features, complexion, the colour of his shirt and beard. She has said that the assailant was identified. Her statement under Section 164 CrPC and her testimony in Court are on similar lines. She has consistently supported the prosecution case without any major contradiction or improvement.

15. Though the appellant has sought to contend that since the outdoor ticket dated 27.05.2015 of the Jeevan Nursing Home records history as assault by an "*unknown person*", the same amounts to a contradiction, however, a perusal of the victim's testimony clears this. She has denied stating in her complainant that the appellant was known to her. Thus, what is meant by "identified" is that she clearly saw the assailant enough to recognise him later. This is evident from her describing his features in the initial complaint.

16. Next, the manner of arrest of the appellant has been doubted. No doubt, there is some discrepancy between the testimony of the complainant



and PW9. While complainant says that she saw the appellant on the road while returning from office, PW9 deposed that he was searching the assailant along with the complainant when she pointed out the appellant. In both versions, however, what has remained consistent is that it has been the complainant who has identified the appellant. She has categorically denied that the IO identified the appellant. Due to the apprehension of the appellant being at the complainant's behest, non-conduction of TIP does not assume importance.

17. Another contention that the appellant has raised is that his photograph was clicked and sent to the complainant by the police and she has identified him due to that. While PW9 has denied the clicking of the photograph of the appellant and getting it sent to the complainant, however the complainant has admitted that the IO sent her photographs of some persons in WhatsApp. However, she has not stated that the photograph of the appellant was also sent to her. Neither has any suggestion to this effect been put to her. Thus, even this does not materially affect the prosecution case.

18. The testimony of the prosecutrix also stands corroborated by the MLC which records fresh sutured wound left parietal region, Abrasion left forearm, Bruised right shoulder, right popliteal fossa and lower thigh and Swelling over left eyebrow. The Site Plan of the spot of incident (Ex. PW9/D) shows the entry point of the accused's entry and exit on the opposite of the side of the house facing Church lane. The other Site Plan, exhibited as Ex. PW 9/C, shows that church road, where the appellant lived, and church lane, are adjacent to each other. Even the defence witness, DW1, has admitted in the cross examination that earlier, the appellant used to reside where the incident took place, and that the room had two doors. If the



rear door was open, anybody could enter the said room from the roof of the adjacent house.

19. On an overall view of the facts and circumstances, this Court finds no infirmity in the impugned judgement. The prosecution case has been proved beyond reasonable doubt. Thus, the conviction of the appellant is maintained.

20. However, the incident pertains to 2015. The appellant has faced trial for the last 10 years. No criminal antecedents have been brought to notice of the court. His parents have passed away, he is married and sole breadwinner for the family. Before his conviction, he used to work as a sweeper and earn Rs. 10,000/- per month. Taking everything in consideration, his sentence for the offence under Section 354B and 308 IPC is reduced to 3 years of Rigorous Imprisonment. However, his remaining sentences, including sentence of fine and default sentence, are maintained.

21. The present appeal is partly allowed and disposed of in the above terms.

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

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 3rd, 2025/kb