

Amar Singh Vs. State

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Court : Delhi

Decided On : May-12-2014

Judge : S. Muralidhar

Appellant : Amar Singh

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. No.313 of 2014 & CRL.M. (B). No.557 of 2014 Reserved on: May 6, 2014 Decision on: May 12, 2014 AMAR SINGH Appellant Through: Mr. Biswajit Kumar Patra, Advocate. versus STATE Respondent Through: Ms. Isha Khanna, APP for State with SI Parmendra Kumar from PS. Paharganj CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

1205.2014 1. This appeal is directed against the judgment dated 27th September 2013 passed by the learned Additional Sessions Judge (ASJ) in Sessions Case No.56 of 2012 convicting the Appellant for the offences under Sections 376, 448, 506 Indian Penal Code (IPC) and the order on sentence dated 1st October 2013 sentencing him to seven years rigorous imprisonment (RI) with a fine of Rs. 5,000 and in default, to undergo simple imprisonment (SI) for two years for the offence under Section 376 IPC, RI for one year with a fine of Rs. 1,000 and in default, to undergo SI for two months for the offence under Section 448 IPC and to RI for a period of three years with a fine of Rs. 1,500 and in default, to undergo SI for six

months for the offence under Section 506 IPC. The sentences were directed to run concurrently. The complaint of the prosecutrix 2. At around 8.07 am, on 1st May 2012, a call was received in the Police Control Room (PCR) from mobile phone 9891043809. The PCR form (Ex.PW-10/B) indicated the informants name as Kamal Nath (PW-3). It extracted the message received from the prosecutrix in this case who was referred to by the trial Court as A (PW-2). The message was to the effect that she stated that she was living with the Appellant, a resident of 420, Mantola, Pahar Ganj, Delhi for the past two years and that his second wife was also present. She alleged that she had been raped by the Appellant.

3. The genesis of the above call has been explained by PW-3 in his evidence. He stated that he was proceeding towards Pahar Ganj on 1st May 2012 between 7.30 and 8 am on his motorcycle. When he reached Ramdwar Road, Chheh Tuti Chowk, he made enquiries about the address he had to reach. At that time a lady along with boy aged about 10 to 12 years asked to borrow his mobile phone as she wanted to make a call to the police to inform them about her having been raped. She borrowed his mobile phone and made a call to the PCR. Thereafter, PW-3 left the spot. It is important to note that nothing has been elicited from this witness in his cross-examination to create any doubt about his version of the above events. Investigation of the case 4. In her first statement to the police under Section 161 of the Code of Criminal Procedure 1973 (Cr PC), PW-2 stated that she and her son J (PW-7) aged about 9 years were at her house on 30th April 2012 at about 10 pm when the Appellant came there. When she asked the Appellant to leave her house, he started giving her beatings and threatened to kill her son in case she raised an alarm. Thereafter, the Appellant forcibly raped her several times through the night. While leaving in the morning, the Appellant threatened to kill her son in case she revealed anything about the incident to anyone.

5. PW-2 was medically examined at the Lady Hardinge Medical College and Smt. S.K. Hospital, New Delhi (LHMC) at about 9.50 am on 1st May 2012. In her Medico Legal Certificate (MLC) (Ex. PW1A) in the column concerning brief history it was noted:

alleged H/o rape by a person named Amar in the night of 30th April 2012 from 10.00 pm 6.00 am. H/o being hit with punches and by belt by the same person. It gives alleged h/o oral as well as rectal intercourse. The man left her at 6.00 am. The victim called police on 100 No. police went to site at 8.00 am but has washed her oral cavity and herself after the incident. Pt. Brought by police for exam at 9.50 am.

In the column titled nature of injuries it was noted:

bruises over back and left hand. Nail abrasions over right and left breast.

Among the samples retained for further examination were the outer clothing, inner clothing, nail scraping, washing from vagina, breast swab. The MLC noted that microscopy of vaginal washing was done and no sperm was seen. This MLC of PW-2 was prepared by Dr. Archana Kumari (PW-1). Despite opportunities, PW-1 was not cross-examined by counsel for the Appellant in the trial Court.

6. The investigation of the case was entrusted to the Assistant SubInspector (ASI) Sushila (PW-10) who joined Constable Raj Kumar Talan (PW-9). She went to LHMC where she met PW-2 along with Sub Inspector (SI) Amrish Giri (PW-4) and Women Constable Vijayta. The MLC and the seizure memo were handed over to her. PW-4 kept the pulandas in his custody for depositing them in the malkhana. Then PW-10 along with PW-2, Constable Vijayta and PW9 went in search of the Appellant. Upon identification by PW-2, the Appellant was arrested. Thereafter, the Appellant is stated to have pointed out the place of occurrence. He was sent to LHMC for his medical examination. His MLC (Ex.PW-10/A) signed by Dr. R.K. Singh noted, inter alia, that Accused denied for giving sperm sample. there is no point that to rule out that accused is not capable of sexual act.

7. The forensic examination of samples was undertaken by the Forensic Sciences Laboratory (FSL) of the Government of NCT of Delhi. The report dated 30th November 2012 of the FSL (Ex.PW11/A) gave the results of examination of, inter alia, one cotton wool swab on stick kept in a tube described as vaginal secretion (Ex. 1k1), two micro-slides having faint smear described as vaginal secretion (Ex.Ex.1k2 and 1K3), dirty liquid kept in syringe described as washing from vagina

(Ex.1m), one cotton wool swab on stick kept in tube described as rectal examination (Ex.1n1), two micro-slides having faint smear described as rectal examination(Ex.1n2 and 1n3) and one cotton wool swab on stick and two micro-slides described as oral swab and oral examination (Ex.1o1, 1o2, 1o3). The result of the analysis was that human semen was detected on Ex. 1k1, 1k2, 1k3, 1m, 1n1, 1n2 and 1n3. Semen could not be detected on 1o1, 1o2 and 1o3. In the report dated 30th November 2012 of the biology division of the FSL (Ex.PW-11/B), in the column titled ABO Grouping/Remarks against the aforementioned samples on which human semen was detected, it was noted no reaction. In other words, the blood group of the semen could not be detected. The FSL reports were prepared by Ms. Seema Nain (PW-11). Her cross-examination did not yield much for the Appellant. Statement of the prosecutrix under Section 164 Cr PC8 PW-2 gave a statement before the Metropolitan Magistrate (MM) under Section 164 Cr PC (Ex.2/B) on 4th May 2012, i.e., four days after the incident. In this statement, she stated that when the Appellant came to her house on the night of 30th April 2012, she was alone. When she asked him to leave, the Appellant told her that he would first finish drinking the alcohol that he was carrying with him. In the meanwhile, her son (PW-7) who was working in a nearby shop reached home. When PW-7 asked the Appellant why he had come to their house, the Appellant abused him and locked the door. PW-2 and PW-7 asked the Appellant to leave their house but he did not leave and started slapping them. Till midnight, PW-2 and PW-7 did not sleep. The Appellant insisted on remaining there. Thereafter, the Appellant removed the salwar of PW-2 despite her pleading with him to not do so. When PW-7 asked the Appellant why he had done that, the Appellant covered the face of PW-7 with a blanket. When PW-2 asked him not to do so, the Appellant beat her with his belt. After undressing himself, the Appellant forcefully had sexual intercourse with her. As he was strongly built, and lay over her, PW-2 could not free herself. When PW-7 tried to rescue her, the Appellant assaulted him with the belt. When PW-2 tried to raise an alarm, the Appellant gave a fist blow on her face and beat her up with his belt.

9. Charges were framed against the Appellant on 25th September 2012 for the aforementioned offences. He pleaded not guilty and claimed trial. On 6th December 2012, learned counsel for the Appellant informed the trial Court that he

did not dispute the factum of the recording of the statement of PW-2 under Section 164 Cr PC. Accordingly, the recording of the evidence of the MM who had recorded the statement was dispensed with. Evidence of PW-2 10. PW-2 was first examined on 24th January 2013. She stated in her examination-in-chief that on 30th April 2012, at about 10.00 10.30 pm, she was present in the house along with PW-7 (her son). Her husband along with her three other children had gone to their native village in Bihar for a few days. The Appellant came there and when she asked him to go away, the Appellant refused. PW-7 made a similar request. However, the Appellant threatened to kill both of them and asked them to sit quietly. When PW-2 asked the Appellant to leave, the Appellant gave her and PW-7 beatings with his belt. The Appellant bolted the door of the house from inside. After sometime, PW-7 went to sleep and the Appellant covered his face with a blanket. Thereafter, the Appellant raped PW-2. He remained in the house throughout the night despite her repeated requests to him to leave. He left the house at about 5.30 am. While leaving, he again threatened to kill her and PW-7 in case they told anyone about the incident. After about half an hour, she came out of her house along with PW-7 and started raising an alarm but no one came forward to help them. Thereafter, a call was made at 100 number through a passer-by's phone.

11. In her cross-examination, PW-2 stated that her husband was working as a cook at a hotel in Delhi and is earning Rs. 9,000 per month. The place where the rape took place was a rented accommodation. She had shifted from there about one and half months prior to her cross-examination. She stated that none of her children was working anywhere. She was working as a housemaid in the nearby houses. She denied the suggestion that she did not have cordial relations with her husband and volunteered that my husband loves me. She further stated that after the incident her husband had stopped loving her. She further denied the suggestion that her husband has stopped loving her as he came to know that she was having relations with the Appellant for a long time.

12. In her cross-examination, PW-2 stated that she knew the wife of the Appellant. He had three wives. She could recollect the names of two, but could not recollect the name of the third wife. She stated that they all lived in separate houses and

she did not know the addresses of the wives of the Appellant. She had visited the house of the Appellant along with the children on the invitation of the wife of the Appellant on the occasion of the birthday of his daughter. The said house was in Mantola but she did not know the address. She claimed to know the Appellant one month prior to the incident. She did not know the nature of his job. She had never gone out of Delhi or anywhere else with the Appellant. She claimed that the Appellant had never given her any money and he had never visited her house prior to the incident. She denied the suggestion that she had accompanied her husband to Bihar on 17th April 2012 and had been making several calls to the Appellant on the intervening night of 29 th and 30th April 2012. She did not know any jhuggi at Badarpur where she visited the Appellant. She stated that House No.420, Mantola, Pahar Ganj, Delhi was the same house where she had gone with her children on the occasion of the birthday of the daughter of the Appellant. She denied the suggestion that there were frequent quarrels between her and the wives of the Appellant on the issue of her relationship with the Appellant.

13. PW-2 was further cross-examined on 16th February 2013. She denied that she had borrowed money from the Appellant or had gone to Nehru Park with the Appellant or that the friends of the Appellant address her as Bhabhi. She denied having visited Mathura with the Appellant. She disclosed the name of her four children. She denied having gone to Haridwar with the Appellant. She denied the suggestion that the name of her sisters husband is Kanhaiya and volunteered that his name is Rajinder. She denied the suggestion that her sister is living with Kanhaiya or that the said person had thrown her sisters husband from his house or that she (PW-2) herself also visited Kanhaiya. The Court observed that at that stage PW-2 had angrily stated as to why she would live with any other person other than her own husband. She denied knowing anything about the said person, Kanhaiya. She denied that Kanhaiya used to beat her children and, therefore, she left him and started friendship with the Appellant. She denied having gone to India Gate and Birla Mandir with the Appellant. At that stage, a photograph of her with the Appellant (Ex. Mark Y) was shown to her. She denied that any fight had taken place between her and the elder son of the Appellant and that she had forcefully entered into the house of the Appellant and locked herself there. She further denied the suggestion that she had broken the TV and the refrigerator of the

Appellant. She denied having lived with the Appellant at the house of a friend, Santosh at the railway colony, NDRS or that she was taken to Babu at Meerut for treatment by the Appellant when she fell ill during her stay at the village. The Court again observed that at that stage, PW-2 had started crying and was getting angry at the questions put to her. She denied that the three persons named Chiku, Balli and Bittoo were sitting in her house on 30th April 2012 and that when the Appellant knocked at her door she did not open the door. She denied the suggestion that he had called two of his relatives and two neighbours from the locality. When all the said persons knocked at the door of her house, she opened the gate. She denied that on seeing the said persons, the neighbours became annoyed and abused her. She further denied that the Appellant became angry and gave beatings to the three persons and, therefore, she had implicated him falsely. She denied that she and the Appellant were in a physical relationship for the last four years. She denied that she wanted to marry the Appellant. At that stage, Ex. Mark X was shown. The said photograph was of both the Appellant and PW-2. She stated that the photograph was taken at the house of the Appellant at the insistence of the Appellants wife and that it was of her alone and she did not know as to how the Appellant was also shown in that photograph.

14. It must be observed that although there are some variations in the three statements made by PW-2 i.e., before the police under Section 161 Cr PC, before the learned MM under Section 164 Cr PC and, thereafter in the Court, during her cross-examination she was not confronted with the said statements. This is significant as regards the crucial aspect of the case i.e. whether the sexual intercourse occurred and whether it occurred with her consent on the night of 30 th April 2012. The further factor that needs to be noted is that the entire tenor of the cross-examination appears to be to discredit PW-2 about her denying her being in a relationship with the Appellant. However, the cross-examination was unable to shake her on her description of what transpired on the night of 30th April 2012. Evidence of PW-7 15. The second crucial witness as far as the events on the night of 30 th April 2012 is PW-7, the 10 year-old son of PW-2. A perusal of his deposition shows that he has been clear and cogent. On three critical aspects his testimony remained unshaken. One is that when he asked the Appellant as to why he had come, the Appellant abused him. The second is that the Appellant beat

PW-2 with the belt, removed her clothes and threatened to kill me in case she raised her voice. Thirdly, PW-7 categorically stated that the Appellant did Ganda Kaam with his mother. Although it does appear that, according to PW-7, PW-2 did have a quarrel with the Appellants wife once and that PW-2 had once gone to the house of the Appellant and broken his TV, he denied any other familiarity and closeness between the Appellant and his mother. PW-7 also denied the alternative version put forth by the Appellant that on 30 th April 2012, three persons had come to the house of PW-2 and that on seeing them, the Appellant got angry and had a fight with PW-2.

16. Consequently, as regards the rape that happened on the night of 30th April 2012, it is clear from both the evidence of PW-2 and PW-7 that it was without the consent of PW-2. Statement of the Appellant under Section 313 Cr PC17 In his statement under Section 313 Cr PC, the Appellant claimed that PW-2 was having a live-in relationship with him and more or less stuck to his line of cross-examination of PW-2 on the various aspects of the said live-in relationship. He states that he had given his name as the husband of PW-2 in the census; that PW-2 started a relationship with another person Kanhaiya to which he had objected; that on the relevant date he had found three persons at her home and gave beating to those three persons and the entire scene was witnessed by members of the locality and on account of the same, the prosecutrix had falsely implicated him in the present case. He also talked of his wife DW-3 and PW-2 fighting with each other; PW-2 submitting a complaint at the Police Post Sangatrashan; PW-2 forcefully entering his house and breaking a colour TV and fridge and police later on pacifying his wife and PW-2. The defence evidence 18. The Appellant examined himself as DW-1. What is significant in his deposition is that he admitted that he went to the house of PW-2 at around 9 pm on 30th April 2012. He stated that he found three boys in her house and gave beatings to them. He admitted in his crossexamination that he has three wives; he was confronted with FIR No.226 of 2013 which was registered at the instance of PW-2 for trying to harm her while he was on interim bail and taking photographs of PW2 with his wife DW-3. Incidentally, it is stated that in the said FIR, a charge sheet has been filed and the Appellant has been denied bail.

19. DW-2 Raj Kumar was examined to prove that on one day when he had gone for some repair work at the jhuggi of the Appellant, PW-2 was present but he could not say what her relationship with the Appellant was. He stated that PW-2 used to visit the house of the Appellant every day.

20. DW-3, inter alia, spoke about finding PW-2 present at the house of the Appellant on one occasion when she had returned after visiting the matrimonial home of her daughter who had been burnt by her in-laws two years prior to her examination-in-chief. She spoke about PW-2 going to her house in her absence and breaking her household articles. She stated that when the Appellant was released on interim bail, PW-2 had come there and despite DW-3 abusing her, PW-2 did not leave. According to DW-3, PW-2 gave her gold ear rings to the Appellant and his son Tinku and then left. She stated that the Appellant again brought PW-2 to her house on 12th August 2013 and she found both of them in an objectionable position and under the influence of liquor and that she had consumed pills out of anger. In her cross-examination, she denied that the Appellant had in fact kidnapped PW-2 on 12th August 2013 after making her unconscious and that he had brought her to Kalyan Puri jhuggi and that DW-3 also took photographs of PW-2 in a naked condition with the mobile.

21. DWs-4 and 5 were Nodal Officers from the Vodafone and Idea Cellular Ltd. respectively. These were to prove the calls between the Appellant and PW-2 including those at a time when the Appellant was on interim bail. Submissions of counsel 22. Mr. Biswajit Kumar Patra, learned counsel appearing for the Appellant, placed a chart of the comparative analysis of the statements made by PW-2 pointing out to the various inconsistencies. He submitted that from the answers given by PW-2 in her cross-examination and by PW-7 in his, it was clear that she was suppressing the true facts concerning the relationship between her and the Appellant. He also referred to the PCR Form where in the first instance when she called the police, she stated that she was staying with the Appellant for the last two years. It was obvious that on account of the quarrel that she had with the wife of the Appellant and his objecting to the presence of the three men in her house on 30th April 2012 that she had falsely implicated the Appellant. Mr. Patra also took the Court through the evidence of DW-1 and his wife DW-3 and submitted

that the defence evidence was not adequately appreciated by the trial Court and an erroneous finding of guilt was returned against the Appellant. Mr. Patra also submitted that there was non-compliance with Section 157 Cr PC inasmuch as it was not shown whether the FIR was sent to the Magistrate as soon as it was registered. He also pointed out that the fact there were no tear marks on the salwar or clothes of PW-2 further supported the defence version that this was a consensual act..

23. On the other hand Ms. Isha Khanna, learned APP for the State replied to the above submissions by pointing out that there was no cross-examination of the IO as regards any failure to send the FIR to the learned MM. She pointed out that PW-2 was not confronted with so-called inconsistencies in her statements before the police, before the learned MM and before the Court. She referred to the evidence of PW-3 which proved the call to the police made on the morning of 1 st May 2012 using his mobile phone. Ms. Khanna explained that the victim must have undergone a great deal of mental trauma and stress and, therefore, the gap of 2 hours between the departure of the Appellant from the house of PW-2 at around 5.30 am and her calling the PCR around 8.05 am was understandable. She referred to the answers given by the Appellant under Section 313 Cr PC. Ms. Khanna further submitted that the calls made during the time when the Appellant was on interim bail were shown to have been made from his mobile number. This was at a time i.e. August 2013, when the cross-examination of PW-2 was already completed. PW-2 was not recalled by the defence and confronted with the above calls. She submitted that in any event this had nothing to do with the incident of 30 th April 2012. She also pointed out that the MLC of the Appellant noted that he had refused to give the semen sample and, therefore, an adverse inference could be drawn against him to the extent that the serological examination by the FSL of the vaginal wash confirmed the presence of semen therein. It corroborated the evidence of both PWs-2 and 7. Ms. Khanna submitted that PW-7 was a young child of 10 years whereas the Appellant is well built and it was understandable that PW-7 was under fear and not in a position to protest or prevent the Appellant from committing the crime. She also pointed out that the photographs of the Appellant and PW-2 were not proved in accordance with law and, in any event, did not falsify the evidence of PWs-2 and 7 as regards what happened on the night of 30 th April

2012. She submitted that the mere fact that there was no tear on the salwar could not mean that the incident of 30th April 2012 happened with the consent of PW-2. Analysis of the evidence 24. An analysis of the evidence produced by the Appellant reveals that he has tried to prove that he and PW-2 were in a relationship which was being objected to by DW-3 as a result of which there were frequent quarrels. It does appear that there was another incident on 12th/13th August 2013 involving the Appellant and PW-2, when the Appellant was on interim bail, which led to FIR 226 of 2013 being registered. The clear attempt was to discredit PW-2 and to portray her to be untrustworthy as well as to highlight the fact that the Appellant has been falsely implicated.

25. Under Section 375 IPC, in terms of the first three situations set out therein, rape occurs when the sexual intercourse takes place (i) against the will of the victim, or (ii) without her consent or (iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. Going by the testimonies of PWs 2 and 4 the aforementioned three situations would be attracted in the present case.

26. In *State of HP v. Mango Ram* (2000) 7 SCC 224 the Supreme Court, inter alia, was considering the definition of consent as occurring in Section 375 IPC and observed as under:

Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.

27. In *Uday v. State of Karnataka* (2003) 4 SCC 46 the Court observed that while considering the question of consent, the Court must in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact.... 28. In *State of UP v. Choteylal* AIR 2011 SC 697

Choteylal, the Court stated that while the testimony of a prosecutrix by itself may be sufficient and no corroboration may be necessary, it is only by way of abundant caution that Court may look for some corroboration so as to satisfy its conscience and rule out any false accusations. In *State of Maharashtra v. Chandraprakash Kewalchand Jain* (1990) 1 SCC550 the Court observed that the nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding, the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclosed that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

29. In *Roop Singh v. State of MP* (2013) 7 SCC89 a case wherein the prosecutrix was raped in a room where the sister-in-law of the prosecutrix was sleeping in a nearby cot, the Supreme Court negated the contention that the element of consent was involved and held that unless there is voluntary participation by the woman to a sexual act after fully exercising the choice in favour of assent, the Court cannot hold that the woman gave consent to the sexual intercourse.

30. As already noticed earlier, for some reason PW-2 was not confronted with her statements under Sections 161 and 164 Cr PC while being cross-examined. This was perhaps due to the fact that as regards the act of rape of which she talked about in her statement under Section 161 Cr PC, there was no inconsistency or contradiction in her subsequent statements under Section 164 Cr PC and before the Court. Barring certain inconsistencies as regards whether PW-7 was already present when the Appellant arrived or came subsequently, it is clear that at the time when the incident happened, PW-7 was already present. His evidence fully corroborates the evidence of PW-2 that the Appellant subjected PW-2 to sexual intercourse without her consent and putting her in fear of her son PW-7 being subjected to harm. In the circumstances explained in the depositions of PWs 2 and 7, it is understandable that PW-2 was not in a position to resist rape by the Appellant.

31. Even if there was a relationship between the Appellant and PW-2, what is relevant, as far as the present case is concerned, is whether the act of sexual intercourse on the night of 30 th April 2012 happened with the consent of PW-2. According to the Appellant, he was present on the night of 30th April 2012 in the house of PW-2 and was upset when he found three persons there. He states that he beat up the said three persons. No other independent evidence was produced to prove the presence of those three persons or their being beaten up. This despite the fact that, according to the Appellant, a large crowd had supposedly gathered there. On the other hand, the evidence of PW-7 is clear and cogent. He fully corroborates the version put forth by PW-2. It does appear that the Appellant was upset with PW-2 for whatever reason and subjected her to sexual intercourse without her consent. In the presence of her son PW-7, it is unlikely that PW-2 would have consented to an act of sexual intercourse by the Appellant. Additionally, the fact that the vaginal swab of PW-2 showed the presence of semen coupled with the failure of the Appellant to give his semen sample, proves beyond reasonable doubt that PW-2 was raped by the Appellant. It may also be noticed here that the swab of the rectum of PW-2 also showed the presence of semen. PW-2 had also, in her MLC, stated that she was subjected to rectal intercourse as well. As regards the failure to send the copy of the FIR to learned MM, it does appear that no question was put in that regard to the IO.

32. As regards the offence of trespass, the Appellant, not being a stranger to PW-2, gained entry into her house and was allowed to stay on till the time he was asked to leave, despite refusing to do so. The Appellant is entitled to the benefit of doubt as regards the said offence. Consequently, while acquitting the Appellant for the offence under Section 448 IPC, the Court maintains his conviction and punishment for the offences under Sections 376 and 506 IPC.

33. The appeal is disposed of in the above terms. The application is also disposed of. S. MURALIDHAR, J MAY12 2014 Rk/dn