

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

Reserved on: 20th May, 2013
Pronounced on: 29th May, 2013

+ **Crl. Rev.P.104 /2013**

MADAN MOHAN GUPTA

..... Petitioner

Through:

Ms. Meenakshi Lekhi with Ms. Aashaa
Tiwari, Advocates

versus

THE STATE(GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Rajdipa Behura, APP

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This Revision Petition is directed against a judgment dated 01.02.2013 passed by the learned Additional Sessions Judge(ASJ) affirming the conviction and sentence imposed on the Revisionist for commission of an offence punishable under Section 354 IPC and directing him to undergo RI for 18 months and to pay a compensation of ₹20,000/- to the complainant by the learned Metropolitan Magistrate(MM) by an order dated 09.02.2012.
2. As per prosecution version, the Revisionist is a qualified homeopathic doctor and runs a homeopathic clinic at Gopi Nath Bazar, Delhi Cantt. in the name of Dr. M.M. Gupta Homeopathic Clinic. On 23.05.2007 at

about 6:00 pm, the prosecutrix along with her mother visited the Revisionist's earlier said clinic. The Revisionist as a doctor desired to physically examine the patient(the complainant) and took her to a sub-clinic examination room just behind a translucent glass portion adjacent to the consultation room. The Revisionist asked the complainant to lie down and deliberately touched her private parts as also her breasts while he had no business to do so. The complainant was stunned by the Revisionist's act and returned home without any opportunity for a reaction. On reaching home, she narrated the incident to her sister and decided to lodge a complaint in the Police Station the next morning. The FIR was registered and after completion of the investigation, a charge sheet for the offence punishable under Section 354 IPC was filed against the Revisionist.

3. In order to establish its case, the prosecution examined six witnesses. PW1 complainant Monica Mehta is the only material witness examined by the prosecution. The examination-in-chief of the complainant is extracted hereunder:

“I am resident of above mentioned address. On 23.05.2007, at about 6 pm I went to the clinic of the accused i.e. Dr. M.M. Gupta, homeopathy doctor at Gopinath Bazar, Delhi Cantt for medical treatment of head ache and insomnia along with my mother. The accused is present in the court and identified by the witness. The accused told me that there is a need of medical check up as such he took me to the back side of his clinic as there was a partition in the clinic. He told me to lay on the bed present over there and I did the same. Thereafter, he started checking my stomach and thereafter, insert his hand in my jeans and touched my private parts. I was shocked on the act of the accused. He removed his hands from my jeans and

then also touched my breasts by putting his hand through my shirt. Thereafter, he went to his seat from the partition. I was shocked. Thereafter, the doctor prescribed some prescription and thereafter, I went to my home along with my mother. Thereafter, on the asking of my sister Umang Mehta as to why was I so shocked I told the whole incident to my sister and decided to take the proper legal action against the accused. On the next morning i.e. 24.05.2007 I went to the PS along with my sister Umang Mehta thereafter, police recorded my statement which bears my signature at point A....”

4. In cross-examination, the complainant stated that she went to the doctor (Revisionist) for insomnia, headache and skin disease. She admitted that there was no door between the glass partition, that is, consultation room and the examination room. She denied the suggestion that the Revisionist had checked her only above her pelvic region. She admitted that there could be one more patient present in the clinic apart from her and her mother. She admitted that she did not make any noise at the time when the Revisionist molested her. She stated that she was shocked and stunned. She went on to add that her mother was 6-7 feet away on the other side of partition (at the time of incident). She admitted that she did not tell her mother regarding the incident as she did not want her mother to get tension on account of the incident. In cross-examination, she testified that she lodged the complaint against the Revisionist on the next morning as a result of her own decision which was supported by her sister and mother. She denied the suggestion that decision for taking legal action against the Revisionist was abetted by any NGO.

5. In order to enable the Revisionist to explain the incriminating evidence appearing against him, the substance of his examination was recorded under Section 313 Cr.P.C. read with Section 281 Cr.P.C. The Revisionist stated that generally he would check a female patient only in the consultation room. In this case, Ms. Monica(complainant) insisted that she would not get herself physically checked in presence of another male patient who happened to be present in the cabin. The complainant was taken in the examination room. The Revisionist informed the Court that the complainant was examined in presence of her mother. The Revisionist did not allege any animosity or any reason for his false implication. The Revisionist examined Smt. Sunil Sharma (DW1) and Sh. K.K. Khurana (DW2). DW1 testified that on 23.05.2007 at about 6.00 - 6.30 pm, she was present in the consultation room of Dr. M.M. Gupta. She proved some photographs of the consultation room and the examination room of Dr. M.M. Gupta(the Revisionist). She testified that on the aforesaid day, one male patient and one female patient were present in the consultation room of Dr. M.M. Gupta. The female patient showed her hesitation to be checked in front of the male patient. She deposed that she (patient) advised the doctor to check her in the examination room. She was also sitting in front of the consultation room on the chair. There was no door or veil between the consultation room and the examination room. She deposed that the actions of the person concerned inside the examination room is semi visible. Similarly, DW2 proved a CD and the photographs Exs. DW2/B, DW2/C and DW2/D in respect of the passage from entrance gate towards the consultation room.

Ex. DW2/E depicting the consultation room; Ex.DW2/F depicting middle passage between consultation room and examination room, Ex.DW2/G depicting the vision of the examination room from the consultation room and Ex.DW2/H depicting the examination room. In cross-examination, the witness admitted that the consultation room has a blurred vision of the person inside the examination room and it cannot be ascertained what is the specific act or movement of the person inside the examination room.

6. On appreciation of the evidence, the learned Metropolitan Magistrate(MM) relying on the complainant's testimony held the Revisionist guilty for the offence punishable under Section 354 IPC and sentenced him as stated earlier. The Appeal preferred by the Revisionist against the order passed by the learned MM was dismissed and the finding reached and sentence awarded by the learned MM was confirmed.
7. Ms. Meenakshi Lekhi, the learned counsel for the Revisionist submits that the complainant made an improvement in her deposition in the Court and, therefore, it was unsafe to place reliance on her testimony without any corroboration from any source. It is contended that although the complainant was accompanied by her mother at the time of the alleged incident and she confided and disclosed about the incident to her sister only on reaching home; but neither the complainant's mother nor her sister have been cited or produced as witnesses to corroborate the complainant's testimony. It is contended that DW1's testimony clearly showed that it was the complainant who insisted for her examination to be carried out in the inner room. It is unbelievable that the Revisionist, who is aged 60 years, would indulge in an indecent act as alleged by the

prosecution behind the translucent glass which did not even have any door. It is urged that a defence witness is entitled to an equal treatment as shown to the prosecution witness and there was no reason to disbelieve the testimonies of DWs 1 and 2. In the alternative, it is argued that even if the Revisionist is held guilty, he ought to have been given the benefit of the Probation of Offenders Act, 1958(the Act) as no previous conviction have been alleged against him and it was established that he was having a good behaviour.

8. On the other hand, the learned APP supporting the impugned judgment urges that there is no material improvement made by the complainant in her testimony as PW1. She had no enmity against the Appellant to levy any false allegation of sexual molestation which may be detrimental to her. She argues that DW1's testimony was rightly discarded as it was only an afterthought. The learned APP urges that the offence of sexual molestation is on the rise. It is very difficult for the ladies irrespective of their age to embark on any activity even in busy areas after sunset. The Revisionist being a practioner in homeopathy brought shame to the profession by indulging in the act and outraging the modesty of a young girl on the pretext of examining her in the inner room and it would not be a fit case to extend the benefit of the Act to the Revisionist. Reliance is placed on *Ippili Trinadha Rao v. State of Andhra Pradesh, 1983(2) APLJ 185*.
9. The learned counsel for the Revisionist has taken me through the testimony of the complainant. In her statement Ex.PW2/A made to the police, she had not stated the word putting hands in jeans or putting hands

in shirt. At the same time, it can be noticed that the PW1 did state in her statement Ex.PW2/A that she lied down on the bed and the doctor(the Revisionist) touched her private parts, touching of the private parts will be only by hand and presumably only through the meaning apparel which in the instant case were jeans (a pant or trouser). Thus, it cannot be said that not stating that the touch was by putting the hand inside the jeans or that the breasts was also touched by putting his hand through her shirt cannot be said to be a material improvement.

10. There is no dispute about the proposition of law laid down in *Dudh Nath Pandey v. State of Uttar Pradesh, AIR 1981 SC 911* that defence witnesses are entitled to equal treatment with those of the prosecution witnesses. What is sought to be projected by the learned counsel for the Revisionist from the statement of DW1 is that the complainant was examined in the inner room only on the insistence of the complainant. This part of DW1's testimony was rightly discarded as no suggestion was given to the complainant (PW1) that she insisted for her examination in the inner room or that she did not want herself to be examined in the consultation room in presence of a male patient. It is very difficult for a young girl to lodge a complaint against a medical practioner because some of the persons may blame the complainant only. On account of the incident, the complainant was shell-shocked and only when her younger sister(Umang Mehta) inquired the reason for her being shocked that she discussed the incident and then decided to lodge a complaint and take action against the Revisionist. There is nothing unusual in the

complainant's conduct. It was only when the complainant confided with her younger sister that she could muster courage to lodge the report.

11. Ms. Umang Mehta ought to have been produced as a witness by the prosecution to prove the fact that the complainant on being asked by her sister disclosed the incident to her as a corroborative piece of evidence, but at the same time, her non-examination does not materially affect the case of the prosecution. Similarly, the complainant's mother was only a witness to the complainant's visiting the doctor which is not in dispute. Admittedly, the complainant did not disclose the factum of the molestation to her mother immediately after the incident. The complainant has given an explanation in this regard that she was shocked and stunned on account of the Revisionist's act and did not disclose this to her mother. Thus, non-examination of the complainant's mother is not at all material. The complainant's behaviour in not reporting the incident to her mother was quite natural. It is a well-known fact that many of the females are initially hesitant to lodge report about sexual molestation. There is concurrent finding of fact reached by the Courts below and I do not find any illegality or material irregularity in the conclusion reached by them. In *State of Karnataka v. Appa Balu Ingale and Ors*, AIR 1993 SC 1126, the Supreme Court held that ordinarily it is not open for the High Court to interfere with the concurrent finding of the Courts below specially by re-appreciating the evidence in its revisional jurisdiction. There may be exceptional cases where the concurrent finding may be re-appreciated. I have gone through the evidence and the conclusion

reached by the Courts below, and I do not find any reason to take a different view even on re-appreciation of evidence.

12. The offence punishable under Section 354 IPC is punishable with imprisonment which may extend to two years and thus, in appropriate cases for such an offence the benefit under the Probation of Offenders Act, 1958 can be extended to a convict. The learned counsel for the Revisionist relies on *Rupan Deol Bajaj v. K.P.S. Gill*, AIR 1996 SC 309 in support of the contention that the Petitioner may be granted benefit of the Probation of Offenders Act, 1958. The authority cited, however, is not attracted to the facts of the present case. In *Rupan Deol Bajaj*, the accused was the Director General of Police who had slapped the posterior of the senior lady IAS officer upon which a complaint for offences under Sections 341, 342, 354, 354 and 509 IPC was filed by the complainant. The Supreme Court had held that there was sufficient material for taking cognizance for the offence under Sections 354 and 509 IPC and had directed the Chief Judicial Magistrate, Chandigarh to take cognizance upon the police report in respect of these offences. It is true that subsequently in *Kanwar Pal Singh v. State & Anr*, (2005) 6 SCC 161, the benefit of Probation of Offenders Act, 1958 was given to the convict in that case. However, the act of the convict in that case and the strata to which the complainant belonged to and the facts of the instant case are entirely different. As stated earlier, in *Rupan Deol Bajaj*, the accused had just slapped the posterior of a lady IAS officer while in the instant case, the Revisionist had touched the private parts and the breasts of a patient. There is relationship of faith and trust between a doctor and the patient.

A medical practitioner is expected after taking the Hippocratic oath to maintain the essence of fiduciary relationship between a physician and his patient. The physician has a duty to act in the patient's best interest and to refrain from exploiting the patient. Respecting the fiduciary relationship and the trust of the patient is a cornerstone of the ethical physician's practice. When a patient seeks care from a physician, the patient trusts that the physician is a professional and as such will treat them in a professional manner. This trust lets a patient discuss private, confidential and personal information with the physician as well as by this environment of mutual respect and trust patients feel confident and safe, thereby allowing the physician to perform physical examinations. A physician, being in a position of trust and power, has a duty to act in the patient's best interest. To maintain trust, a physician must avoid making sexual advances. Sexual advances or inappropriate touching of a patient by a medical practitioner is a grave breach of trust and an offence under Section 354 IPC of gravest form. Such a conduct from a medical practitioner is unacceptable and cannot be tolerated. In the circumstances, it is not a fit case where the benefit of the Probation of Offenders Act, 1958 should be extended to the Petitioner. Keeping in view the fact that the offence of outraging modesty of a woman, stalking are on the increase, the Parliament had to amend Section 354 IPC so as to make it non-bailable. The sentence of 18 months of imprisonment awarded to the Petitioner, in the circumstances, cannot be said to be disproportionate.

13. The Revision, therefore, has to fail; the same is accordingly dismissed.

(G.P. MITTAL)
JUDGE

MAY 29, 2013
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