

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

+ **CRL.REV.P.No.340/2013**

Decided on 09.09.2013

IN THE MATTER OF :

RAJ KUMAR (THROUGH PAROKAR)

..... Petitioner

Through: Mr. Rambir Chauhan, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Naveen Sharma, APP for State

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present revision petition has been filed by the petitioner under Section 397 read with Section 482 Cr.P.C. praying inter alia for setting aside the judgment dated 31.5.2013 passed by the appellate court in Appeal No. 81/2012, whereby the judgment on conviction dated 21.8.2012 passed by the learned MM was upheld and the order on sentence dated 19.11.2012 was modified. By the impugned judgment, the appellant court had concurred with the trial court and held that the petitioner is liable for the offence punishable under Sections 354/34 IPC. However, the sentence of rigorous imprisonment for one year imposed on the petitioner by the trial

court was reduced to rigorous imprisonment for six months with fine of ₹5,000/-, in default, simple imprisonment of three months.

2. The petitioner has assailed the impugned judgment dated 31.5.2013 mainly on the ground that the learned ASJ had failed to take into consideration the fact that the victim herein spoke only Telugu language which could not be understood by the police officers and therefore there was no ground available to presume that she was mentally ill. He points out that the victim who was arrayed by the prosecution as PW-11 had been partly examined before the trial court but later on, she was dropped from the array of witnesses and yet the learned M.M. had relied upon her testimony for convicting the petitioner. He states that the judgment of the trial court is unsustainable and the learned ASJ has committed an error in upholding the order of conviction whereas he ought to have set aside the said order solely on the aforesaid ground. Lastly, he has submitted that a material witness, i.e., the police officer who had translated the statement of the victim from Telugu language during the course of the investigation, had not been arrayed by the prosecution as a witness in this case and the said oversight ought to have been treated as fatal to the case of the prosecution.

3. This Court has perused the records including the impugned judgment passed by the appellate court, the order of conviction and the order on

sentence passed by the learned M.M. As per the impugned order, the incident in question had occurred on 18.10.2004, when Ct. Lalit Yadav(PW2) and Ct. Raj Kumar(PW1) who were present at the police picket at Samta Sathal, were informed by a passerby that two persons were committing obscene acts with a female behind the Samta Sathal. PW1 and PW2 had reached the spot and found that two accused persons were forcing themselves upon a woman and trying to outrage her modesty. Both of them were apprehended and in the meantime, I.O. Ram Swaroop Singh along with a Head Constable had reached the spot.

4. On making enquiries, it was revealed that the victim in question was mentally retarded as she was unable to disclose her name and her particulars. On the statement of Constable Raj Kumar(PW1), the present FIR No.547/04 was registered under Section 354/34 IPC. Both the petitioner and the other accused had pleaded not guilty and they had claimed trial. The prosecution had cited thirteen witnesses. During the course of the trial, the co-accused had stopped appearing and he was declared as a proclaimed offender. As for the present petitioner, the trial court considered the evidence placed on record and concluded that the petitioner was guilty for the offence punishable under Section 354/34 IPC and accordingly, he was sentenced to undergo R.I. for a period of one year.

5. Aggrieved by the orders of conviction and sentence, the appellant/petitioner had preferred an appeal before the Appellate Court. By the impugned judgment dated 31.5.2013, the learned ASJ had upheld the order of conviction but reduced the sentence imposed on the petitioner from rigorous imprisonment for one year to RI for six months alongwith a fine of `5,000/- and in default thereof, simple imprisonment for three months.

6. It is a settled law that while exercising its power under Section 397 Cr.P.C., the revisional court ordinarily examines the questions of law that are raised for adjudication. However, while hearing revisions under Section 397 Cr.P.C., the Court does not work as an appellate court and will not re-appreciate the evidence, unless some glaring feature is pointed out which may show that injustice has been done. Ordinarily, it would be inappropriate to re-appreciate the evidence and interfere with findings of facts when the same have already been appreciated by the Magistrate as well as the Sessions Judge in appeal.(Refer: State of Kerala Vs. Puttamana Illath Jathavedan Namboodiri **1999 Cri.J.1443**)

7. This Court has carefully considered the submissions made by the counsel for the petitioner and is of the opinion that none of the points raised by the learned counsel are questions of law that require adjudication in a

revision petition. However, as the learned counsel for the petitioner has insisted on arguing the case on merits, the court has perused the impugned judgment as well as the judgment of the trial court to verify if there is any misappreciation of facts or impropriety in appreciation of the evidence by the appellate court, as alleged.

8. The contention of the learned counsel for the petitioner is that the victim was speaking in Telugu language which could not be deciphered by the police officers and her statement, as translated by a constable from the CRPF Battalion was not sufficient to presume that she was mentally retarded. A perusal of the decision of the trial court reveals that the victim was produced before the learned MM but she was not found to be in a sound state of mind and therefore, her statement could not be recorded. The trial court had recorded that PW-9 ASI Renu had admitted the victim in IHBAS, as per an earlier order dated 25.10.2004 and since she had been found to be suffering from psychosis NOS/seizure disorder, she was discharged unexamined and was dropped as prosecution witness vide order dated 19.5.2012. Pertinently, the said order of discharge was not assailed by the petitioner at any stage. After passing the order dated 19.5.2012, the trial court had continued to record the testimony of the remaining witnesses cited by the prosecution and finally the prosecution evidence was closed on 23.6.2012. The statement of the petitioner was recorded under Section

313 Cr.P.C. and thereafter, the order of conviction came to be passed on 21.8.2012.

9. In the aforesaid circumstances, the petitioner cannot question the statement of the victim as recorded in the course of the investigation by taking the assistance of a third party, i.e., Constable D. Nagraj from the CRPF who hailed from Andhra Pradesh and had helped the police in understanding what the victim had stated in Telugu. Furthermore, while passing the judgment of conviction, the learned M.M. had taken into consideration the testimony of Constable Raj Kumar(PW-1) and Constable Lalit Yadav(PW-2) that had remained unshaken though they were cross-examined at length. Therefore, it cannot be claimed by the petitioner that the sole basis of his conviction was a partly recorded testimony of the victim(PW-11) who had been dropped from the list of witnesses due to her mental health condition.

10. The deposition of PW-1 and PW-2 reveals that both of them were on duty at the Samta Sathal picket and at about 9.00 P.M and they were informed by a passer-by that two persons were doing obscene acts with a female in the bushes located behind Samta Sathal and on reaching the spot, they had found that the accused persons were trying to outrage the modesty of the victim. The argument of the counsel for the petitioner that the

testimony of the police constables is unreliable and ought to have been discarded by the trial court is found to be devoid of merits.

11. It is well settled that credibility of a witness has to be tested on the touchstone of truthfulness and trustworthiness. There is no rule of law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. In fact, the presumption that every person acts honestly applies as much in favour of a police official as any other person. It is therefore not the law that a conviction cannot be recorded on the testimony of the police officials if such evidence is otherwise found to be reliable and trustworthy. [Refer: Girja Prasad(Dead) by LRs Vs. State of Madhya Pradesh **(2007) 7 SCC 625** and Govindaraju @ Govinda Vs. State by Sriramapuram P.S. & Anr. **(2012) 4 SCC 722**]. On this point, the learned ASJ has relied upon a judgment of the Supreme Court in the case of Tahir Vs. State, reported as **1996(3) SCC 338** where it was observed as below:

“Para 7:....No infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence...”

12. In the present case, the victim was a helpless lady suffering from psychosis NOS/seizure disorder due to which she was admitted to IHBAS. As she was found to be incoherent in her testimony, the learned M.M. had discharged her unexamined. As noted above, the petitioner had chosen not to challenge the order dated 9.5.2012 whereunder the victim(PW-11) was dropped as a prosecution witness. Therefore, the plea taken by the petitioner that PW-11 was not mentally infirm does not cut any ice.

13. It is also relevant to note that the petitioner has not denied his presence at the spot where he and the other co-accused had been apprehended. In his defence, the petitioner had claimed that on the date of the incident he was crossing the road after attending a birthday party where he had consumed liquor and had been falsely implicated by the police. However, the petitioner has failed to adduce any evidence on this aspect and in the entire cross examination of the prosecution witnesses, he did not make any such suggestion to them. This only proves that the prosecution has been able to establish its case beyond reasonable doubt.

14. Having regard to the facts and circumstances of the present case where the prosecution witnesses had given a clear and undisputed version of the incident that had taken place on 18.10.2004 and their testimony appeared to be trustworthy, this Court is of the opinion that the learned ASJ

cannot be faulted in concurring with the trial court and holding that the testimony of the prosecution witnesses had remained unshaken. In the absence of any reason for implicating the petitioner allegedly on false grounds and the said grounds not having been spelt out by the petitioner, the defence taken by him was naturally found to be unsustainable. Similar observations were made by the learned ASJ in the impugned judgment dated 31.5.2013, wherein it was held that the testimony of the prosecution witnesses had clearly established that the petitioner and the other co-accused were trying to outrage the modesty of a mentally retarded woman at a remote and desolate place in the night by using criminal force. The aforesaid act of the petitioner attracts the provisions of Section 354 IPC for which he has been indicted.

15. It is also pertinent to note that while upholding the order of conviction, the Appellate Court had modified the order of sentence by taking into consideration some mitigating circumstances as were pointed out by the counsel for the petitioner and resultantly, his sentence was reduced from RI of one year to RI of six months and further, he was directed to pay fine of ₹5,000/- and in default thereof, undergo simple imprisonment for three months for the offence punishable under Section 354/34 IPC.

16. In view of the aforesaid facts and circumstances, this Court is of the opinion that there is no illegality, arbitrariness or impropriety in the impugned judgment that deserves interference. The present petition is accordingly dismissed as being devoid of merits and the petitioner is directed to surrender before the trial court within a period of one week from today.

The Registry is directed to forward a copy of this order to the learned trial court for information.

HIMA KOHLI, J

SEPTEMBER 09, 2013

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