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

Date of Decision : 22nd July, 2014

+ CRL.L.P. 232/2013 & CrI.M.A. No.5617/2013

STATE Petitioner

Through: Ms.Rajdipa Behura, APP.

versus

RAJ KUMAR Respondent

Through: Respondent in person.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (ORAL)

1. The State has filed the present leave to appeal challenging the judgment dated 29.09.2012 passed by the learned Metropolitan Magistrate, Mahila Court, Dwarka, New Delhi, whereby the Respondent was acquitted of the charges under Sections 354/323/341/509 IPC.

Leave is sought on the following grounds:-

- (i) The learned Trial Court has observed that the prosecution has not joined any public independent witnesses, though the incident has taken place in a moving bus.
- (ii) There is improvement in the statement of the complainant while deposing before the Court. The contention of learned APP for the

State is that the improvements are only explanatory in nature.

(iii) The testimony of the victim does not require any corroboration and is sufficient to convict the Respondent.

2. Trial Court record has been requisitioned and the same has been perused.

3. I have heard Ms.Rajdipa Behura, learned APP for the State and the Respondent in person.

4. Perusal of the Trial Court record reveals that the above-noted FIR was registered on the basis of statement (Ex.PW-1/A) of the complainant 'V' (name withheld to conceal her identity) aged about 20 years. As per the complaint, on 09.09.2003, she had gone to drop her brother at Air Force School near Mandir. At about 8:15 a.m. she boarded the bus route No.764, registration No.DL 1P B 1874 and requested the Conductor to stop the bus at Mehram Nagar bus stand, as she was to get down there. When the bus reached near Mehram Nagar bus stand, she requested the Conductor to stop the bus, but he asked the driver not to stop there. The bus stopped at 'T' point, Gurgaon road and when she tried to get down there, the Conductor abused and misbehaved with her and slapped her. She requested for necessary action against the bus conductor and refused to undergo any medical examination.

5. After registration of the FIR, notice under Section 133 of the M.V. Act was served on the owner of the bus, who undertook to produce the bus driver as well as the conductor in the police station.

6. During the course of investigation, the Respondent-conductor was arrested for committing the above offences and charge-sheeted under

Sections 354/323/341/509 IPC.

7. During the trial, the complainant was examined as PW-1. In her examination before the Court, she stated that when the bus reached Mehram Nagar, she asked the driver that she had to get down and requested him to stop the bus there, but the driver did not stop the bus. When the bus reached at 'T' point, Gurgaon, the traffic signal was red and she was about to get down there, at that time the conductor of the bus started abusing and misbehaving with her and gave a slap to her.

8. The incriminating evidence has not been put to the Respondent. In a very cryptic manner, the accused was examined, referring his statement being recorded under Section 313/281 Cr.P.C. The manner in which statement of the Respondent has been recorded, reflects that the incriminating evidence has not been put to him to enable him to explain the circumstances appearing against him and rather it appears to be a mere formality than an opportunity to give a chance to the accused to explain the incriminating circumstances against him. It is necessary to extract what has been put to the Respondent/Accused during his examination under Section 313/281 Cr.P.C., as under:-

"FIR No.307/03

P.S. Delhi Cantt.

Statement of accused Raj Kumar S/o Sh. Dalel Singh R/o VPO Mundela Kalan, New Delhi u/s 313 read with Section 281 Cr.P.C.

Q.It is in evidence against you that on 09.09.2003 at 8.15 PM in a running bus in bus route no.764, registration no.DL1 PB-1874 at near T Point Gurgaon Road, you assaulted criminal force to Kumari Vandana and molested her by uttering abusing language and wrongfully restrained her and wrongfully caused her beatings by slapping. Statement of complainant is Ex.PW1/A on the basis of which

endorsement on Rukka Ex.PW2/B was made and FIR Ex.PW2/A was registered. The facts explained in vernacular which he has understood and he is asked to render explanation, if any, desired. His response is recorded as under:-

Ans. I have been falsely implicated in the present case. I am innocent. I do not want to lead defence evidence."

9. After perusing the complaint (Ex.PW-1/A) and her examination before the Court, the material improvements in her testimony on vital aspects got noticed as under:-

In Complaint (Ex.PW-1/A)

- (i) At about 8:15 a.m., she boarded bus route No.764, registration No.DL 1P B 1874 and when she asked the **conductor** to stop the bus as she wanted to get down, the conductor of the bus asked the driver not to stop the bus.
- (ii) When the bus stopped at 'T' point, Gurgaon Road red light and she was getting down from the bus, the conductor abused and misbehaved with her and slapped her.

In Examination- in-chief before the Court

- (i) When the bus reached Mehram Nagar, she asked the **driver** of the bus to stop the bus, as she had to get down there.
- (ii) When the bus reached 'T' point, Gurgaon Road red light, the conductor of the bus started abusing and misbehaving with her.

10. From the statement of the complainant, the following details can be inferred:-

- (i) She called the police from her house.

- (ii) The Respondent was arrested at the spot, i.e. T point, Gurgaon Road.
- (iii) There were number of passengers in the bus and the bus was packed with passengers.
- (iv) She requested the conductor as well as the driver of the bus to stop the bus.
- (v) 2-3 male and female passengers in the bus also raised protest along with her and encouraged her to file the complaint.
- (vi) She was abused when she was in the process of getting down and she had also told the police that the accused had also slapped her.

11. At the outset, it is necessary to refer that the Respondent was booked for committing the offences under Sections 354/323/341/509 IPC. Section 354 IPC can be invoked when the assault or use of criminal force to a woman is with intent to outrage her modesty. Under Section 509 IPC, uttering any word, or making any gesture or act intended to insult the modesty of a woman has been made punishable, whereas Section 341 IPC comes into play when a person has been wrongfully restrained. Section 323 IPC provides punishment for voluntarily causing hurt and is non-cognizable offence.

12. After going through the contents of complaint (Ex.PW-1/A) as well as her deposition before the Court, at the most it could have been a case under Section 323 IPC.

13. So far as the act of the Respondent in stopping the complainant when she was in the process of getting down at T Point, Gurgaon Road red light is concerned, it is a matter of common knowledge that the passengers board the bus from the rear gate and after purchasing the ticket from the conductor,

who is seated near the rear gate, proceed towards the front gate to get down from the bus. It is the duty of the driver to stop the bus to facilitate the passengers to get down from the front gate. As per complainant, the bus was fully packed with passengers. While in the **complaint (Ex.PW-1/A)**, she stated that she requested the **conductor** to stop the bus, who in turn asked the **driver** not to stop the bus, during her cross-examination before the Court, she stated that the driver of the bus was requested to stop the bus.

14. Seeing the distance between the seat of the driver and the conductor and their position of seats in the front and rear side, it is highly improbable that the incident could have taken place in the manner as stated by the complainant. It is not explained as to why the driver was not examined as prosecution witness.

15. Apart from that, it is the complainant's own case that she wanted to get down at traffic signal where the bus stopped because the traffic signal was red. Being conductor of the bus, the Respondent had the duty to ask the passengers not to get down from the bus at the traffic signal to prevent any untoward incident/accident. If the bus stops at the traffic signal being red, the passengers are not supposed to get down from the bus when it stops at the traffic signal. If the conductor has performed his duty in preventing the Respondent from getting down at the traffic signal and due to that some altercation took place at that point of time, it is difficult to comprehend as to how the Respondent could be booked for committing the offences punishable under Sections 354/341/509 IPC. The improvements made by the complainant during her examination before the Court as PW-1 are material in nature and not explanatory as contended by learned APP for the State.

16. This Court is of the view that the ingredients of Sections 354/341/509

were not satisfied. Rather, it was a case wherein exchange of abuses and altercation took place between the complainant and the Respondent for the reason that the Respondent instead of being polite was aggressive when the complainant was getting down from the bus at T Point, Gurgaon Road red light..

17. It has been held and reiterated in numerous cases by the Hon'ble Supreme Court that the High Court's jurisdiction in examining a petition for leave to appeal is confined to considering whether the judgment impugned before it raises substantial and compelling questions which ought to be gone into for the purpose of granting a leave. The law makers in their wisdom did not permit a State to prefer an appeal against the acquittal by a competent court as it was to be considered as an affirmation of an accused's innocence. In these circumstances, the authorities have primarily ruled that the expression 'substantial and compelling reasons' would extend to only grave misappreciation of evidence, grave misapplication of law and adoption of an approach by the trial court which would lead to miscarriage of justice.

18. Since the present petition does not disclose any of the above elements, the impugned judgment passed by the learned Magistrate does not call for any interference by this Court.

19. The leave petition is accordingly dismissed. Trial Court record be sent back forthwith along with a copy of this order.

PRATIBHA RANI
(JUDGE)

JULY 22, 2014
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