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

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Judgment delivered on: 13.02.2018

+ CRL.REV.P. 643/2017

ABID ALI

..... Petitioner

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Alamgir, Adv.

For the Respondents : Mr. Arun Kr. Sharma, Addl. PP for
the State with SI Prashant

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

13.02.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The nominal roll of the petitioner has been received. The same is taken on record.

2. The petitioner impugns order dated 19.08.2017 passed by the appellate court whereby the appellate court while confirming the judgment on conviction dated 15.12.2017) modified the order on sentence dated 14.12.2014 of the trial court by reducing the sentence awarded to the petitioner to undergo Rigorous Imprisonment (RI) for

a period of one years (reduced from two years) with fine of Rs. 10,000/- and in default to undergo simple imprisonment for two months (reduced from four months) for the offence committed under Section 354 IPC and further convicted to undergo sentence of simple imprisonment for a period of three months under Section 506 IPC.

3. The allegations against the petitioner are that the complainant visited the petitioner, who is a *Tantrik*, in relation to the work related problem of her husband. The complainant visited the petitioner along with her husband for performing “*Jhada ponchhi*” (*some for form of magic*). It is alleged that the petitioner put a black *dupatta* on the complainant and misbehaved with her. At the time when the petitioner misbehaved with the complainant, the husband was asked to wait outside. The complainant thereafter immediately reported the matter to her husband and along with him approached a PCR van parked near the house of the petitioner, consequent to which the petitioner was arrested and the subject FIR registered.

4. The trial court after examining the testimony of the prosecution witnesses held as under: -

“1. Being troubled by tier husband’s work related problems, the complainant was advised by her neighbour Ziauddin to visit a tantrik Abid Ali at 5th Pushta. She was told that Abid All would give her a tabiz and the same would solve her problems. Acting on the advice, the complainant alongwith her husband visited Abid All on 12.08.2007. Abid All gave them 9 tabiz for drinking and asked them to come after one week. On 16.08.2007, both

the complainant and her husband again visited him. However, he was not present at home and he came later at about 03.00 PM Abid Ali started doing jhada ponchhi while the complainant was sitting in front of him. whereas her husband was sitting at a distance. He put a black dupatta on the complainant and started to touch her body. He grabbed her breast and started to unbutton her. He also moved his hands on her stomach, reached for her salwar put his hand inside her salwar. Then he thrust his private part into the complainant's hand. When she protested, he threatened to kill her if she reported the matter. The complainant then went out of the room and told everything to her husband. The complainant's husband approached a PCR Van parked at the Pushta. The PCR officials took the complainant, her husband and Abid Ali to the Police Station where the complainant gave her statement. These facts constitute the prosecution case and form the basis of registration of FIR in the present case on the statement dated 16.08.2007 of the complainant, in which the above mentioned facts have been narrated. The same is Ex.PW-2/A.

11. A perusal of the testimonies of the various prosecution witnesses reveal that they corroborate the sequence of events. The prime witness i.e. PW-2 has testified on the same lines as her earlier compliant Ex.PW-2/A. She is the only witness to the incident of 16.08.2007. Her husband i.e. PW-3, although not an eye witness, has fully corroborated the version of PW-2 regarding the visit to the house of accused and the subsequent events that followed after the complaint regarding the incident was made. Both the witnesses have stood the test of cross examination. There is nothing in the cross examination of PW-2 or PW-3 which

could cast a doubt on their veracity. Their testimony inspires confidence. As regards the acts indulged in by the accused with PW-2, she has testified about each of the acts on the same lines as her complaint Ex.PW-2/A.

12. As regards the contention of the learned defence counsel that the versions of PW-2 and PW-3 are full of contradictions, this argument fails to impress. Whatever little inconsistencies which appear in the testimony of PW-2 and PW-3 are minor inconsistencies, which do not hit at the prosecution case. The nature of work in which PW-3 was engaged in at the time of incident is not of relevance. Even as such PW-3 (like PW-2) has stated that he was disturbed due to certain issues regarding his business. Whether PW-3 was engaged in the business of supplying chicken and mutton or selling garments/jeans is hardly relevant. Mode of transport used for the visit to the house of accused or number of tabiz given by the accused is also not relevant. No such suggestion was put to PW-2 or PW-3 to the effect that the accused is not involved in tantrik activities. The defence taken by the accused in his statement recorded u/s 313 Cr. P.C. regarding false implication by the complainant at the instance of one Jyoti Arya is a highly absurd defence. It is difficult to fathom that a woman would put her dignity at stake only to help another in getting the bail of the accused cancelled. Even in her cross-examination, PW-2 has denied the suggestion that the accused has been falsely implicated by her at the instance of Jyoti Arya. PW-2 did not even know whether Jyoti Arya had registered any case against the accused. PW-2 even stated that Jyoti Arya had contacted her after the news of the present case had been published in the newspaper and that prior to it, she had never met her.

13. The official witnesses have also corroborated the chain of events and their testimony is consistent with the

testimony of PW-2 and PW-3. The testimony of PW-2 clearly establishes that the accused had outraged her modesty and also threatened her at knife-point, that in case she narrated the incident to anyone, he shall kill her. Accordingly, in view of the above discussion and the consistent testimony of the various prosecution witnesses, I hold that the prosecution has successfully proved its case against the accused beyond reasonable doubt. Accordingly, the accused is convicted for offence u/s 354 IPC and 506 IPC.”

5. The appellate court in the appeal confirmed the finding of fact and held as under:-

“6. Perusal of the case file makes it clear that the complainant lady/victim herself as well as her husband both were examined as PW2 and PW3 respectively and the rest witnesses are official witnesses. The prosecution story talks about two visits by the complainant lady and her husband to the house of the accused (appellant herein) as on 12.08.2007 and 16.08.2007. Interestingly, in the entire cross examination of the complainant/PW2, not even a single suggestion was put to her that no such visit was paid by them to the accused at his house. As a matter of fact, even during the cross examination of the husband of the complainant/PW3, it was not at all touched upon w.r.t. the first visit i.e. 12.08.2007, however, a formal suggestion was given regarding the second/subsequent visit dated 16.08.2007 which was obviously negated by the witness.

7. It would not be out of context to mention herein that the offending act/conduct on the part of the accused/appellant amounting to the offences under consideration took place as on 16.08.2007 at or about 4.00 pm or so on 16.08.2007. The matter was reported to

the police immediately on the same day. Hence, there were minimal or no chances of any sort of concoction.

8. *The assailed judgment in its perusal makes it clear that it is a well reasoned order wherein each and every minute detail has been touched upon. There is detailed appreciation of testimony of both the public witnesses i.e. the complainant herself and her husband. The Ld. Trial Court duly relied upon the testimony of the victim/sufferer/eye witness i.e. PW2 as she had consistently deposed by elaborating upon the every minute aspect of the allegations. Her husband though was not an eye witness, yet duly corroborated her testimony by deposing on the lines as to how his wife apprised him of the untoward activities of the accused/appellant. His conduct in taking the victim to the police on the very day of incident further substantiates the allegations against the accused/appellant. Their deposition has duly been discussed by the Ld. Trial Court and there is nothing such so as to be suggestive of any major contradictions therein.*

9. *Moreover, as per the defence, it was a false case in connivance with one lady namely Jyoti Arya who was allegedly having some grudge against the accused/appellant. As this was a specific defence put by the accused himself, he was required at least to prima facie lead some cogent evidence in its support. Though, in the SA u/s 313 Or. P.C, he opted for leading evidence in defence, yet as a matter of fact, no such defence witness (including accused himself u/s 315 Cr.P.C) was examined for the reasons best known to the accused/appellant. The order sheet dated 13.10.2014 (Trial Court Record) makes it clear that the accused/appellant after availing two opportunities himself requested the Court to close the DE as he was not inclined to lead any defence evidence. Here it is worth*

mentioning that as per the accused's own admission, the said lady Smt. Jyoti Arya used to reside in front of the house of the accused. The complainant/victim lady categorically deposed in her cross-examination that she had had no occasion of meeting with said Smt. Jyoti Arya prior to the present incident and in fact the said lady was not known to her. It was on the publication of the news in the newspaper "Dainik Jagran" regarding the present incident i.e. incident in question that said Smt. Jyoti Arya came to see her. The complainant /PW2 also placed on record the copy of the newspaper cutting (Dainik Jagran dated 18.08.2007) which was placed on record as Mark A-1 wherein the news of the alleged misdeed of the accused/appellant had been published under the title of "MANILA SE CHHED CHHAD MEI TANTRIK GIRAF TAAR". The accused could not even remotely and prima facie establish on record that the complainant was known to said Smt. Jyoti Arya prior to the incident in question or that the present case FIR was the result of any sort of connivance between the two. The testimony of the 10 and the rest police officials also substantiate the prosecution version and find due appreciation in the Trial Court judgment.

*10. Thus, it becomes clear that the appellant has failed to prove that the assailed judgment was faulty on any account. Thus the assailed judgment is hereby affirmed.*****"*

6. The appellate court was of the view that the sentence awarded to the petitioner was on the higher side keeping in view the fact that the proceedings in the impugned case were pending for a period of 10 years. The appellate court considering the totality of the facts and the

material on record modified the sentence as noticed above and reduced the period of RI from two years to one year and simple imprisonment in default of payment of fine reduced from four months to two months for the offence under Section 354 IPC.

7. The nominal roll indicates that as on date the petitioner has undergone six months and 10 days of sentence with five months remaining.

8. Perusal of the judgments passed by the trial court as well as appellate court and also the testimony of the witnesses placed on record, shows that the judgments are well reasoned and there is no infirmity in the concurrent finding of fact returned by the trial court as confirmed by the appellate court.

9. The petitioner has already been given indulgence by the Appellate Court by reduction of his sentence. I find no reason to further reduce the sentence to the period already undergone as is contended by the learned counsel for the petitioner. There is no infirmity with the view taken by the courts as noticed above.

10. In view of the above, I find no merits in the petition. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J

FEBRUARY 13, 2018

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