

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

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**Reserved on : 13.09.2019**

**Pronounced on : 15.10.2019**

+ **CRL.REV.P. 887/2019 & Crl. M. (Bail) 1485/2019**

VINOD KUMAR

..... Petitioner

Through: Mr. Aditya Sharma and Mr. Vinay  
Kumar, Advs.

versus

STATE

..... Respondent

Through: Ms. Kamal Kumar Ghei, APP for the  
State with SI Durga Das,  
P.S.K.M.Pur.

**CORAM:**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**JUDGMENT**

1. By this judgment, I shall decide the present revision petition filed by the revisionist against the judgment dated 13.08.2019, passed by the Court of Ms. Shaunali Gupta, Ld. A.S.J.-5, South East District, Saket Court, New Delhi in criminal appeal No. 514/2018 in case FIR No.655/2014 P.S. Kotla Mubarakpur.

2. The FIR in this case was registered on the statement of the complainant who stated that on 07.08.2014, she had boarded on a bus from medical bearing route no. 479. The bus was crowded and there was no place

to sit. She was standing in the bus, a man boarded the bus and stood behind her. She felt that he was touching her from behind, so she moved ahead and stood near the ladies seat. It was around 03:30 p.m. that the said man also came there and started touching her from behind. When she looked back she saw that the man had opened the zip of his pant and had taken out his private part from the zip and was repeatedly touching the same to her. When she started screaming and the passengers sitting in the bus looked at it, they started beating that man. Thereafter, she called police at 100 number. The driver of the bus stopped the bus near Defence Colony. She asked the name of that man who revealed his name as Vinod Kumar, S/o Lekhraj. When the police came, she handed over the man to the police.

3. Thereafter, endorsement Ex PW 4/A was made on the Tehrir by ASI Rajender and the FIR was got registered. After investigation the charge sheet was filed and charge U/s 354/354A/294 IPC was framed against the revisionist to which he pleaded not guilty and claimed trial.

4. The prosecution examined 5 witnesses to prove its case.

5. PW 1 is H.C. Jitender who has deposed that he alongwith IO and lady Ct. went to the spot where he met the complainant. He further deposed that revisionist was inside the bus and had been beaten by the public. IO prepared the rukka and he took the rukka to the police station for the registration of the FIR. He further deposed that the revisionist was arrested at the spot and brought to the police station and arrested vide memo Ex. PW 1/A and his personal search was conducted vide memo Ex. PW 1/B.

6. In his cross examination, he stated that the IO had enquired from the public persons but nobody came forward to give his statement and started dispersing from there.

7. PW 2 is the complainant who is the material witness of the case and her testimony will be discussed in the later part of the judgment.

8. PW 3 SI Ram Sharan is the IO of the case. He deposed that upon receiving the call, he alongwith PW 1 and PW 5 reached the spot where he met the complainant. The complainant handed over the accused (revisionist herein) to him and also gave an written complaint which he proved as Ex. PW 2/A. He further deposed that he made an endorsement on the complaint and gave it to PW 1 for the registration of the FIR. He further deposed that he prepared the site plan Ex. PW 2/C. He further deposed that accused / revisionist was arrested and his personal search was taken. He recorded the supplementary statement of the complainant, PW 5 Woman Ct. Rama Thakur and H.C.Jitender.

9. PW 4 is ASI Rajender who recorded the FIR Ex. PW 4/B and had made endorsement on the rukka Ex. PW 4/A.

10. PW 5 is Woman Ct. Rama Thakur who deposed that on 07.08.2014 she was posted as Ct. at P.S. Kotla Mubarakpur. On receiving the information regarding misbehavior by one boy with one girl at South Extension Part-I, she accompanied SI Ram Sharan (IO) at the spot where they met the complainant. Accused /revisionist was present there who was apprehended by the public persons. Statement of the complainant was

recorded and she was taken to Safdarjung hospital for medical examination.

11. After the conclusion of the prosecution evidence, statement of the revisionist / accused U/s 313 Cr.P.C. was recorded who stated as under :

"I am innocent. This case is false and concocted. On 07.08.2014, I had boarded a bus for going to medical. The bus was very crowded and as I was about to de-board the bus at medical and was standing in the crowded bus, the driver of the bus applied sudden brake due to which I lost my balance and fell on complainant. I apologized to her but she abused me. Then my stop had come so I requested the driver to stop the bus and let me down. Complainant also came down and insisted to call the police despite my repeated requests. I waited till the police came and went to the police station with the police. I never misbehaved with the complainant in the manner alleged by her nor did intentionally fall on her."

Accused did not lead any defence evidence.

12. I have heard the Ld. counsel for the revisionist, Ld. Addl. PP for the State and have also gone through the records of the case including the trial Court Record.

13. It is urged by the Ld. counsel for the revisionist that in the first complaint which is DD No. 22 A dated 07.08.2014, the complainant had made allegations of altercation and thereafter she has improved her statement and made false allegations of molestation against the revisionist. He further urged that the accused / revisionist has been falsely implicated and due to heavy crowd in the bus, the complainant got pushed by the revisionist on which she got annoyed and made the call to the police. He

further urged that no public person including the driver and conductor of the bus have been joined by the police as public witness despite the bus being crowded. He further urged that as per the complainant the passengers gave beatings to the revisionist/accused but the MLC of the revisionist negates the version of the complainant. He further urged that there are material contradictions in the testimony of the complainant.

14. On the other hand, it is urged by the Ld. Addl. PP for the State that there is no infirmity in the impugned judgment and he further urged that the testimony of PW 2 is totally believable and minor contradictions which do not go to the root of the matter are not enough to discredit the otherwise truthful version of PW 2. He further urged that the non joining of the public witnesses is not fatal to the case of the prosecution in the light of the statement of PW 2. He further urged that simply because the MLC of the revisionist does not show any injury, that does not mean that the offence was not committed and it is not the case of the revisionist that he was given beatings with any object, so mere slaps does not get reflected in the MLC.

15. The star witness of the case is Pw 2 who has deposed as under : -

"On 07.08.2014, I was going towards Badarpur from Medical by bus. I boarded the bus from Medical and the bus was very crowded, so, I did not get the seat, so I was standing in the bus. One person who was standing behind me, he acted inappropriately, due to which, I went further ahead. Thereafter, he also came behind me. After some time, I realized that that person was touching me by his private part. Thereafter, I asked him what are you doing ? Then he replied that I am not doing anything.

Thereafter, as public also noticed the same, so, public had beaten him. Thereafter, I called at no. 100."

16. The contention of the counsel for the revisionist that since the first allegation made by the complainant was of altercation which is evident from the DD No. 22 A dated 07.08.214, therefore, PW 2 complainant is not believable has no force in it. In the instant case, it was the complainant PW 2 who has made call at number 100 on the basis of which DD No. 22 A was recorded. No doubt, the complainant has not given the details of the incident and has only stated that one boy is fighting with her and using abusive language, but it is pertinent to mention here that the incident has taken place in the bus and the revisionist / accused was caught hold by the public, so in these circumstances, it was not possible for the complainant to narrate the entire incident in detail. Her first concern was to call the police at the spot so that the accused can be handed over to the police and appropriate action can be taken against him. Thereafter, when the police arrived at the spot, she made the detailed complaint to the police in writing and her statement was also recorded U/s 164 Cr.P.C wherein she has levelled the allegations against the revisionist/accused and in both the statements there are no material contradiction, so this argument has no force in it.

17. As far as the question of non joining of public witnesses is concerned, this contention of the counsel for the revisionist has no force in it because it has been categorically stated by PW 1 that the IO had asked the public persons to join the investigation but they refused to join the same. It is a matter of common knowledge that public persons are reluctant to be a

witness or to assist the investigation. Reasons are not far to seek. In this regard reliance can be placed on a judgment in case titled as ***Ambika Prasad Vs. State reported as JT 2000 (1) SC 273***. In another case titled as ***Mohd. Anwar Vs. State reported as 1999 (10) AD 317 SC***, it was held that there is no reason to disbelieve the statement of PW-1 that SI Pankaj Singh tried to record the statement of some persons who collected at the spot but none agreed to be a witness. For such a situation prosecution cannot be blamed.

18. It has also been argued by the counsel for the revisionist that the revisionist/accused has been falsely implicated but no reason has been assigned and nothing has been mentioned by the revisionist/accused in his statement recorded U/s 313 Cr.P.C as to why the complainant would falsely implicate the revisionist/accused and not even a suggestion in this regard has been given to PW 2. The perusal of the statement of Pw 2 shows that the revisionist was doing a very obnoxious act and it takes a lot of courage for a lady to bring these types of activities in the public domain. PW 2 gathered courage and made a call to the police and she even confronted him then and there. So in these circumstances, it cannot be said that the complainant had any reason to falsely implicate the revisionist/accused.

19. It has been argued by the counsel for the revisionist / accused that as per the complainant, the revisionist was given beatings by the public but the MLC of the revisionist is silent on this point which clearly goes to show the false implication of the revisionist. Firstly, the revisionist has not denied his presence in the bus. It has also not been denied that he was apprehended at the spot itself. Now as far as the question of non receiving

of any injury is concerned, despite having been given beatings by the public to the revisionist, it cannot be a ground to disbelieve the complainant. It is nobody's case that the revisionist was given severe beatings by the public or any object was used while giving beatings to him. It appears that the revisionist was given simple thrashing by the public and he must not have received any serious injury which could be reflected in the MLC but the point remains he was apprehended by the public and given beatings when the complainant confronted the revisionist for his acts against her.

20. As far as the question of contradictions in the testimony of complainant is concerned, this contention has also no force in it because the version of her statement recorded in the court; in the complaint made to the police and her statement recorded u/s 164 Cr.P.C is the same. Moreover, the perusal of the three statements of the complainant that is one on the basis of which the FIR was registered, second statement recorded U/s 164 Cr.P.C and the third recorded before the trial court clearly sets out the allegations against the revisionist / accused in clear terms. The statements of the complainant are truthful and it is not expected from the complainant to make a verbatim statement. It is settled preposition of law that minor discrepancies and contradictions do creep in the statement of the prosecution witnesses. The court has to see whether the contradictions are material and goes to the root of the matter. In this regard reliance can be placed on judgment reported as **1999 Vol. 8 AD (SC) 642 and JT 1991 (7) SC 247**. Reliance can also be placed upon ***State represented by Inspector of Police Vs. Raravanan & Anr. [JT 2008 (11) SC 290]*** in which it has been held as follows :

"18.....it has been said time and again by this Court that while appreciating the evidence of witnesses, minor discrepancies on trivial matters without affecting the core of the case, ought not to prompt the court to reject evidence in its entirety."

21. I have also perused the cross examination of PW 2 (complainant) done by the Ld. counsel for the accused / revisionist in the Ld. Trial Court and there is nothing in her cross-examination so as to impeach her creditworthiness. In spite of incisive cross-examination nothing material has been brought out on the record so as to discredit the testimony of the said witness. Minor contradictions are merely the inconsistencies on the fringe without materially affecting the credibility of the evidence. So, in the instant case, there is no reason to doubt the truthful version of the complainant.

22. Therefore, for the foregoing reasons, I find no infirmity in the impugned judgment dated 13.08.2019, the same is, therefore, upheld. The revision petition is dismissed being meritless and the CrI. M.(Bail) 1485/2019 is also disposed of accordingly. Trial Court Record be sent back forthwith.

**RAJNISH BHATNAGAR, J**

**OCTOBER 15, 2019**

*Sumant*