

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

Judgment Reserved on: September 7, 2016

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Judgment Delivered on: September 15, 2016

+ **CRL.REV.P. 382/2016**

YOGENDRA

..... Petitioner

Represented by: Mr. S. Prasad, Advocate.

Versus

THE STATE OF (NCT) OF DELHI

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP
with SI Sunil Kumar, PS
Govind Puri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

CrI.M.A. 8379/2016

For the reasons stated in the application, the delay in filing the revision petition is condoned.

Application is disposed of.

CrI.Rev.P. 382/2016 & CrI.M.B. 1031/2016

1. By the present petition the Petitioner seeks setting aside of the order dated 20th February, 2016 passed by the learned Additional Sessions Judge upholding the order of conviction of the Petitioner passed by the learned Metropolitan Magistrate on 07th July, 2015 under Sections 354/451 IPC and order on sentence dated 26th August, 2015 sentencing the Petitioner to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹2,000/- for offence punishable under Section 354 IPC and rigorous imprisonment for a period of one year for offence punishable under Section

451 IPC.

2. Factual matrix of the case is that on 23rd December, 2012 DD No. 19A was received at 6:38 P.M. stating that there was a quarrel at House No. 224, Gali No. 16. TKD Extension. PW-4, HC Krishan Kumar recorded the statement of PW-3 on the basis of which FIR was registered. PW-3 stated that he worked as a mason and his wife PW-1 worked in a factory. They both were not at home. When he returned at around 6:15 P.M. after work, the prosecutrix PW-2 told him that Yogender who was her 'mausa', had come at their house. Yogender was drunk and he pressed the breasts of the prosecutrix and went away. When PW-3 went to Yogender's room to complain about the incident, he started quarrelling with PW-3 as a result of which PW-3 called the police. Accordingly FIR No. 691/2012 was registered on the complaint of PW-3 under Sections 354/451 IPC at PS Govind Puri. After completion of investigation, charge sheet was filed. Learned Metropolitan Magistrate after recording the prosecution evidence and statement of the petitioner, convicted and sentenced the petitioner as noted above. Aggrieved by the judgment and order on sentence, the Petitioner preferred an appeal which was dismissed by the learned Additional Sessions Judge vide order dated 20th February, 2016 and upheld the judgment and order on sentence passed by the learned Metropolitan Magistrate.

3. Learned Counsel for the Petitioner contends that there is contradiction with respect to time when the alleged incident took place. The prosecutrix PW-2 in her cross-examination stated that her mother came around 12:00 in the afternoon and the alleged incident took place before she came. However, as per the rukka forwarded by PW-4, Krishan Kumar for registration of FIR,

the time of incident was mentioned as 6:00 P.M. No independent public witness was examined and produced for corroborating the incident. The prosecutrix was also not medically examined. Thus, there was no corroboration of her version even on this count.

4. Per contra learned APP for the State submits that the impugned judgments suffer from no illegality. No corroboration can be there to the version of the prosecutrix as she was alone at home. There is no contradiction in the time of the incident as deposed to by the witnesses.

5. After satisfying that the prosecutrix was capable to understand the questions, give rational answers and competent to depose correctly about the incident, the learned Magistrate recorded the statement of the prosecutrix. She deposed that her mother had gone to her work place and she was alone at home. When she was cooking food, the petitioner entered the room and started molesting her. He caught hold of her breast and pressed them. She pushed the petitioner when he touched her and made him to go out of the house. The petitioner was her 'mausa'. During her cross-examination, she stated that the petitioner had come to her house in a drunken condition. She left the house after the petitioner misbehaved with her and went to a lady in the neighbourhood. Her mother came home around 12 in the afternoon and the incident took place before her mother had come. She had stayed in the neighbourhood till 8:00 P.M. She stated that her medical examination was not conducted and she had not received any injury. During her re-examination, she stated that when she was coming to the Court, her mother had told her to narrate the whole incident before the Court.

6. PW-1 the mother of the prosecutrix deposed that the prosecutrix informed her about the incident when she came home around 7-8 P.M. She

corroborated the version of the prosecutrix.

7. PW-3 the father of the prosecutrix deposed in sync with his statement made before the police.

8. The version of the prosecutrix that the incident took place before 12.00 PM when her mother came back from work is required to be ignored in view of the consistent version of the parents who stated that they came back in the evening. Further if the mother of the prosecutrix would have come back at 12 noon there was no reason for the prosecutrix to have stayed in the house of the neighbour till evening.

9. Considering the evidence on record, it is evident from the cogent and credible testimony of the prosecutrix that the petitioner entered the house of the prosecutrix and outraged her modesty by pressing her breasts. When the prosecutrix was alone, there could not have been corroboration by independent witness. Since no injuries were received by the prosecutrix, there was no necessity for conducting the medical examination of the prosecutrix. I find no reason to interfere with impugned order passed by the learned Additional Sessions Judge. The revision petition and application are dismissed.

10. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

11. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 15, 2016
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