

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

RESERVED ON : 27th JANUARY, 2016

DECIDED ON : 1st FEBRUARY, 2016

+ CRL.REV.P.780/2015

ASHOK KUMAR Petitioner

Through : Mr.Akshat Goel, Advocate with
Mr.Dushyant Tiwari, Advocate.

versus

GOVT. OF NCT OF DELHI Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant revision petition has been preferred by the petitioner – Ashok Kumar to challenge the legality and correctness of a judgment dated 26.10.2015 of learned Add. Sessions Judge in Crl.A.No.49/15 arising out of FIR No.22/11 under Section 354 IPC at PS Dhaula Kuan by which conviction and sentence awarded by the Trial Court vide orders dated 28.08.2015 and 11.09.2015 were upheld. The petitioner was convicted by the Trial Court under Section 354 IPC and sentenced to undergo SI for six months with fine ₹5,000/-. Revision petition is contested by the State.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 01.02.2011 at about 01.00 p.m. at PET/CT, Centre Army

Hospital (Research and Referral) Delhi Cantt, the petitioner outraged the modesty of the victim 'X' (assumed name). The incident was reported to the police on 02.02.2011 by the victim and on her written complaint (Ex.PW-2/A), Investigating Officer lodged First Information Report. Statements of the witnesses conversant with the facts were recorded. The accused was arrested. Upon completion of investigation, a charge-sheet was filed against him in the Court. To establish its case, the prosecution examined five witnesses. In 313 Cr.P.C. statement, the petitioner denied his involvement in the crime and pleaded false implication. He examined himself as DW-1 in his defence. After hearing rival contentions of the parties and on appreciation of the evidence, learned Metropolitan Magistrate convicted the petitioner under Section 354 IPC and sentenced him as mentioned previously. The petitioner challenged the conviction and sentence unsuccessfully in CrI.A.No.49/15.

3. Learned counsel for the petitioner urged that the Trial Court did not appreciate the evidence in its true and proper perspective and erred to base conviction on the testimonies of interested witnesses. No independent witness was associated at any stage of investigation. The complainant / victim had purportedly apprised Dean and the Head of the Department soon after the occurrence, however, they were not cited and

examined. It being a 'Maintenance Day' on 01.02.2011, many officials from Siemens India Ltd. were available at the spot; none of them was joined in the investigation. The story presented by the complainant is improbable as she did not raise hue and cry on the way to the Console area. Delay in lodging the FIR has remained unexplained. Learned Addl. Public Prosecutor urged that no sound reasons prevail to disbelieve the victim who had no extraneous consideration to implicate the appellant.

4. The occurrence whereby 'X', a second year DNB student in the Department of Nuclear Medicine, Army Hospital (R&R) suffered physical sexual harassment at the hands of the petitioner occurred at around 01.00 p.m. on 01.02.2011. In her complaint (Ex.PW-2/A), she categorically named the petitioner to be the perpetrator of the crime and assigned a specific and definite role to him. She informed the police that at around 01.00 p.m. when she requested the petitioner to show her leave register of the trainees, he told her to come to his office. She went towards his chamber adjacent to her 'Trainee' room and he showed her the register. When she turned towards her 'Trainee' room, the accused tried to pull her inside the chamber and also tried to hug and kiss her. She pushed him away and rushed towards the 'Trainee' room. However, she was followed by the accused and he tried to bully and scare her. She

immediately called her husband on phone and it made the accused to leave.

5. In her Court statement as PW-2, 'X' proved the version given to the police at first instance without any variation. She reiterated that when she was working in PET/CT Department on 01.02.2011 at around 01.00 p.m. she asked Mr.Ashok, department stenographer, regarding the leave register of resident doctors, the accused asked her : "Madam, come I will show you the register". She went to the petitioner's chamber adjacent to the resident doctors' room. The petitioner showed her the register. When she was returning to the doctors' room, the petitioner pulled her inside towards his chamber by her left hand and tried to hug and kiss her. She pulled him back and returned to the doctors' room. The petitioner followed her stopping her way to the exit and terrorised her by saying "do not dare tell anything to anybody otherwise I will tarnish your image and nothing would happen to me". She somehow ran towards the corridor but the petitioner continued to chase her till the 'Console' area approximately 50 meter away. When she called her husband, the petitioner stopped terrifying her. She immediately went to the main hospital premises and informed the Head of the Department. On arrival of her husband approximately after about 40 minutes, she complained to the Dean of the

Army Hospital. Complaint (Ex.PW-2/A) was lodged on 02.02.2011. In the cross-examination, she informed that no hue and cry was raised by her that time as the department was completely empty and there was no one person who could have come to her help. She further explained that she could not call 100 as there was no network in her mobile. She fairly admitted that on that day, she did not go to the police station to lodge the report. She volunteered to add that it was on the assurance of Dean for necessary action against the accused, that she waited for a day. She denied that there was 'conflict' between her and the accused prior to incident. She reiterated that the accused had touched her body though there was no injury.

6. On scanning the testimony of the victim in entirety, it reveals that she is consistent throughout and no material infirmity could be extracted in her cross-examination to disbelieve her. She has given graphic account of the incident. Material facts deposed and proved by her remained unchallenged and uncontroverted in the cross-examination. No suggestion was put to her that she had not visited the petitioner's room / chamber to see the leave register at that time or that she was not working in the PET / CT Centre that day and it was not her working day. The accused did not deny his presence at the spot at the relevant time. No

ulterior motive was assigned to the complainant to falsely rope him in the incident. Nothing has surfaced if there was any prior enmity with the petitioner prompting 'X' to implicate him. Nothing was elaborated by the accused as to what was the nature of 'conflict' between him and the victim and how it had originated. PW-3 (Dr.Ajay Gopal Vyas) – victim's husband arrived at the spot on getting distress call from his wife at around 02.15 p.m. Nothing was suggested to him in the cross-examination if there was any previous hostility with the victim on any specific issue. In 313 Cr.P.C. statement for the first time, the petitioner claimed that victim's husband - PW-3 (Dr.Ajay Gopal Vyas) was PG in the year 2008 – 2009 and 2009 – 2010 when he was posted as Office Superintendent in Nuclear Medicine Department. At that time, 'X's husband had sought some illegal favour from him i.e. of disclosing official secrets before hand to which he had refused. On that, he nurtured grudge against him and when his wife joined the PG course in 2010, he sought to take revenge through her by lodging the false complaint. The defence put forward by the petitioner in 313 Cr.P.C. statement deserves outright rejection. No such suggestion was put to PW-3 (Dr.Ajay Gopal Vyas) in the cross-examination. The petitioner did not elaborate or explain as to what official secrets were sought to be disclosed by the victim's husband. No complaint whatsoever

was ever lodged by the petitioner against the victim's husband on that score. Beside this, over a trivial issue, the victim is not expected to level serious allegations of outraging her modesty to put her honour at stake.

7. Delay in lodging the FIR has been duly explained. The victim had brought it promptly to the knowledge of the appropriate authorities i.e. Head of the Department and Dean on the same day. She was not expected to rush to the police station immediately. She waited the authorities to take suitable action against the accused for a day. Disciplinary proceedings have been initiated against the petitioner for his 'act'. Non-joining / non-examination of independent witnesses during investigation by itself may not give rise to adverse inference against the prosecution. The victim has categorically stated that at the time of incident none else was present at the spot. It was vehemently urged on behalf of the petitioner that it being a 'Maintenance Day' many officials from Siemens India Ltd. were available to carry out maintenance / repair work for the PET-CT and Cyclotron. Reliance has been placed on number of documents obtained by the petitioner through RTI. The information sought by the petitioner shows that reception / window remained functional for the patients in PET-CT on its working days; it also worked on the 'Maintenance Day' for the patients who wanted to collect their

reports. It is also informed that ‘maintenance’ / repair work for the PET-CT and Cyclotron is being carried out by service engineers of Siemens India Ltd. as and when required by them for routine maintenance / breakdown of equipments and on an average 3 – 4 members of the company are deputed in maintenance / repair. It is further admitted that on 01.02.2011 it was a ‘Maintenance Day’ in PET-CT Centre. The information collected by the petitioner through RTI is of no help. It appears that the petitioner did not deliberately sought specific information under RTI Act whether on 01.02.2011 at around 01.00 p.m. any specific individual from Siemens India Ltd. was on duty for maintenance of any particular equipment. The petitioner himself did not disclose the name of any such individual who was available / present at or near the spot, he did not examine any of them in his defence.

8. Concurrent findings holding the petitioner guilty for commission of offence under Section 354 IPC have been recorded by the two Courts below incorporating detailed reasons for arriving at the said conclusion. The judgment based upon fair appreciation of the evidence warrant no intervention. The conviction under Section 354 IPC is upheld.

9. The petitioner was sentenced to undergo SI for six months with fine. Prayer has been made to modify the Sentence Order taking into

consideration the mitigating circumstances. It is informed that there is no male member in the family and petitioner's daughter, a student of 12th standard is to go to US for studies. In the absence of any male member, she is unable to fulfil the formalities. The petitioner is in JC since 26.10.2015 and is not a previous convict.

10. No adequate and sound reasons exist to modify the Sentence Order as the petitioner while working in a reputed institution outraged the modesty of the victim who unsuspectingly visited him to see the leave register. The victim was even criminally intimidated and threatened not to report the incident to anyone. The petitioner was well aware of her daughter's plan to go abroad for studies at the time of incident.

11. The petition lacks merits and is dismissed. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 01, 2016 / *tr*