

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

**RESERVED ON : 26th AUGUST, 2016
DECIDED ON : 20th SEPTEMBER, 2016**

+ CRL.REV.P.796/2015

JEEWAN

..... Petitioner

Through : Ms.Ritu Rastogi, Advocate.

VERSUS

STATE OF (GOVT. OF NCT) DELHI

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present revision petition has been preferred to challenge the legality and correctness of a judgment dated 30.11.2015 of learned Addl. Sessions Judge in CrI.A.No. 34/2014 by which conviction and sentence under Section 354 IPC awarded by the learned Metropolitan Magistrate vide orders dated 10.09.2014 and 22.09.2014 were upheld. The petitioner was awarded SI for one year with fine ₹500/- for commission of offence punishable under Section 354 IPC in case FIR No.533/2009 registered at PS Pandav Nagar.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 20.10.2009 at around 11.30 a.m. the petitioner outraged the

modesty of the prosecutrix / complainant 'X' (changed name) when she visited Dr.Gulab Gupta's clinic at C-4/19, Main Patparganj, Acharya Niketan, Delhi. After recording victim's statement (Ex.PW-2/A), the 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 the accused in the Court. The prosecution examined six witnesses to establish its case. In 313 Cr.P.C. statement, the petitioner denied his involvement in the crime and pleaded false implication. He examined DW-2 (Jitender Pal) besides appearing himself as DW-1 in defence. The Trial Court recorded conviction; appeal against conviction resulted in its dismissal.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the petitioner was working as a 'compounder' with PW-4 (Dr.Gulab Gupta) at his clinic at Mayur Vihar, in front of Sitla Mandir, Chilla Road, Acharya Niketan, Delhi on the day of incident i.e. 20.10.2009. The victim had visited the said clinic that day. It is also admitted that PW-4 (Dr.Gulab Gupta) was not available in the clinic that time.

4. Conviction recorded by the Courts below is solely based upon the sole testimony of the prosecutrix 'X'. Needless to say, conviction can be based on the sole testimony of the prosecutrix provided it lends assurance of her testimony. In case the court has reasons not to accept the version of the prosecutrix on its face value, it may look for corroboration.

5. On scrutinising the statements of the prosecutrix and the other witnesses, it transpires that material discrepancies have been emerged which

make it unsafe to base conviction without independent corroboration. The prosecutrix has made vital improvements in her Court statement. The occurrence took place on 20.10.2009 at around 11.30 a.m. The victim, however, lodged the FIR after a considerable delay and a rukka (Ex.PW-1/B) was sent at around 04.00 p.m. after recording her statement (Ex.PW-2/A). The delay in lodging the FIR has remained unexplained. In the complaint (Ex.PW-2/A), the complainant disclosed that on 20.10.2009 at the time of her visit to the clinic, Dr.Gulab Gupta was not available. On enquiry from the compounder i.e. the petitioner, she came to know that he would arrive soon. She further disclosed that the accused enquired about her ailment. On being revealed that she was feeling weakness, the accused took her inside the clinic to check her BP. Inside the room, the accused on the pretext of checking her BP outraged her modesty. On her raising objection, he told that it was quite normal and 'misbehaved' with her. She went to her residence and narrated the entire episode to her husband. Thereafter, both of them came to the Police Station and lodged the FIR.

6. Improving her version, the prosecutrix in her court statement as PW-2 deposed that when she visited the clinic, Dr.Gulab Gupta was not available. On the petitioner's asking about her problem and she telling him regarding feeling weakness, the accused called her inside and started to check her BP. Thereafter, he asked her to lie on the table; put his hand under her shirt and salwar. When she enquired as to what he was doing, he said it was 'normal'. She came out of the cabin and narrated the incident to her husband. After the doctor came, they had a talk with him. The doctor told that the accused had done 'wrong' act. Thereafter, she along with her husband went to the Police Station and recorded her statement (Ex.PW-2/A).

In the cross-examination, she denied that an altercation had taken place due to non-payment of consultation fee of ₹250 or ₹300.

7. Scanning the statement of the prosecutrix reveals that prosecutrix has given an inconsistent version. In her complaint (Ex.PW-2/A) made to the police, she did not elaborate as to how and in what manner she was molested by the accused. She merely mentioned that the accused did 'Chedkhani'. However, in her Court statement, she specifically narrated that the accused had put his hand under her shirt and salwar. The prosecutrix did not offer any cogent or plausible explanation as to why this material and vital fact was not stated in her initial report given to the police.

8. Glaring discrepancy about the presence of the victim's husband has surfaced in the depositions of PW-2 'X' and PW-3 (Rakesh Kashyap). In her complaint (Ex.PW-2/A), the complainant did not claim if her husband PW-3 (Rakesh Kashyap) had accompanied her to the clinic at the time of her visit. She was categorical to say that after the episode, she narrated the incident to her husband at her house. Apparently, victim's husband was not present at the time of the alleged occurrence. PW-3 (Rakesh Kashyap) has given a conflicting version and claimed that when he along with the victim had visited the clinic; accused Jeewan after introducing himself as 'doctor' had taken his wife inside the cabin; he himself remained outside the cabin. After some time, his wife came out 'weeping' and stated that the accused had 'misbehaved' with her. Only then, he came to know that accused Jeewan was not the 'doctor'. When Dr.Gulab Gupta came, they enquired as to how the BP was checked and whether there was any necessity to take the patient inside the cabin. He further claimed that after a fight took place with the accused, he made a telephone call at 100. Police came and recorded

complaint at the Police Station. The prosecution has failed to explain or reconcile the two conflicting versions. In her Court statement, the victim too spoke her husband's presence at the clinic. PW-5 (HC Dharamvir), the Investigating Officer, disclosed that when on receipt of PCR call, he went to the spot, the complainant was not available there. The complainant had come to the Police Station along with her husband and after recording her statement, he had lodged First Information Report. In the cross-examination, he disclosed that at first instance after receipt of PCR call when he reached the spot, the complainant was not available till 11.30 a.m. He waited her for about 20 – 25 minutes. There was hardly any patient at the clinic in the absence of the doctor. Needless to say, the prosecutrix was not accompanied by her husband at the time of her visit to the clinic. PW-2 'X' and PW-3 (Rakesh Kashyap) apparently have not presented true facts.

9. In her complaint (Ex.PW-2/A), the complainant revealed that after the accused had taken her inside the room on the pretext to check BP, he continued to outrage her modesty. When she confronted him as to what he was doing, he misbehaved with her and she came to her house. The victim did not offer any cogent reason as to why she did not raise any alarm when she was being allegedly molested by the accused inside the unlocked cabin. It is unbelievable that she would maintain complete silence while being molested by the accused. It does not appeal that she would return to her house without any demur. The complaint is silent if any call was made to the police promptly by her or her husband. She even did not disclose if she had come 'weeping' outside the clinic as deposed by her husband (PW-3). She did not state if she had waited for the arrival of the doctor or had got herself medically examined. In the Court statement, she spoke about their

conversation with the doctor after his arrival at the clinic. In the cross-examination, she even claimed to have paid ₹250 or ₹300 as consultation fee to him. No document is on record to show if any OPD slip / prescription slip was prepared or the victim was medically examined by PW-4 (Dr.Gulab Gupta) or any consultation fee was paid by her. PW-4 (Dr.Gulab Gupta) after reaching the clinic at around 01.30 p.m. examined patients present inside the cabin. After some time, he heard that his assistant had misbehaved with a female patient. A quarrel took place between both of them and someone informed the police at 100. PCR van came and took the accused to the Police Station. PW-4 (Dr.Gulab Gupta) did not depose if he had medically examined the victim and had charged ₹250 or ₹300 as consultation fee. He did not state if the accused to his knowledge had outraged the modesty of the prosecutrix.

10. Needless to say, an altercation between the petitioner and the victim had taken place over an issue. It has, however, not been proved beyond reasonable doubt that the accused had outraged the modesty of the prosecutrix inside the cabin at the relevant time. There was no previous complaint of any such act against the accused. It is highly unbelievable that the accused would dare to outrage the modesty of the prosecutrix whose husband was allegedly present outside the room at the relevant time. It is unbelievable that the victim would not raise any protest when allegedly the accused put his hand inside her shirt and salwar as alleged. The accused did not abscond from the spot. The prosecutrix and her husband did not lodge the complaint with the police at 100. When the Investigating Officer arrived at the spot; the complainant was not present there. The Investigating

Agency has not placed on record the PCR form to show when for the first time call was made at 100 and if so, by whom.

11. The improvements / contradictions / omissions referred above are of such magnitude which materially affect the trial and cannot be ignored. In view of the discrepancies in the evidence of PW-2 'X' and PW-3 (Rakesh Kashyap), the statement given by the victim does not inspire confidence. It cannot be held that the prosecution has proved its case to the hilt. Testimony of the prosecutrix cannot be relied upon since there are material improvements in her statement. Seemingly, the prosecutrix and her husband have not presented true facts.

12. In the light of above discussion, the impugned judgments of the Courts below basing conviction under Section 354 IPC are unsustainable. The petitioner deserves benefit of doubt. Revision petition is allowed and the conviction and sentence recorded by the Courts below are set aside.

13. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

SEPTEMBER 20, 2016 / tr