

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Revision No. 1399 of 2017(O&M)

Date of Decision: April 27 , 2017.

Anand PETITIONER (s)

Versus

State of Haryana RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sudhir Hooda, Advocate
for the petitioner.

LISA GILL, J.

The petitioner alongwith co-accused Kuldeep was convicted for the offences punishable under Sections 323/354 read with Section 34 IPC and sentenced to undergo simple imprisonment for one year each by the learned Judicial Magistrate First Class, Meham vide judgment and order dated 3/4.3.2016. They were also ordered to pay a fine of ₹1,000/- each and in default thereof, undergo further simple imprisonment for three months. An appeal was preferred by both the accused. The learned Additional Sessions Judge, Rohtak vide decision dated 07.04.2017 while upholding the conviction of the accused under Sections 323/354 read with Section 34 IPC reduced the sentence imposed upon them to one month each under Sections 323/354 IPC.

The petitioner Anand being aggrieved of the abovesaid judgment

and order dated 3/4.3.2016 of the learned Judicial Magistrate First Class, Meham as well as decision dated 07.04.2017 of the learned Additional Sessions Judge, Rohtak, has preferred the present revision petition.

The brief facts of the case are that, FIR No.154 dated 06.09.2012 was registered on a complaint filed by the victim (PW1). PW1 stated that she was going to village Lakhan Majra from Panipat on 05.09.2012 at about 6.00 p.m. She boarded a Jeep alongwith two other passengers at about 8.30 p.m. The two passengers got off the Jeep at village Kathura. Thereafter, they reached village Chiri. The driver of the Jeep was accompanied by another boy. The driver of the Jeep then turned towards village Garothipur. The victim objected to the same by saying that she had to go village Lakhan Majra however, they did not turn around and took the Jeep towards village Garothipur. The accused stopped their Jeep over a bridge and caught hold of her with a bad intention. They started teasing her. When she objected, they physically abused her. However, she managed to flee from the spot. A purse containing ₹5,000/- as well as one mobile phone of Nokia brand bearing SIM No. 9729415920 belonging to the victim were left in the vehicle. Final report under Section 173 Cr.P.C. was presented after completion of investigation. Charge was framed against both the accused. The prosecution examined four witnesses as well as various documents to prove its case.

The accused in their statements under Section 313 Cr.P.C. denied all the incriminating material and evidence put to them. They pleaded innocence and false implication. However, no evidence was led by them.

Learned trial court after taking into consideration the evidence, all the facts and circumstances of the case concluded that the prosecution had

proved its case against the accused beyond reasonable doubt. Consequently, the petitioner alongwith co-accused was convicted and sentenced as mentioned above. Appeal was preferred by the petitioner as well as the co-accused. The learned Additional Sessions Judge, Rohtak on considering the evidence on record upheld the conviction of the accused persons under Sections 323/354 read with Section 34 IPC. However taking a lenient view, the sentence of one year each under Sections 323/354 IPC was reduced to one month each. The petitioner being aggrieved of his conviction and sentence has filed the present revision petition.

Learned counsel for the petitioner vehemently argues that the prosecution has miserably failed to prove its case against the petitioner. No reliance can be placed upon the statements of the victim and her husband who are clearly interested witnesses. No independent witness has been examined to prove the prosecution case. Furthermore, there are material discrepancies in the statements of the victim (PW1) and her husband (PW2). It is urged that the falsity of the prosecution case is evident from the statement of the victim (PW1) inasmuch as she has stated that she left behind in the vehicle in question a mobile phone of Nokia brand whereas, the mobile phone allegedly recovered was of Samsung brand. Still further, the victim in her complaint states that she travelled in a Jeep whereas, the vehicle recovered from the accused is a TATA Spacio (Sumo) vehicle. This vehicle cannot be said to be a Jeep. Moreover, the number of the vehicle was not disclosed by the victim. The link evidence in this case is thus missing. Learned counsel for the petitioner further argues that PW2 i.e. the victim's husband has named Kuldeep and one Jai Bhagwan to be the accused persons. Therefore, it is not imaginable as to how the present

petitioner, namely, Anand has been convicted.

In the alternate, learned counsel for the petitioner submits that the quantum of sentence is excessive. Sentence imposed upon the petitioner be reduced to that of already undergone or the petitioner be afforded the benefit of probation as he is not involved in any other case. He is a young man and has a family to support.

I have heard learned counsel for the petitioner and have gone through the file as well as the statements of the witnesses produced in Court today.

The complainant has steadfastly supported prosecution version. It is duly proved on record that the petitioner is guilty of the offence in question. There is no reason whatsoever for the complainant to falsely implicate the accused persons who were admittedly not known to her prior to the incident in question. The argument of learned counsel for the petitioner that the complainant did not disclose the manner in which the accused outraged her modesty, is not acceptable. She has specifically recorded the term 'Chherkhani'. It is rightly held by the learned Additional Sessions Judge, Rohtak that the said word itself is sufficient to indicate impropriety in the behaviour of the accused persons. The details thereof have been clearly mentioned in the application (Ex.PW1/A). The allegations are further elaborated by the victim's husband (PW2). The learned courts below have rightly observed that the complainant being an illiterate rustic lady might have felt hindered in deposing freely before the learned trial court in respect to the details therefore, she mentioned the term 'Chherkhani' only. It is duly proved that criminal force was used by the petitioner with an intention to outrage her modesty or with the knowledge that

her modesty would be outraged. Inappropriate contact with the complainant by the accused with sexual intent is proved. Her hands were also twisted. The victim however managed to escape and flee from the spot.

In the facts and circumstances, to insist upon the examination of an independent witness is not justified. Due deference has to be afforded to the testimony of the victim once it is found to be trustworthy. There is no question of seeking any further corroboration in case the victim's testimony is found to be reliable. It is not in dispute that the victim is an illiterate rustic lady. In the present case, the complainant admittedly did not know the accused persons prior to the incident in question. There is nothing on record, much less proved, to indicate that there was any enmity of any sort between the parties. Bald assertions have been made on behalf of the petitioner that the complainant's husband was known to police officials and it is at their asking that the present petitioner has been involved. No details, whatsoever, in this respect are on record. There can thus be no presumption that the petitioner has been falsely implicated.

Similarly, the argument that the complainant merely wanted to avoid the payment of fare to the accused persons cannot be countenanced. In fact, giving of such a suggestion proves that the victim indeed travelled in the vehicle being run by the petitioner and the co-accused. It is a matter of record that a vehicle TATA Spacio Sumo bearing No. HR19A 8909 (Ex.PW3/A) and mobile phone of Samsung brand bearing IMEI No.359988/04/869016/1 (Ex.PW1/C) were recovered. The complainant prior to the recovery of the same produced a bill (Ex.PW1/D) in respect to the said mobile phone. Therefore, the contention that a mobile phone of Samsung brand was recovered whereas the

complainant stated that she left a mobile phone of Nokia brand in the vehicle, is of no avail to the petitioner. As noted above, the victim is an illiterate rustic lady. She has in her cross-examination stated that she did not know the make of the phone or make of her purse which she left in the vehicle. She has however stated that her purse was red in colour. Similarly, the fact that the victim did not disclose the make of the vehicle in question or did not disclose its number, does not detract from the prosecution version in any manner. The contention that the petitioner has not been identified because PW2 i.e., the husband of the victim, has wrongly mentioned the names of the accused as Kuldeep and Jai Bhagwan whereas the petitioner is Anand and not Jai Bhagwan, is of no avail to the petitioner for the reason that the petitioner has been duly identified in court by the victim.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the conviction of the petitioner vide the impugned judgments which call for interference by this Court in exercise of its revisional jurisdiction.

The alternate prayer raised by the petitioner also deserves to be rejected. The learned Additional Sessions Judge, Rohtak has already displayed a leniency which is immense. Sentence of one year each under Sections 323/354 IPC imposed upon the petitioner by the learned trial court has been reduced to that of one month. Both the sentences are ordered to run concurrently. Any further reduction in the sentence is clearly not called for.

The Hon'ble Supreme Court in State of Madhya Pradesh versus Saleem @ Chamaru and another, 2005(5) SCC 554 has specifically observed that undue sympathy to impose inadequate sentence would do more harm to the

justice system to undermine the public confidence in the efficacy of law and society could not endure under such threats. Similarly, the Hon'ble Supreme Court in State of Madhya Pradesh versus Sheikh Shahid, 2009 (12) SCC 715 has observed that any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect to such offences will be counter productive in the long run and against societal interest, which needs to be taken care of and strengthened by string of deterrence inbuilt in the sentencing system.

Learned counsel for the petitioner is unable to point out any such mitigating circumstance, which would justify further reduction of the sentence imposed upon the petitioner or for affording the benefit of probation to the petitioner.

Accordingly, this petition is dismissed.

(**LISA GILL**)
JUDGE

April 27 , 2017.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No