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

DECIDED ON : FEBRUARY 17, 2017

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CRL.REV.P. 132/2015

SHIV SHANKAR

..... Petitioner

Through : Mr.Bipin Kumar Jha, Advocate.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through : Ms.Manjeet Arya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present Revision petition under Sections 397/401 read with Section 482 Cr.P.C. has been preferred by the petitioner to challenge the legality and correctness of a judgment dated 24.02.2015 of learned Additional Sessions Judge in Crl.A.No.22/14 whereby conviction and sentence recorded by the learned Trial Court under Section 354 IPC sentencing the petitioner to undergo Simple Imprisonment for one year with fine ₹100/- were upheld. The Revision petition is contested by the respondent/State.

2. I have heard the learned counsel for the parties and have examined the file. Allegations against the petitioner were that on 30.07.2006

at about 6.00 p.m. at complainant's jhuggi at B-58, Rama Road, Delhi, the petitioner caught hold of victim's hand with an intention to outrage her modesty and inflicted injuries to her and her sister Anu Beg Bibi. The Investigating Officer after recording victim's statement (Ex.PW-4/A) lodged First Information Report on 5.10.2006. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the petitioner in the court. In order to establish its case, the prosecution examined six witnesses. In 313 Cr.P.C. statement, the petitioner denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as aforesaid. Appeal resulted in its dismissal. Being aggrieved and dissatisfied, the instant Revision petition has been preferred.

3. At the outset, it may be mentioned that there is inordinate delay in lodging the FIR. The occurrence took place at 30.07.2006 at around 6.00 p.m. The victim was taken for medical examination to Deen Dayal Upadhyay Hospital where arrival time was recorded in the MLC (Ex.PW-6/A) as 7.20 p.m. In the MLC, there is no mention of 'sexual assault'. The victim had not sustained any injuries, whatsoever, on her body. Victim's sister Anu Beg Bibi was not medically examined for the injuries allegedly sustained by her. The Investigating Agency did not lodge any FIR for the said incident at that time. After delay of more than three months, the complainant opted to lodge complaint (Ex.PW-4/A) forming basis of the registration of the FIR. No plausible explanation, whatsoever, has been offered by the complainant or the Investigating Agency for inordinate delay in lodging the FIR.

4. Early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. In the case of *Jail Prakash Singh v.State of Bihar & Anr.* 2012 CRI.L.J.2101 the Supreme Court held:-

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant’s version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

5. Admitted position is that the petitioner and the victim lived in the neighborhood for the last many years. There is no history of any previous quarrels between them. PW-2 (Md.Ainul Shekh), victim’s husband, admitted in the cross-examination that the petitioner was his neighbour and thus had cordial relations with him. No complaint, whatsoever, was lodged about his behavior or conduct prior to the incident.

6. Vital discrepancies and infirmities have emerged in the prosecution witnesses making it unsafe to base conviction without independent corroboration. In the complaint (Ex.PW-4/A) the victim disclosed that the petitioner arrived at her jhuggi at around 6.00 p.m.; caught

hold of her right hand and when she attempted to get her hand released and raised alarm, she was beaten. After some time her younger sister Anu Beg Bibi also arrived at the spot; she was also beaten on her intervention. Her husband who was at his tea shop came at the spot after some time and made a telephone call at 100. She further disclosed that her sister had not sustained any vital injuries and was not medically examined. It was not revealed in the complaint (Ex.PW-4/A) if the accused had caught hold of victim's hand with an intention to outrage her modesty.

7. In her Court statement as PW-4, the complainant informed that the petitioner arrived at her jhuggi at around 8.00 p.m. and caught hold of her hand. When she tried to get her hand released and raised hue and cry, the petitioner started beating her. Her younger sister who came to intervene was also given beatings. She became unconscious due to injuries sustained by her. When she regained senses, she saw her husband at the spot. He made a telephone call at 100 to the police. She deposed that the accused had caught hold of her right hand in order to outrage her modesty. In the cross-examination, she expressed ignorance if the petitioner had helped her sister Anu Beg Bibi to buy a TV from Mahashakti Electronics on 31.01.2006 in installments and had stood guarantor for it. She admitted in the cross-examination that the petitioner had gone to the jhuggi of her sister and not to her jhuggi.

8. PW-5 (Anu Beg Bibi), victim's younger sister who gave the timing of incident between 6.00 to 8.00 p.m. deposed that the petitioner had come to her jhuggi and had caught hold hand of her sister 'X's hand. When she raised hue and cry, she was given beatings. She became unconscious to the injuries sustained by her. In the cross-examination, she admitted that her

jhuggi was separate from that of jhuggi of her sister 'X'. She admitted that a week prior to the incident, she had purchased a TV from Mahashakti Electronics. She further stated that the accused had gone with her at the time of purchase of TV and the shopkeeper had given her TV on installments on the asking of the petitioner. She further admitted that down payment of ₹2,000/- was made by the petitioner to the shopkeeper and she had promised to return it. It was further admitted that she could not return ₹2,000/- to the petitioner. She added that the TV purchased by her was handed over to the petitioner after two months of the incident. She further admitted that the petitioner had come to collect the installment of loan of TV due to which a quarrel had taken place.

9. From the scanning of the testimony of both the material witnesses, it reveals that they have given divergent version about the incident. Since the petitioner had gone to collect ₹2,000/- which had remained unpaid, seemingly, an altercation or scuffle had taken place. That seems to be the motive of the complainant to lodge the FIR in question after a considerable delay of more than three months. The victim's version was not corroborated by medical evidence. As per MLC, she did not sustain any injury, whatsoever, leading to her unconscious state. No independent public witnesses were examined. It has not been explained properly as to where the occurrence took place i.e. whether at the jhuggi of the victim or at the jhuggi of the victim's sister. PW-3 (Ainul Sheikh) in the examination-in-chief disclosed that when he was present at his tea shop, her daughter informed that an altercation/quarrel had taken place with the petitioner. He did not reveal if the petitioner had caught hold of his wife's hand to outrage her modesty.

10. From the evidence produced on record, it cannot be inferred with certainty if the petitioner had caught hold of victim's hand with an intention to outrage her modesty. Both parties were acquainted with each other and there was dispute/altercation over demand of money of ₹2,000/- from the victim's sister. The occurrence took place at her jhuggi. In view of this scenario, conviction on the uncorroborated testimony of the victim and her sister cannot be relied to base conviction under Section 354 IPC. It is relevant to note that the Trial Court did not convict the petitioner under Section 323 IPC.

11. In the light of the above discussion, the impugned judgments of Courts below cannot be sustained and are set aside. The petitioner is acquitted of the charge. The Revision petition is accordingly allowed. Bail bond and surety bond of the petitioner stand discharged.

12. Copy of this order be sent to the concerned Jail Superintendent for information.

13. Trial court record be sent back along with a copy of this order.

(S.P.GARG)
JUDGE

FEBRUARY 17, 2017

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