

\$~48

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

Decided on: 5th May, 2017

+ CRL.L.P. 267/2017 and Crl.MA.7512/2017 (delay)

STATE (GNCT OF DELHI)

..... Petitioner

Through: Mr. Amit Chadha, APP for the
State with SI Satyawar, PS
Baba Haridas Nagar.

versus

SH. ERWIN LAKRA @ BABA & ORS. Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent stood trial in the court of Metropolitan Magistrate in criminal case registered as no.65/2016 on the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on conclusion of investigation into First Information Report (FIR) No.135/2012 of Police Station Baba Haridas Nagar, on the accusations that they had forcibly entered into house of the complainant (described as Ms. K in the proceedings of the trial court) and having shared common intention, assaulted her thereby outraging her modesty and, thus, having committed offences punishable under Sections 451/323/354/34 of Indian Penal Code, 1860 (IPC).

2. On the conclusion of the trial, by judgment dated 28.10.2016, the metropolitan magistrate recorded her dissatisfaction with the prosecution evidence and concluded that the guilt of the respondents had not been proved beyond reasonable doubt and consequently acquitted them.

3. The State has come up with the petition at hand seeking leave to file a criminal appeal in terms of Section 378 (4) Cr.P.C.

4. The learned counsel for the State has been heard. Record perused.

5. The learned Additional Public Prosecutor fairly conceded that the complainant while deposing as PW-1 made no allegations about the second and third respondent having participated in any acts of commission or omission on the part of the first respondent save and except for the fact that they were also accompanying him at the time of visit in question. In these circumstances, the learned magistrate cannot be said to be in error in observing that there is no evidence showing sharing of intention, if any, with the first respondent.

6. As regards the first respondent, the complainant, the solitary witness for the incident in question, stated that the respondents were under the influence of alcohol, their visit being unwelcome and, therefore, they had been asked to go out whereupon the assault took place. The judgment of the trial court shows that the medical examination reports in respect of the respondents would not

corroborate the word of PW-1 as to the state of they being under the influence of alcohol at the relevant point of time.

7. The visit to the house of the complainant was not denied by the respondents. Rather, they tried to explain it by leading defence evidence by examining, amongst others, DW-1 Vijay Miz and DW-2 Head Constable Raj Kumar. The gist of the defence evidence, as noted in the impugned judgment, reveals that the complainant's son is an accused in a previous criminal case it having arisen out of FIR No.129/2012 of the same Police Station in which case DW-1 was a victim, such incident having occurred statedly on 06.06.2012. It is the said victim who had approached the complainant through DW-1 for exploring the possibility of an amicable settlement. The purpose of the visit to the house of the complainant, thus, cannot be said to be unholy or unlawful. It was for PW-1 to entertain the visitors or not to do so. But then, the manner of assault described by her is not very convincing. She would vaguely state that the first respondent had misbehaved with her. The use of the expression "*misbehaviour*", as rightly observed by the learned magistrate, leads one nowhere. It is too general and vague. What was the element of misbehaviour had to be described by narrating the conduct indulged in by the person in question.

8. The learned magistrate has also noted the discrepancy in the evidence of PW-1 vis-à-vis her allegations about she having been assaulted by all the respondents resulting in her shirt being torn. The discrepancies are material and cannot be wished away or ignored.

9. In the above facts and circumstances, it cannot be said that the view taken by the metropolitan magistrate was perverse or not possible.

10. The petition along with accompanying application, therefore, must be dismissed.

11. Ordered accordingly.

MAY 05, 2017
vk

R.K.GAUBA, J.

