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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on 9th November, 2017

Order pronounced on 16th November, 2017

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CRL. REV. P. 528/2017

ABID

.....Petitioner

Through: Mr. Abdul Salam, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)

....Respondent

Through: Ms. Anita Abraham, APP for State.
Ms. Inderjeet Sidhu, Advocate (DHCLSC)
with the complainant in person.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present Criminal Revision Petition has been filed under Section 401 Cr.PC assailing the order dated 13.07.2017 passed in C. A. No. 33/17 titled as 'Abid Vs. State' by the Additional Sessions Judge, North-East, Karkardooma Courts, Delhi and also conviction order dated 28.03.2017 and order on sentence dated 04.05.2017 whereby the petitioner was sentenced to undergo Rigorous Imprisonment for a period of four months for the offence punishable under Section 354 IPC in case FIR No. 72/2008 registered at Police Station – Seelampur.
2. The brief and relevant facts necessary for disposal of the present petition is that on 18.02.2008 at about 1:45 p.m., the complainant was standing outside of his house; that the petitioner came there

and introduced himself as Abid Hussain; that the petitioner put his hand on the shoulder of the complainant and asked “*Kitne Paise Legi, Chal Mere Sath Chal*”; that the complainant raised an alarm and the people of the locality gathered there and apprehended the petitioner; that PCR was called and petitioner was handed over to the police.

3. After completion of trial, the petitioner was convicted for the offence punishable under Section 354 IPC and was sentenced to undergo Simple Imprisonment for four months for the said offence. The petitioner preferred an appeal against the aforesaid conviction and sentence, which was dismissed. Hence, the present Criminal Revision Petition.
4. The petitioner was sentenced to undergo four months for the offence punishable under Section 354 IPC and he is reported to have undergone 1 ½ months in incarceration.
5. During the course of the arguments, learned counsel for the petitioner does not challenge the conviction passed by the Trial Court, however prays that the petitioner be released on the period already undergone as he has clean antecedent and having responsibility of four daughters and three sons.
6. Supporting the impugned judgment/orders, learned APP for the State contended that the petitioner has rightly been convicted on the sole unrebutted testimony of the victim and both the courts below have appreciated the facts in the correct perspective, hence, the impugned judgments/orders do not warrant any interference.

7. Learned counsel for the complainant also opposed the prayer made in the petition and adopted the arguments raised by the learned APP for the State.
8. I have heard the learned counsel for the parties and perused the material available on record.
9. The present case involves Section 354 IPC which deals with assault or criminal force with intent to outrage the modesty of a woman. In *Vidyadharan Vs. State of Kerala* reported in [2004] 1 SCC 215, the Apex Court observed that :

“In order to constitute the offence under Section 354 mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outraged alone for its object. There is no abstract conception of modesty that can apply to all cases. (See *State of Punjab v. Major Singh* (AIR 1967 SC 63). A careful approach has to be adopted by the Court while dealing with a case alleging outraged of modesty. The essential ingredients of the offence under Section 354 IPC are as under:

- (i) that the person assaulted must be a woman;
- (ii) that the accused must have used criminal force on her, and
- (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

Intention is not the sole criteria of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her witness should receive same weight.

10. Undisputedly, the testimony of the victim remained unrebutted. Her version on oath in Court (PW-1) is fully corroborative of the version given by her in the rukka pursuant to which the present FIR had been registered. However, it appears that that the petitioner may be having remorse of the act done by him and was also conscious of the disrespect/abuse caused to the complainant which led the petitioner in not rebutting/refuting the allegations made against him. The act appears to have happened in a spur of moment without any physical force. The petitioner has no previous

criminal record having responsibility of four daughters and three sons.

11. Keeping in view the facts and circumstances of the present case, the sentence is modified to the period already undergone. However, imposition of fine remains unaltered.
12. Accordingly, the present petition is disposed of.
13. Bail bonds furnished by the petitioner stands cancelled and sureties are discharged.
14. A copy of this order be communicated to the concerned Jail Superintendent.

SANGITA DHINGRA SEHGAL, J.

NOVEMBER 16 , 2017

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