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

DECIDED ON : JANUARY 29, 2018

+ **CRL.REV.P. 796/2014**

AJIT SINGH

..... Petitioner

Through : Mr.Prag Chawla, Advocate.

versus

STATE

..... Respondent

Through : Mr.Ravi Nayak, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present revision petition has been preferred by the petitioner-Ajit Singh to challenge the legality and correctness of an order dated 18.11.2014 of learned Additional Sessions Judge in Crl.A.No.14/2 by which the findings of the learned Trial Court recorded by a judgment dated 19.12.2013 convicting the petitioner for commission of offence under Sections 323/354 IPC were confirmed. The Trial Court had sentenced the petitioner to undergo simple imprisonment for one year with fine ₹1,000/-. In appeal the substantive sentence was modified and reduced to simple imprisonment for six months with fine ₹25,000/-. The revision petition is contested by the respondent.

2. Learned counsel for the petitioner urged that the Trial Court did not appreciate the evidence in its true and proper perspective. There was not enough material before the trial court to base conviction under Sections 323/354 IPC. The victim's statement was not corroborated by any independent evidence; even her father did not support her version. As per the information conveyed to the police, initially a quarrel had taken place at the spot. The statement of the prosecutrix does not inspire confidence as her husband and children present in the house did not intervene; they were not cited as witnesses. The complaint against the petitioner was motivated to avoid payment of ₹20,000/- borrowed by the complainant from the petitioner's wife.

3. Learned Additional Public Prosecutor urged that the petitioner's conviction is based upon fair appreciation of evidence by the courts below and no interference is called for.

4. Admitted position is that both the prosecutrix and the petitioner lived nearby in the same locality and were acquainted with each other prior to the incident.

5. The occurrence took place on 18.04.2005 at about 9.00 p.m. in front of House No.G-11/A, Kanwar Singh Nagar, Nangloi. The information about the incident was reported promptly and DD No.45B came to be recorded at 9.15 p.m. at Police Station Nangloi regarding a 'quarrel' to have taken place at the spot. The investigation was assigned to SI Joginder Singh (PW-6). After recording victim's statement (Ex.PW-2/A), the Investigating Officer lodged first information report by sending rukka at 12.45 on the night intervening 18/19.04.2005. In the complaint, the complainant implicated the petitioner for outraging

her modesty; she attributed specific and definite role to the petitioner in the crime. Apparently, there was no delay in lodging the FIR. The petitioner was named in the FIR. There was least possibility of the prosecutrix to have concocted a false story in such a short period. Soon after the incident, the prosecutrix was taken to Sanjay Gandhi Memorial Hospital, Mangolpuri and was medically examined with MLC Ex.PW-7/A. Arrival time at the hospital was recorded as 11.45 p.m.

6. In her court statement, the prosecutrix proved the version given to the police at first instance without any variation. She deposed that at about 9.00 p.m., when she was coming back to her house after purchasing certain articles and reached in front of her house, the accused Ajit Kumar came from front; stopped her and caught hold of her right hand. The accused by the other hand started holding and pressing her breast and thereafter tried to kiss her. She tried to rescue herself from his clutches and in the process broke her bangles. She raised hue and cry and rescued herself. She made a call at 100. She further deposed that injuries were suffered by her on her wrist due to breaking of bangles; she also sustained scratches on her breast due to the acts of the petitioner. In the cross-examination, she informed that the petitioner's wife was known to her and she lived in her neighbourhood nearby. She denied if there was any money transaction between her and petitioner's wife. She further denied to have borrowed ₹50,000/- from the petitioner's wife in the year 2004 or had to return the balance amount of ₹20,000/-, which she denied to pay despite repeated demands. She denied that the petitioner was falsely implicated to avoid the said payment. She denied if a quarrel had taken place with

the petitioner's wife on the day of incident. She deposed that after the occurrence, the petitioner fled the spot threatening her.

7. On scanning the testimony of the complainant/victim, it reveals that despite lengthy cross-examination, the defence could not elicit any infirmity to disbelieve her version. The petitioner did not deny his presence at the spot at the time of occurrence. No specific motive was attributed to the complainant to suddenly make serious allegations of sexual harassment against the petitioner with whom there was no prior animosity or quarrel. No plausible evidence has come on record to show if any money transaction or any dispute had taken place on the day of incident between the complainant and the petitioner's wife, as urged. The petitioner was also unable to establish if ₹50,000/- were ever borrowed by the complainant from his wife. It is unbelievable that the complainant would level serious allegations of sexual harassment against the petitioner to avoid payment of paltry sum of ₹20,000/- and to bring herself to disrepute. No valid reasons exist to disbelieve the testimony of the prosecutrix. She in her statement informed that after the occurrence, she had made a call to her father. This has been corroborated by PW-3 (Om Prakash), her father. He deposed that on 18.04.2005 her daughter had given a call at his residence at about 10.00 p.m. and had informed him about the quarrel and asked him to reach immediately. He further informed that her daughter had given a call at 100 also. He immediately reached the Police Station and her daughter was taken to Sanjay Gandhi Memorial Hospital. Had no incident been taken place, there was no occasion for the complainant to make a call to her father living at Chandpur Dabas, and to compel him to reach at odd

hours at the police station. Om Prakash was not the witness to the incident. The plea that he did not support the prosecution in its entirety is of no consequence.

8. Soon after the incident, efforts were made to apprehend the petitioner; however, he was not traceable. The petitioner did not explain as to what had prompted him to flee the spot and where he kept himself hiding before his arrest on 10.05.2005.

9. Minor inconsistencies highlighted by the petitioner's counsel are inconsequential as they do not effect the core of the prosecution case. The courts below have given concurrent findings recording the petitioner's guilt by minutely discussing all the relevant aspects. The petitioner did not examine any witness in defence in whose presence the alleged loan was given to the complainant by the petitioner's wife.

10. The findings on conviction recorded by the courts below are based on fair appreciation of the evidence and deserves no intervention. The conviction is confirmed under Section 354 IPC.

11. Regarding Section 323 IPC, no hurt as such, was caused by the petitioner to the complainant. Only in the process of committing offence under Section 354 IPC, the complainant sustained simple hurt on her body due to breaking of bangles which she was wearing at the time of incident; hence there was no credible evidence on record that the petitioner was guilty for commission of offence punishable under Section 323 IPC. He deserves benefit of doubt and is acquitted under Section 323 IPC.

12. Regarding sentence, the petitioner has been imprisoned for a period of six months. It has come on record that the petitioner remained

in custody in this case for certain duration. Fine of ₹25,000/- has been imposed. The petitioner is not a previous convict and is not involved in any other criminal case. He is stated to be the only bread earner of the family. He has old parents, wife and two minor children to take care of them.

13. Considering the facts and circumstances of the case, the sentence order is modified and the substantive sentence of simple imprisonment for six months is reduced to simple imprisonment for three months. Other terms and conditions of the sentence order are left undisturbed.

14. The petition stands disposed of in the above terms.

15. The petitioner shall surrender before the trial court on 8th February, 2018 to serve out the remaining period of substantive sentence.

16. Copy of the order be sent to trial court for information.

**S.P.GARG
(JUDGE)**

JANUARY 29, 2018/sa