

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

% Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 467/2016

BHUPENDRA SINGH VERMA & ORS. Petitioners

versus

THE STATE (NCT OF DELHI) & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Sugandha Anand and Mr. Surinder Anand,
Advocates.

For the Respondents : Ms. Meenakshi Dahiya, APP for the State with SI
Avaneesh Kumar, PS Farsh Bazar.
Mr. Saurabh Kansal and Ms. Pallavi S. Kansal,
Advocates for respondent No.2 with Respondent
No.2 in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. Petitioners impugn judgment dated 26.04.2016, whereby, the Revisional Court has allowed the revision petitions filed by respondent No.2 as also the State impugning the order of charge of the Trial Court dated 17.12.2015.

2. The Trial Court, by order dated 17.12.2015, had framed a charge against the petitioner No.1 Bhupender Singh Verma under Sections 354/354A/323 IPC but had discharged the petitioners of the

offences under Sections 452/506 IPC and petitioner Nos. 2 to 4 of the offences under Sections 354/354A/323 IPC.

3. Respondent No.2 complainant is the sister-in-law of the petitioner No.1 being his brother's wife. Petitioner No.2 is the wife of the petitioner No.1. Petitioner Nos.3 and 4 are the daughters of the petitioner Nos.1 and 2.

4. Subject FIR No.498/2014 was registered under Sections 452/354/354A/323/506/34 IPC, Police Station Frash Bazar on the complaint of the respondent No.2 contending that she was a resident of ground floor and second floor in property No.D-22./B, East Arjun Nagar along with her husband and daughter. It is contended that after the death of her mother-in-law the property was divided and parties were residing in separate portions.

5. It is alleged that the father-in-law (since deceased) was having evil eyes upon her and a number of times he was warned to reform himself. Petitioner No.1, who was a having a separate personal portion, in order to grab the property instigated her father-in-law on one pretext or the other.

6. It is alleged that on 24.10.2013 at about 6 pm when the complainant was alone with her younger daughter and her husband was out in connection with his business her father-in-law along with the petitioners came to the gate of the complainant's house coming from their separate portions and firstly her father-in-law entered the

house along with an electricity bill and asked her to take the same but she refused. In the meantime, the lights went off. It is alleged that her father-in-law caught hold of her chest and when she tried to remove herself, he threatened that either she should follow his directions to have sex or else she and her family would be dispossessed and that the petitioners were standing outside and they will come on his calling and when she clearly refused, petitioner no. 1 entered the house started mercilessly beating her with fist and kick blows.

7. It is alleged that the petitioner No.1 tried to outrage the modesty of the complainant. It is alleged that her father-in-law uttered abuses at her. The complainant with the assistance of her younger daughter raised an alarm and other people of the locality collected on the spot. It is alleged that if the persons of the locality had not collected, she apprehended that she would be raped by her father-in-law and the petitioner No.1. Further, it is alleged that while leaving the spot they all threatened that in case the complainant and her husband did not vacate the portion of the property, her entire family would be removed. Further, it is alleged that when her husband returned back at 7 pm, the entire incident was narrated to him. He called the police but no complaint was registered by the police on the ground that Delhi elections were going on.

8. In a subsequent statement, recorded on 25.06.2014 under Section 164 Cr.P.C., the complainant alleged that her father-in-law hit his hand on her chest and subsequently her brother-in-law (petitioner

No.1) also hit his hand on her chest and started misbehaving with her. Her sister-in-law, petitioner No.2 and her daughter Dolly said that they would disrobe her and thereafter they beat her.

9. In her further supplementary statement recorded on 25.06.2014, the prosecutrix contended that when the petitioners were beating her, her daughter, who suddenly got up and seeing the condition of the complainant started making a noise. Suddenly, there was a knock on the door and when she opened the door, she found that her brother was standing there and when her brother came in, all the petitioners along with the father-in-law ran away.

10. Her brother-in-law, in his statement recorded on 04.07.2014, stated that on 24.10.2013 at about 6-6:30 pm, he came to meet his sister and when he reached her house, he heard abuses coming from inside and when he knocked on the door his sister opened the door and he saw her and her father-in-law and the petitioner No.1 inside the house and as soon as they saw him they went to their adjoining portions and his sister started crying and told him that they wanted to evict them from the house and her father-in-law, brother-in-law, his wife and daughters had misbehaved with her and beaten her.

11. The Trial Court, in the order on charge dated 17.12.2015, has noticed that the complainant had lodged a police complaint on 17.12.2013 after a delay of more than 50 days. The alleged incident being of 24.10.2013.

12. Though the complainant had named the daughters of the petitioners Nos.1 and 2 i.e. the petitioner Nos.3 and 4 in her complaint but there were no specific allegations against them. The Trial Court noticed that in her statement under Section 164 Cr.P.C., there were several improvements in the version given, based on which, the FIR was registered. There were no allegations in the complaint given to the police that petitioner Nos.2, 3 and 4 had threatened to disrobe her.

13. The Trial Court noticed that the parties were residing in separate portions of the same house as per the family arrangement and there was no partition of the property by metes and bounds. Trial Court further held that as there was no partition of the property and parties were residing in the same house, it could not be said that the petitioners had committed house trespass by stepping into another portion of the same house and as such, no case was made out under Section 452 IPC.

14. Further, the Trial Court noticed that the allegation of the complainant that she was threatened to leave her house was vague and non-specific and, accordingly, petitioners were discharged of the offence under Section 506 IPC.

15. Further, the Trial Court noticed that there were no specific allegations against the petitioner Nos.2 to 4 in the original complaint filed by the complainant and no *prima facie* case was made out against them for the offence under Sections 354/354A/323 IPC.

Accordingly, they were also discharged. Trial Court held that charge was liable to be framed against the petitioner No.1 under Sections 354/354A/323 IPC.

16. Both the State as well as the complainant filed revisions against order on charge dated 17.12.2015 of the Trial Court. By the impugned judgment dated 26.04.2016, the Revisional Court has held that where one person enters the property in possession of the other with an intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, such person commits criminal trespass. The Revisional Court was of the view that if the portion of the property was occupied by the possessors to the exclusion of the others, even though there was no partition by metes and bounds, said offence would be made out.

17. It is noticed that the petitioner had alleged that she was residing in separate portions while the accused were residing in other portions and it was not the case that the accused persons were common users of the portions occupied by the complainant and accordingly, an offence under Section 452 IPC was made out against the petitioners.

18. The reasoning given by the Revisional Court is based on the premise that the portion of the property alleged to be occupied by the complainant is in her exclusive possession.

19. The Revisional Court has erred in not noticing that apart from bald allegation that the complainant was occupying the ground and

second floor consequent to an alleged family arrangement post the demise of her mother-in-law, there was no material produced to substantiate the same.

20. It is an admitted position that the property is a joint property at least in terms of possession where the accused as well as the complainant were residing. Even the statement of witnesses on record i.e. her brother shows that the portion admittedly occupied by the accused was adjoining to the room of the complainant. Merely because one family member enters into the room of another in the same property would not *ipso facto*, without any corroborative material, establish the offence of criminal trespass.

21. The allegation is that the father-in-law entered the room and thereafter on his beckoning the others i.e. the petitioners entered the room. There is no material to substantiate that there was exclusive possession of the complainant or that the petitioners had no right to enter the room. The allegation of the complainant is that they were occupying separate portions consequent to a family arrangement. No such family arrangement has been produced on record to show that the complainant was occupying the property to the exclusion of others. The basis of the impugned order of the Revisional Court that the property occupied by the complainant was to the exclusion of others is not substantiated.

22. The Revisional Court seems to have lost sight of the fact that the parties were related to each other and the complainant was the daughter-in-law of the deceased and is the sister-in-law of the petitioner Nos.1 and 2. The Revisional Court clearly committed an error in holding that a case for an offence under Section 452 is made out against the petitioners. The Revisional Court further erred in not noticing that the brother, whose supplementary statement was recorded subsequently, does not say that the petitioner Nos.3 and 4 were even present at the house.

23. With regard to offences under Section 323/452 IPC, the Revisional Court has held that there are specific roles ascribed to petitioner Nos.2 to 4 of the offence under Section 323 IPC. The Revisional Court has clearly erred in not noticing that Section 323 IPC deals with causing hurt. In her statement given to the police there are vague allegations that all of them started hitting her in the chest with fist and kick blows. Said statement is contradicted by the statement of her brother, who has stated that when he entered the house, he saw her father-in-law and petitioner Nos.1 and 2 present. He does not state that he saw respondent Nos.3 and 4 in the property.

24. Further, the MLC does not corroborate the version of the complainant. The MLC records that there were multiple bruises on the chest with no other external injury. In her statement given to the police, which statement is also given after a delay of 50 days with regard to the role of petitioner Nos.2 to 4, it is alleged that on the

asking of the father-in-law all the aforesaid persons, i.e., the petitioners entered the house and started mercilessly beating her with fist and kick blows.

25. Subsequently, in the statement recorded under Section 164 Cr.P.C., there is an improvement in the version that the petitioner Nos.2 to 4 had threatened to disrobe her also. It is noticed that in none of the statements or the supplementary statement given by the complainant except for her statement recorded under Section 164 Cr.P.C. there is any such allegation that petitioner Nos.2 to 4 threatened to disrobe her. The only allegation qua them is that they had physically assaulted her with fist and blows.

26. As noticed above, the allegations against the petitioner Nos.2 to 4 are vague. The complainant seems to have roped in all the family members in one go.

27. I am in complete agreement with the Trial court that the allegations are non-specific and vague insofar as the petitioner Nos.2 to 4 are concerned and there are substantial improvements in the version of the complainant. The Trial Court was correct in holding that that no *prima facie* case was made out against petitioner Nos.2 to 4 under Sections 354/354A/323 IPC or under Section 452 IPC.

28. Clearly, the Revisional Court in the impugned judgment has committed an error that because there are specific roles and allegations, a case is made out against petitioner Nos.2 to 4.

29. In view of the above and also on perusal of the record, I am satisfied that the facts do not show grave suspicion against petitioner Nos.2 to 4 of the offences under Section 452/323/506/354/354A IPC and against petitioner No.1 under Sections 452 and 506(I) IPC.

30. In view of the above, impugned order dated 26.04.2016 of the Revisional Court, setting aside the order dated 17.12.2015 of the Trial Court and directing framing of a charge against petitioner Nos.2 to 4 for the offences under Section 452/323/506/354/354A IPC and against petitioner No.1 under Sections 452 and 506(I) IPC, cannot be sustained and is, accordingly, set aside.

31. Since petitioner No.1 had not impugned the order of the Trial Court dated 17.12.2015 framing a charge against the petitioner No.1 under Sections 354A/323 IPC, the same is not being commented upon.

32. Sequitur to the above is that the order dated 17.12.2015, passed by the Trial Court, is, accordingly, revived.

33. Petition is allowed in the above terms.

34. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 01st, 2019
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