

\$~16

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

+ **CRL.L.P. 362/2017 and CRL.M.A. 10396/2017**

MS RITU

..... Petitioner

Through: Mr Sanjeev Kumar, Advocate.

versus

STATE & ORS

..... Respondents

Through: Ms Meenakshi Chauhan, APP
for State.

SI Sanjay Kumar, PS Prasad
Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

17.09.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present appeal impugning a judgment dated 14.12.2016 passed by learned ASJ – 04 (Central), Delhi in Sessions Case No. 27255/16. The said proceedings arose from the FIR No. 190/2013 under Sections 308/323/354B/34 of the Indian Penal Code, 1860 (IPC), registered with PS Prasad Nagar. The FIR in question was registered at the instance of the petitioner (the complainant).

2. In terms of the impugned judgment, the accused have been convicted of the offence under Sections 323/34 of the IPC for causing injuries to the complainant, one Mr Brahm Prakash (the complainant's father) and Vishal (the complainant's brother). However, the accused

were acquitted of the offence under Section 354 of the IPC. The accused were also acquitted of the offence under Section 323 of the IPC stemming from injuries, allegedly suffered by one Mr Mahesh (the complainant's uncle).

3. The appellant is aggrieved by the impugned judgment to the extent that it acquits the accused of an offence under Section 354 of the IPC.

4. In view of the above, the limited question to be considered is whether the impugned judgment is manifestly erroneous, inasmuch as, it acquits the accused of an alleged offence under Section 354 of the IPC.

5. The appellant was examined as witness for the prosecution (PW-1). She had deposed that she was standing at the gate of her house on the day of the incident and her uncle (Mahesh Kumar) came out of his house to go to the house of his in-laws. She deposed that the pet dog of the accused Kalu had pounced on her uncle to bite him. She stated that her uncle had asked the accused Kalu to keep his dog on a leash. This resulted in a quarrel between her uncle (Mahesh) and Kalu. The other accused (Jeetu, Chintu and Deepak) also came at the spot and used abusive language against her. The appellant further stated that her brother Vishal also reached on the spot to assist them. Jeetu picked up a brick which was lying in the lane and hit Vishal on his head with it. She also alleged that Jeetu and Deepak had touched her breast; Jeetu had caught hold of her hand; and Chintu had pulled the

lower part of her apparel. She stated that Jeetu had kicked her stomach. She also stated that she had bitten Jeetu's stomach to save herself. She states that she had dialled 100 and informed the police. The police officials arrived on the spot and the petitioner and Vishal were taken to a hospital.

6. The petitioner's father (Mr Brahm Prakash) also deposed as PW-3. He also had described the said incident and stated that he saw that the accused were beating his younger brother Mahesh and were abusing his daughter (the appellant herein). He stated that he attempted to save them and, in the process, the accused also started beating him. He stated that his son Vishal also reached at the spot and the accused Jeetu had smashed a brick on Vishal's head. He stated that the appellant and his wife had taken Vishal to RML Hospital and thereafter, he was taken to Lady Hardinge Hospital for medical examination.

7. Vishal (the appellant's brother) deposed as PW-5. He also deposed that he had witnessed the accused (Jeetu and Kalu) abuse and beat his sister (the appellant) and his uncle (Mahesh).

8. The Trial Court noted that neither the testimony of the petitioner's father nor the testimony of the petitioner's brother supported the allegations made by the appellant regarding the accused touching her inappropriately and trying to disrobe her. The relevant extract of the impugned order is set out below:

“43. IN regard to the injuries, she stated that accused

Jeetu kicked her on stomach. However, as per the MLC Ex.PW15/B, no visible injury was found on her body, though patient was complaining of pain on her chest, upper abdomen and face and the injuries were reported to be simple. There is no dispute about the presence of complainant at the spot at the time in question, as it is also the case of the accused that Ritu had bitten accused Jeetu's stomach on the spot. In regard to other allegation, complainant stated that accused Jeetu caught her hands and Jeetu & Deepak also touched her breast and Chintu pulled her lower, but it seems to be exaggerated / improved version mainly due to the fact that as per the prosecution, all four eye witnesses were present at the spot at the same time but the said fact of outraging complainant's modesty has not been corroborated by any other eye witness. PW1 had also made material improvements in her statement, particularly with respect to the number of assailants. As per her statement Ex.PW1/A, four accused persons had quarrelled and beaten them, but in the court stated that besides the said four accused, father and uncle of the accused had also participated in the offence. She explained that she had not named the said persons in her complaint as IO had advised that case against more than four persons was not made out. This explanation appears to be an afterthought as no other eye witness has stated about involvement of more than four persons. The cross-examination of PW1 and other witnesses also reveals that complainant and accused were having previous disputes amongst their families. It therefore appears that complainant has exaggerated her statement on certain points, further in view of previous complaints interse between the parties, there is a doubt whether the

accused persons had also committed the offence of outraging her modesty as claimed by her. There is however no contradiction or doubt in the testimony of any eye witness about the fact that four accused persons had beaten complainant and other victims on the spot. PW1 stated accused Jeetu kicked her on stomach and she bit Jeetu on stomach to save herself which is corroborated by DWs. Thus, presence of accused Jeetu on the spot and he having injury on stomach is not disputed. It is also proved that PW1 had called police on 100 and was medically examined immediately after the incident in question. She was reported having simple injuries.”

9. In view of the above, the Trial Court acquitted the accused of the offence under Section 354 of the IPC.

10. It is well settled that no interference with an order of acquittal is warranted in an appeal unless the court finds compelling reasons for the same (See: *Ghurey Lal v. State of Uttar Pradesh: (2008) 10 SCC 450; Niraj vs. Ramesh Pratap Singh, 2012: SCC OnLine Del 3813*).

11. The view taken by the Trial Court, after evaluation of all evidence, is a plausible view and therefore, this Court finds no compelling reason to overrule the same.

12. The petition is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

SEPTEMBER 17, 2019/RK