

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.01.2021

+ **CRL.REV.P. 329/2020 & CRL.M.(BAIL) 8164/2020**

SANDEEP ALIAS BHOPALI

.....Petitioner

Versus

THE STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Puneet Singhal and Mr S.P. Bhati,
Advocates.

For the Respondent : Mr Ravi Nayak, APP for State.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present revision petition impugning a judgment dated 02.09.2020 (hereinafter 'the impugned judgement'), whereby the petitioner's appeal against a judgment dated 26.07.2019 convicting him for an offence punishable under Section 354/451 of the Indian Penal Code, 1860 (hereinafter 'IPC') and an order dated 27.08.2019 sentencing him for the said offences, was dismissed.

2. The learned Trial Court found merit in the prosecution's case that, at about 01:00 p.m. on 04.08.2014, the petitioner had entered into the house of the complainant. She was resting at that time. He had

caught hold of her left hand and given a blow on her chest with the intention to outrage her modesty. In addition, he had allegedly threatened her.

3. The complainant was examined as PW2. She stated that she was working as a maid in the nearby houses. She testified that on 04.08.2014, at about 01:00 p.m. or 01:30 p.m., she returned back home after completing her work and was lying on her cot. She stated that the petitioner, who lived near her house, entered the house and started physically abusing her. She alleged that he delivered a blow on her chest and had also threatened that he would kill her with a knife. She raised an alarm and on hearing the same, her nephew, Kartik, came and apprehended him. He called the police. The PCR came and took him to the police station. She also stated that she along with her nephew, Kartik, went to the police station. Her statement (Ex.PW2/A) was recorded by the police. Subsequently, her statement under Section 164 of the Cr.PC (Ex.PW2/D) was recorded. In her statement, she stated that she had returned to her home at about 01:30 p.m. on 04.08.2014. She had entered the house and had lied down on a cot (*charpai*). A little while later, a boy came and caught hold of her hand and he also gave a blow on her chest (*meri chhati par hath mara*). She stated that she started screaming and on hearing the same, her nephew came and took the boy, whose name was Bhopali, outside. She stated that thereafter, they called the police. She also alleged that he had threatened her and she was feeling scared.

4. HC Rakesh Kumar was examined as PW6. He testified that on 04.08.2014, he was posted as a Head Constable at PS Vasant Kunj (North). He stated that at about 01:35 p.m., he received DD No.51B regarding molestation at the given address. He stated that he, along with Ct. Askaran went to the spot where they met the complainant, her nephew and some neighbours. They had apprehended the accused Sandeep @ Bhopali. He testified that he recorded the statement of the complainant (Ex.PW2/A) in presence of Ct. Rakhi. He prepared a *rukka* (Ex.PW6/A) which was handed over to Ct. Askaran for registration of the FIR.

5. Ct. Askaran was examined as PW4. His testimony is consistent with that of HC Rakesh (PW6). He testified that the IO had handed over the *rukka* to him and he had taken the same to the police station and got the FIR registered. He testified that after getting the FIR registered, he came back to the spot and handed over the original *rukka* and a copy of the complaint to the IO (HC Rakesh).

6. Ct. Rakhi was examined as PW5. She stated that on 04.08.2014, at about 01:30 p.m., a call had been received by the PCR Cell about someone misbehaving with a woman. Since the call related to an offence committed against a woman, she was sent to the spot. She testified that she went to the spot and met the IO (HC Rakesh Kumar). He recorded the statement/complaint of the complainant. She stated that she read over the statement to the complainant and had also signed the same.

7. The nephew of the complainant, Kartik Barman, was examined as PW3. He testified that he was working as a housekeeper and on 04.08.2014, at about 01:00 p.m. – 01:30 p.m., he was resting at his home. He heard a hue and cry from outside and immediately rushed outside. He saw the accused Bhopali running out of the house of his paternal aunt (the complainant). He stated that he apprehended him. Some persons from the neighbourhood had also gathered there. He stated that he called the police and the police took the accused to the police station.

8. The statement of the accused was recorded under Section 313 of the Cr.PC. In his statement, he denied committing the alleged offence. He also stated that it was by mistake. He stated that he had consumed *ganja* and was not in his senses. He claimed that he touched the door of the house of the complainant but did not enter it. According to him, the complainant had misunderstood him and had raised an alarm. He claimed that has been falsely implicated in this case. In his defence, he examined one of his uncles (Sh. Arun Kumar) as DW1. He deposed that he had reached the place of the incident after hearing the noise and about 20-30 persons were gathered there. He stated that he heard that the accused had inappropriately touched a woman in her room. He testified that the accused (the petitioner herein) was intoxicated. He also testified that the accused had not touched the lady as he knew about his character.

9. The Trial Court evaluated the evidence and had concluded that the prosecution had established the allegations made against the

petitioner. The testimony of DW1 did not particularly assist the defence as DW1 was not present at the site when the offence was committed. On the contrary, DW1 had confirmed that the petitioner was in an inebriated state. He also confirmed that the public had gathered at the spot and he had heard that the petitioner had inappropriately touched a woman.

10. The Trial Court convicted the petitioner of an offence punishable under Sections 354/451 of the IPC. By an impugned order dated 27.08.2019, the petitioner was sentenced to simple imprisonment for a period of one year with a fine of ₹1,500/- for an offence punishable under Section 354 of the IPC. He was also sentenced to simple imprisonment for a period of six months along with a fine of ₹1,500/- for committing the offence punishable under Section 451 of the IPC. The court further directed that he would undergo simple imprisonment for a further period of fifteen days, in the event of default in payment of the fine.

11. The petitioner's appeal against his conviction and order of sentence was rejected by the learned ASJ by the impugned judgment. Before the said court, it was contended that there were material contradictions in the statements of the complainant and the material witnesses. The court examined the testimony of the complainant (PW2) and her nephew, Kartik (PW3) and found that there was no inconsistency in their statements. PW2 (complainant) had testified that when she raised an alarm, her nephew PW2 (Kartik) had come at the spot and he had called the police. She also stated that when she came

out, the petitioner (Bhopali) also came out in the *gali* and the police apprehended him. PW3 deposed that when he heard the hue and cry, he rushed out of his home and saw the accused Bhopali running out of the house of his paternal aunt (*bua*). He testified that he had apprehended him. It was contended on behalf of the petitioner that the aforesaid testimony of complainant and her nephew were not consistent. The learned ASJ had examined the same and found that there was no inconsistency in the testimonies. The court noted that it was apparent that PW3 had called the police and when the police arrived, PW3 and other persons had apprehended and restrained the accused. It was obvious that the accused had not managed to flee from the spot. DW1 had also testified that the accused was present and there were 20-30 persons gathered at the spot when he arrived.

12. Mr Puneet Singhal, learned counsel appearing for the petitioner contended that the inconsistencies in the testimony of PW2 and PW3 ought not to have been overlooked. He further contended that the petitioner was in an inebriated state and therefore, ought not to be visited with such a serious punishment.

13. This Court finds no merit in the aforesaid contention. As noticed above, the Trial Court as well as the Appellate Court had examined the testimonies of the concerned witnesses. None of the courts had found any material inconsistency in the testimony of PW2 and PW3. This Court does not find any manifest error in the impugned judgement. The evidence led by the prosecution clearly established that the petitioner

had trespassed into the house of the complainant. He had also delivered a blow on the chest of the complainant, thus, outraging her modesty.

14. This Court finds no infirmity with the decision of the Trial Court and the Appellate Court in finding that the petitioner was guilty of committing an offence punishable under Section 354/451 of the IPC. The petitioner has been awarded the minimum sentence for committing the offence punishable under Section 354 of the IPC.

15. In view of the above, this Court finds that there are no grounds to interfere with the impugned judgment. The present petition is unmerited and is, accordingly, dismissed. The pending application is also disposed of.

JANUARY 06, 2021
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VIBHU BAKHRU, J

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