

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.REV.P. 913/2018**

Date of decision: 9<sup>th</sup> FEBRUARY, 2021

IN THE MATTER OF:

PARMOD KUMAR @ RAHUL & ANR. .... Petitioners  
Through Mr. Navjot Kumar, Advocate  
versus

STATE ..... Respondent  
Through Ms. Kusum Dhalla, APP for the State

**CORAM:**  
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. This revision petition filed under Section 397/401 Cr.P.C is directed against the order dated 09.10.2018, passed by the Additional Session Judge, West District, Tis Hazari Courts, Delhi in Criminal Appeal No.77/2017 where by the Additional Session Judge has confirmed the judgment dated 17.12.2016, passed by the Metropolitan Magistrate-03 (West), Tis Hazari Courts, Delhi, convicting the petitioners for offences punishable under Sections 342, 325 and 34 IPC. By order dated 20.02.2017, the accused have been sentenced to undergo rigorous imprisonment for six months for the offence punishable under Section 325 IPC and rigorous imprisonment for one month for offence punishable under Section 342 IPC. They were also directed to deposit compensation of Rs.1,00,000/- ( Rs.50,000/-each ) to be paid to the injured/complainant. In default, the accused have to undergo

simple imprisonment for three months.

2. The allegation in the FIR is that on 19.04.2010, injured Dharmesh was going to attend the ring ceremony of his sister with his friend. It is stated that on the way when they reached in front of House No.I-58, Adhyapak Nagar, Nangloi, Delhi, the accused Parmod, Seema, Harpal, Suresh and Ashok pulled him into the house No.I-58 and started beating him with hockey, wooden sticks and bat. After beating the victim they threw the victim in a vacant plot. The injured/victim was taken to the hospital. Police came to record the statement of the injured/victim, and he identified the petitioner herein. Harpal passed away during the course of the investigation itself and the other two accused namely Suresh and Ashok could not be identified and therefore were not taken into custody.

3. Proceedings were initiated against the accused. In order to prove the guilt, prosecution examined 9 witnesses.

- i. PW-1 (Dharmesh) is the injured/victim.
- ii. PW-2 is the father of the injured. He stated that he received information from SGM Hospital that Police brought his son to the hospital and he has been badly beaten up.
- iii. PW-3 Head Constable Somveer was examined to prove the FIR.
- iv. PW-4 Constable Kuldeep was examined to prove the arrest memo of the accused.
- v. PW-5 Head Constable Naresh was examined to prove DD No.35A dated 19.04.2010.
- vi. PW-6 Dr. Vijay was examined to prove the discharge summary as well as the MRI report.

- vii. PW-7 Retired SI Rameshwar Dass has deposed that on 19.04.2010, at about 09:25 P.M, he received DD No.35A for investigation which was regarding quarrel. He went to the spot i.e. I-58, Adhyapak Nagar, Near Chand Pradhan Chowk, Nangloi where he came to know that the victim has been admitted to SGM Hospital. He deposed that no eye-witness was found by him. He went to SGM Hospital and came to know that injured Dharmesh has been admitted to the hospital and is unfit for statement.
- viii. PW-8 Dr. Manoj Dhingra was examined to prove and exhibit his opinion on MLC.
- ix. PW-9 SI Dinesh Chandra deposed that on 30.10.2010, after registration of FIR, further investigation was handed over to him by the order of the then SHO. On 31.10.2010, he went to the house of complainant/Ashok Kumar and made inquiry from him. He states that at that time, injured/victim namely Dharmesh was not at home. He recorded the statement of complainant Ashok Kumar. On 20.12.2010, he collected the opinion on the MLC of Victim/injured Dharmesh regarding the name of injury from the concerned doctor. After going through the MLC on which the doctor stated that the injuries were grievous he added section 325 IPC. He enquired the victim/injured Dharmesh, recorded his statement and prepared the site plan. On 26.02.2011, he arrested accused Pramod, Seema and Harpal Singh (now deceased) and prepared their arrest memos. As the offences under investigation were

bailable, the accused were released on bail. He recorded the statement of Constable Kuldeep and examined Shashi (the sister of the victim) and recorded her statement. He states that he could not find out the two other accused persons viz. Suresh and Ashok. He states that after the completion of investigation, charge-sheet was prepared and filed in the court.

4. After closure of prosecution evidence, statements of the accused persons under Section 313 Cr.P.C were taken and they denied all the allegations and stated that they are innocent and have been falsely implicated in this case. Accused persons opted to lead evidence in their defence.

5. Accused Seema got herself examined as DW-1. In her defence she stated that the victim/Dharmesh had entered into her house on 29.03.2010 and caught hold her hand and started misbehaving with her. She also stated that the victim/Dharmesh slapped her and he also hit her on her head with brick. She stated that an FIR bearing No.68/2010, dated 13.04.2010, under Sections 323/354/506/504/34 IPC was registered at Police Station Nihal Vihar against the victim/Dharmesh. She also stated that the statement of the victim was recorded. She also stated that on the fateful day i.e. 19.04.2010, Dharmesh came to the house of the accused. It is stated that the accused Seema gave a call to the Police and called beat officer Suresh and when the beat officer reached the spot and asked Dharmesh to accompany him to the Police Station, victim/Dharmesh started running to the rear portion of the street which was closed where there was a boundary wall. She stated that Dharmesh tried to flee from the spot by jumping the wall, but fell down as he was drunk. She states that people gathered at that place and someone

called Police.

6. The Trial Court found that the testimony of PW-1/victim Dharmesh was reliable and trustworthy, even though weapons had not been recovered. The injuries inflicted on the victim were grievous in nature. The Trial Court did not believe the statement of the accused Seema. The Trial Court found that the testimony of DW-1/Seema is uncorroborated.

7. The trial Court therefore held that the petitioners herein are guilty under Section 342, 325 read with Section 34 of the IPC and sentenced them to undergo rigorous imprisonment of one month for offence punishable under Section 342 IPC. They were directed to deposit compensation of Rs.1,00,000/- (Rs.50,000/- each) within 30 days from the date of the Order, to be paid to the injured/victim Dharmesh. In default, they have to undergo simple imprisonment for three months.

8. The petitioners herein challenged the judgment in appeal by filing CRL.M.A. No.77/2017. The appellate Court after going through the material on record upheld the judgment of the Trial Court. The appellate Court also found that the defence taken by the appellants is a sham defence.

9. Heard Mr. Navjot Kumar, learned counsel appearing for the petitioner and Ms. Kusum Dhall, learned APP appearing for the State.

10. Mr. Navjot Kumar, learned counsel for the petitioner would state that the injuries sustained by the victim are not corroborated by the statement made by the accused. He contends that the MLC of the victim would show that the victim had only suffered injuries on his face. He states that it is the version of the victim that he was beaten by five persons armed with bats, sticks, etc. and it is not possible that all these injuries would only be inflicted on the face of the victim and not on the entire body. He would therefore

state that the story of the victim is completely false. He states that the version of DW-1 that Dharmesh had come to the house of the accused on 19.04.2010 and then the accused called the beat Officer, on seeing the beat officer Dharmesh fled from the spot and in an attempt to climb the wall, since he was drunk, fell flat on his face and therefore suffered injuries on his face is more probable.

11. Mr. Navjot Kumar, learned counsel for the petitioner would place reliance on the FIR No. 68/2010, dated 13.04.2010, registered at Police Station Nihal Vihar for offences under Sections 323, 354, 506 read with Section 34 IPC. He would contend that the victim/Dharmesh used to tease accused Seema.

12. Mr. Navjot Kumar, learned counsel for the petitioner would also place reliance on the final report filed in the FIR No.227/2010, and he would rely on the statement of the IO in the present proceedings which is recorded in the charge-sheet. The relevant portion on which reliance is placed reads as under:

*“IO submits that Dharmesh (son of the complainant) has criminal antecedent and one case u/s 323/354/506/34 IPC has already been registered against the son of the complainant on the complaint of one Seema. He further submits Dharmesh (son of the complainant) was in drunken state and went to the house of his sister and after seeing Smt. Seema, he entered into arguments with her unnecessarily. He further submits that Smt. Seema made a PCR call and also called up the beat Constable Suresh. He further submits that after receiving the call the police party reached at spot and on seeing the police Dharmesh tried to flee away from the spot and as he was already drunken state. He fell down when a cot came in his way*

*and collided with wall and sustained some injuries on his person. He further submits that he has recorded the statement of eye-witnesses and they have not supported the version of the complainant.”*

13. Ms. Kusum Dhalla, learned APP for the State states that the scope of High Court while exercising its jurisdiction under Section 397/401 Cr.P.C is very narrow and the Court cannot re-appreciate evidence. She would state that both the courts below have found the evidence of the injured complainant as trust worthy. She would therefore argue that the conviction be maintained.

14. The scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. is narrow. In State v. Manimaran, reported as (2019) 13 SCC 670, the Supreme Court observed as under:

***“16. As held in State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452 : 1999 SCC (Cri) 275] , ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.”*** (emphasis supplied)

In State of Haryana v. Rajmal, reported as (2011) 14 SCC 326, the Supreme Court observed as under:

***“14. In State of A.P. v. Pituhuk Sreeinvasa Rao [(2000) 9 SCC 537 : 2001 SCC (Cri) 642] this***

*Court held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.*

*It has been also held by this Court in Amar Chand Agarwalla v. Shanti Bose [(1973) 4 SCC 10 : 1973 SCC (Cri) 651 : AIR 1973 SC 799] that the revisional jurisdiction of the High Court under Section 439 CrPC is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. (SCC p. 20, para 17 of the Report.)”* (emphasis supplied)

In State of Kerala v. Puttumana Illath Jathavedan Namboodiri, reported as (1999) 2 SCC 452, the Supreme Court observed as under:

*“5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own*

*conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.”*

(emphasis supplied)

15. The arguments of Mr. Navjot Kumar, learned counsel for the petitioner that on the fateful day the victim had come to the house of the accused and when the accused called the Police, Constable Suresh came to the site and on seeing him the victim, who was drunk, fled and in an attempt to cross a wall, fell down on his face and thereby sustaining injuries only on face, cannot be accepted at this juncture because nothing prevented the petitioners to move an application to summon Constable Suresh to examine him. The deposition of Dharmesh, who was examined as PW-1 has been found to be trustworthy and reliable by the two courts.

16. The reliance made by the counsel for the petitioner on the statement of the IO, where the IO himself said that the victim fell down while jumping

the wall also cannot be accepted at this juncture in the revision petition before this Court because nothing prevented the petitioners to cross examine the IO on this account. Nothing has been stated by the IO and the IO has not been confronted about the statement relied on by the learned counsel for the petitioner in this Court.

17. After two courts have appreciated the deposition of the victim and have found him to be trust worthy, this Court cannot re-appreciate evidence while exercising its jurisdiction under Section 397/401 Cr.P.C. and substitute its own conclusion to the one arrived at by the Courts below. It cannot be said that the appreciation of evidence by the Metropolitan Magistrate, West Tis Hazari Courts, Delhi is so perverse that no court would have come to the same conclusion.

18. The judgment dated 09.10.2018, passed by the Additional Sessions Judge, West District, Tis Hazari Courts, Delhi in Criminal Appeal No.77/2017 is sustained.

19. The accused are husband and wife. The incident is of the year 2010, more than 10 years have passed after the incident. Considering the facts and circumstances of the case, nature of the offence and the punishment imposed on the accused, this court deems it appropriate to grant the benefit of probation under Section 360 Cr.P.C read with Section 4 of the Probation of Offenders Act, 1958 to the accused.

20. Accordingly, the petitioners shall furnish requisite bond of good behavior for one year before the learned trial court.

21. This court makes it clear, that if the petitioners are found to be involved in any unlawful activity, their benefit of probation will be withdrawn and they shall undergo the remaining un-expired portion of

sentence as awarded by the learned trial Court.

22. Accordingly, the revision petition is disposed of in the above mentioned terms.

**SUBRAMONIUM PRASAD, J.**

**FEBRUARY 09, 2021**

*Rahul*

