

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

Reserved on : 03.02.2023

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Pronounced on : 10.05.2023

+ CRL.REV.P. 220/2020

MOHD. FARHAN

.....Petitioner

Through: Sh. Rupin Singh Dhama, Advocate.

versus

STATE

.... Respondent

Through: Ms. Priyanka Dalal, APP with SI
Giriraj, PS Kamla Market.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present revision petition has been filed by the revisionist U/s 397/401 read with section 482 of the Code of Criminal Procedure, 1973 for setting-aside the impugned judgment dated 24.02.2020 passed by Ld. ASJ-02, Central District, Tis Hazari Court, Delhi vide which the appeal of the revisionist was dismissed and Order/Judgment dated 16.09.2019 and order on sentence dated 22.10.2019 passed by Ld. MM-01, Mahila Court, Central District, Tis Hazari Court, Delhi vide which the revisionist was convicted for the offences punishable U/s 341 & 354 IPC and sentenced to undergo rigorous imprisonment for a period of 01 year for the offence punishable U/s 354 IPC with fine of Rs. 1000/- and further sentenced to undergo simple imprisonment for a period of 01 month for the offence punishable U/s 341 IPC with fine of Rs. 500/-.

2. Briefly stated, the facts of the case are that on 30.11.2015, a PCR call vide DD No. 31-A was received at PS Kamla Market and the same was entrusted to ASI Jagpal Singh. ASI Jagpal Singh alongwith staff reached at the spot i.e. in front of Gate of Zakir Hussain College, Delhi and met with complainant and her maternal aunt. ASI Jagpal Singh recorded the statement of the complainant, wherein, the complainant alleged that on 30.11.2015, she was going towards bus stand and when she reached in front of gate of Zakir Hussain College, a boy namely Mohd. Farhan (revisionist herein) who was sitting already there on a motorcycle bearing registration No. DL-10-S 1677, stopped her and held her hand on which complainant tried to get her hand released but revisionist Mohd. Farhan used criminal force upon the complainant and hit her on the breast.

3. According to the complainant when she started shouting, Mohd. Farhan (present revisionist) ran away from the spot and left his motorcycle on the spot. Complainant further alleged that revisionist had also committed such offence earlier about 6 months ago but the matter was settled amicably due to intervention of family members and after that incident, Mohd. Farhan (present revisionist) did not stop and started stalking again.

4. On the basis of the statement of the complainant, a case U/s 323/341/354-B IPC vide case FIR No. 501/2015, P.S. Kamla Market was got registered and investigation went underway.

5. During the course of investigation, motorcycle No. DL-10-S 1677 was seized and later on revisionist Mohd. Farhan was arrested on 01-12-2015. After the completion of the investigation, charge sheet against CRL.REV.P. 220/2020

the present revisionist was filed before the Court of Ld. MM on 08.02.2016 and the Ld. MM vide order dated 06.02.2017, framed the charge U/s 341/354/354-D IPC against the revisionist to which he pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution had examined 6 witnesses. After the closing of the prosecution evidence, statement of the revisionist U/s 313 Cr.P.C. was recorded. Revisionist also led his defence evidence and in his defence he examined himself as DW-1.

7. After the completion of the trial, Ld. MM-01, Mahila Court, Central District, Tis Hazari Court, Delhi vide impugned judgment dated 16.09.2019 convicted the revisionist for the offence U/s 341 & 354 IPC and vide impugned order on sentence dated 22.10.2019 he was sentenced to undergo rigorous imprisonment for a period of 01 year for the offence punishable U/s 354 IPC with fine of Rs. 1000/- and further sentenced to undergo simple imprisonment for a period of 01 month for the offence punishable U/s 341 IPC with fine of Rs. 500/-.

8. The revisionist preferred an appeal against the impugned judgment dated 16.09.2019 and impugned order on sentence dated 22.10.2019 passed by the Ld. MM-01, Mahila Court, Central District, Tis Hazari Court, Delhi before the Court of Sessions and the Ld. ASJ-02, Central District, Tis Hazari Courts, Delhi vide judgment dated 24.02.2020 dismissed the appeal filed by the revisionist.

9. Now the impugned judgment dated 16.09.2019, impugned order on sentence dated 22.10.2019 passed by the Ld. MM-01, Mahila Court, Central District, Tis Hazari Court, Delhi and the impugned judgment dated 24.02.2020 passed by the Ld. ASJ-02, Central District, Tis Hazari Courts, Delhi are under challenged in the present revision petition.

10. I have heard Ld. counsel for the revisionist, Ld. APP for the State and have also perused the records of this case.

11. It is submitted by the Ld. counsel for the revisionist that there are material contradictions in the testimony of PWs which goes to the root of the matter. It is further submitted that constable Vijay who has been examined as PW 2 during his chief examination has stated that the revisionist was arrested from his house but during cross examination he stated that accused (revisionist herein) was arrested from the spot itself which makes the case of the prosecution doubtful. It is further stated that PW 2 (wrongly numbered) Ct. Ram Kishan in his examination in chief stated that on hearing the noise of the complainant, her mother came at the spot and on seeing her revisionist ran away from there, but as per the record of the case, the mother of the complainant was never at the spot and even her statement was not recorded by the IO.

12. It is further submitted that the complainant is not a trustworthy witness and she has failed to disclose the entire facts and she had to be cross examined by the Ld. APP to cull out the facts. It is further submitted that no public witness has been joined by the IO though admittedly a crowd had gathered at the spot.

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13. On the other hand, it is submitted by the Ld. APP for the state that there is no infirmity in the impugned judgment. It is further submitted by the Ld. APP that PW 3, complainant has specifically on oath deposed about the incident and her testimony finds corroboration from the testimony of PW 5 who is the sister-in-law of the complainant. It is further submitted that nothing could be extracted from the cross examination of PW 3 and PW 5 to make their testimonies untrustworthy. It is further submitted that there is no dispute with regard to the identity of the revisionist and as far as the question of non joining of public witnesses is concerned, public witnesses are reluctant to join the investigation and simply because the IO failed to join the public witnesses, the trustworthy testimony of complainant cannot be brushed aside. It is further submitted that the revisionist is involved in 3 more cases which shows is desperate character.

14. The prosecution has examined 6 witnesses in support of its case.

15. PW-1 is the duty officer and has registered the FIR.

16. PW-2 is constable Vijay and he was part of investigation alongwith ASI Gajpal on 01.12.2015 and he deposed that IO ASI Gaj Pal arrested the accused/revisionist on 01.12.2015.

17. PW-2 (wrongly numbered) is Ct. Ram Kishan who has reached the spot alongwith ASI Gaj Pal on receiving the information on 30.11.2015 regarding molestation of a girl who gave her statement Ex. PW 3/A to the IO.

18. PW-3 is the complainant "T".
19. PW-4 is the IO of the case who unfolded the sequence of investigation done by him.
20. PW-5 who is another witness is the Bhabhi of the complainant.
21. After the completion of the prosecution evidence, statement of accused/revisionist was recorded U/s 313 Cr.P.C. in which he stated that he has been falsely implicated and it was the complainant who had called him at the spot to meet her.
22. The revisionist/accused also led his defence evidence and examined himself as DW 1 and has deposed that on 30.11.2015 at about 6 p.m., he received a call from complainant for giving head phone to her near bus stand of Zakir Hussain College as she was going to Ghazipur with her Bhabhi. He reached there on his motorcycle. When accused was handing over the ear phone to the complainant, her Bhabhi saw them and started shouting. On hearing the noise of Bhabhi of complainant, accused got scared and left the spot. Huge crowd gathered there. He has further deposed that he had given a number to the complainant on his identity which she was using for her personal use.
23. PW-3 complainant "T" is the most material witness of the case. She has deposed as follows:

"She has deposed that in the year 2015, she alongwith her Bhabhi was going towards bus stand, accused met them near bus stand and started misbehaving with her by holding her hand

and snatching her wearing dupatta. Accused fled away from the spot after seeing the family of complainant reached there. She made a call at 100 number where police reached and recorded her statement. The complainant was not disclosing the entire facts, therefore, she with the permission of Ld. MM was cross-examined by Ld. APP in which she admitted that the accused also hit on her breast. She raised noise, hearing which her sister-in-law came."

24. PW-5 is the Bhabhi of the complainant, she is also a material witness of the case. She has deposed as follows:

"She has deposed that on 30.11.2015 at about 7 p.m. she alongwith complainant was going towards village Gandholi. Complainant was ahead of her. Accused came on his motorcycle and stopped the complainant. He snatched complainant's dupatta and put his hand on her breast. Crowd gathered at the spot, out of whom somebody made a call at 100 number. Police reached at the spot."

25. Ld. Trial Court has observed as under with regard to the testimonies of PW-3 and PW-5:

"PW-3 and PW-5 are the most material witnesses of the prosecution as the entire case of the prosecution rest upon their testimony. PW-3 is the victim of the crime and PW-5 was accompanying PW-3 at the time of incident. They both have remained consistent of the fact that on 30.11.2015 at about 7 p.m. they both were going to bus stand Zakir Hussain College and when they reached near the bus stand, the accused stopped complainant (PW-3), snatched her dupatta and hit on her breast. PW-3 prosecutrix was not disclosing the entire facts during her chief examination, therefore, with the permission of the Ld. MM, she was cross examined by the Ld. APP in which she categorically admitted that the accused also hit on her breast, which was duly corroborated by the testimony of PW-5 (Bhabhi of prosecutrix) that accused stopped the complainant,

snatched her dupatta and hit on her breast. Nothing has come in the cross examination of both these witnesses (PW-3 and PW-5) to create doubt on their testimony, despite their lengthy cross examination. The testimony of both these witnesses clearly proves the occurrence of incident with PW-3."

26. I see no reason to disturb the observations of the Ld. Trial Court in appreciating the testimonies of PW-3 and PW-5.

27. As far as the identity of the revisionist is concerned, the same was not in dispute because according to the first complaint Ex. PW 3/A, made by the complainant to police, revisionist was known to her even prior to the incident as in her said complaint, she alleged that accused had done similar kind of act with her earlier also which was resolved by both the families themselves. No suggestion was given to any of the prosecution witnesses during their cross examination that revisionist was not present at the spot, therefore, the presence of the revisionist at the spot is also not disputed.

28. With regard to the certain contradictions point out by the Ld. counsel for the revisionist in the testimony of PWs, the Ld. Trial Court has observed as follows:

"Ld. counsel has pointed out certain contradictions in the testimony of PWs that as per PW-2 Ct. Vijay, accused was arrested from his house and as per PW-2 Ram Kishan, he was arrested from the spot and also that in chief examination PW-3 complainant has stated that she made call at 100 number but during cross examination, she said that 100 number call was made by her Bhai and as per PW-5 100 number call was made by some public persons. All these discrepancies in the deposition of witnesses are minor and do not fail the case of the prosecution. It is settled law that the minor discrepancies do

not fatal the case of the prosecution unless they impact the genesis of the case."

29. In support of its above observations, the Ld. Trial Court has relied upon "*Sidhan Vs. State of Kerala*" 1986 Criminal L.J. 470, "*State of U.P. Vs. Naresh*", (2011) 4 SCC 324, "*Lal Bahadur Vs. State (NCT of Delhi)* (2013) 4 SCC 557. This Court is in consonance with the observations made by the Ld. Trial Court and of the opinion that the Ld. Trial Court has rightly relied upon the judgments to conclude that the minor discrepancies do not fatal the case of the prosecution unless they impact the genesis of the case. More so, the consistencies as pointed out by the Ld. counsel for the revisionist does not go to the root of the matter in order to dislodge the case of the prosecution.

30. One of the contentions of the Ld. counsel for the revisionist is that despite the presence of crowd gathered at the spot, the IO has failed to record the statement of a single public witness. The experience has shown that public witnesses are reluctant to join the investigation and it is settled law that it is the quality and not quantity of the evidence which is to be seen. The Ld. Trial Court in para No. 24 of the impugned judgment dated 24.02.2020 has rightly observed as follows:

"The importance of testimony of the complainant and sufficiency of the same to prove the prosecution case, especially in women related offences has also been highlighted in a catena of leading judgments including the judgment titled as "*State (NCT of Delhi) Vs. Pratap*

***Singh @ Krishna"* (Delhi High Court dated 25.05.2016 in Cr. A. No. 254/16), wherein it has been held that:-"**

"There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the courts will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise."

31. For the cases pertaining to offences against women even mere testimony of complainant is sufficient to bring home the guilt of the accused provided the same remains firm even after her cross examination and in the instant case, there is no reason to see the testimony of victim "T" with tainted eyes.

32. The revisionist has taken the defence that he had love affair with the complainant and had provided her mobile number on his identity and on the day of the incident he was called by the complainant to hand over ear phone to her at Zakir Hussain College. To prove his defence, the revisionist led defence evidence and examined himself as DW-1 but he failed to prove his defence by leading any cogent evidence because he has not placed on record his call details record to substantiate his contention that he received any call from the complainant on the day of the incident. Therefore, the defence taken by revisionist is of no help to him.

33. In view of the discussions mentioned hereinabove, this Court is also of the opinion that the cogent and reliable testimonies of PW-3 and PW-5 regarding the occurrence of the incident clearly establishes that on 30.11.2015, at about 07:00 p.m., the revisionist wrongfully restrained the complainant and used criminal force upon her by snatching her dupatta and hitting on her breast whereby he outraged her modesty, therefore, the ingredients of Section 341 and 354 IPC stands established against the revisionist.

34. In view of the discussions mentioned hereinabove, I find no infirmity in the impugned Judgment dated 24.02.2020 passed by the Ld. Trial Court, the same is, therefore, upheld. Consequently, the appeal is dismissed. All pending applications (if any) are disposed of. The revisionist is now on bail. His bail-bond / surety bond are cancelled. The revisionist is directed to surrender before the Ld. Trial Court within seven days from today to undergo the remaining sentence, failing which the Ld. Trial Judge must take appropriate steps in this regard.

35. Trial Court Record be sent back forthwith alongwith a certified copy of this judgment.

RAJNISH BHATNAGAR, J

MAY 10, 2023

Sumant