

(2013) 05 DEL CK 0049

In the Delhi High Court

Case No : Criminal Revision Petition 119 of 2010

Chander Mohan Dutta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 306, 307, 319
Penal Code, 1860 (IPC) — Section 120B, 193, 195, 196, 218

Citation : (2013) 7 AD 433 : (2013) 136 DRJ 293

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : S.C. Bhuttan, for the Appellant; M.N. Dudeja, APP, for the Respondent

Judgement

P.K. Bhasin, J.—The petitioner-accused is facing trial in Sessions Case No. 141/1/10 arising out of FIR No. 852/2000 registered on 30th August, 2000 at Rajouri Garden Police Station, for the commission of offences punishable under Sections 120-B IPC, 193 /195 /196 r/w Section 120-B IPC, 389 r/w 120-B IPC and 218 r/w Section 120-B IPC alongwith two others. Charges for these offences were framed by the learned Additional Sessions Judge on 18th August, 2007. Thereafter the prosecution evidence started and when seven prosecution witnesses had been examined the petitioner-accused raised an objection before the trial Court that PWs 1, 2, 6 and 7 were accomplice witnesses and so their evidence should not have been recorded since they had not been tendered pardon as prescribed u/s 306 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") by the Magistrate either during the investigation stage or even after filing of the charge-sheet and so a prayer was made to the Court for complying with the provisions of Section 306 or 307 Cr. P.C. if at all their evidence was to be used against the accused. The learned trial Court, however, rejected that objection of the petitioner-accused vide order dated 21st January, 2010 on the ground that since none of the accused facing trial had sought pardon nor had the prosecution sought pardon for any of the accused Sections 306 /307 Cr.P.C. were not

attracted. Feeling aggrieved by the said order of the trial Court the petitioner-accused filed the present revision petition. The relevant facts, which only need to be noticed for the disposal of this petition are that on 29th August, 2000 a criminal case of gang rape of PW-1 was registered vide "Zero FIR" at Subzi Mandi police station since she was found in semiconscious state in that area near St. Stephen Hospital. One Sushil Gulati was arrested for the commission of the said offence same night. Sometime thereafter the regular FIR no. 852/2000 was registered at Rajouri Garden under Sections 376 /328 /506 /34 IPC since the offences appeared to have been committed within the jurisdiction of Rajouri Garden police station. However, on 3rd September, 2000 investigation of the case came to be transferred to the Crime Branch of Delhi Police. During the investigation conducted by the Crime Branch it was found out that the said Sushil Gulati was, in fact, falsely implicated by PW-1 in conspiracy with the present petitioner-accused who during those days was an Inspector in the Delhi Police and was involved in a case u/s 354 IPC in which the said Sushil Gulati was a witness against him and so the petitioner-accused wanted to take revenge by implicating Sushil Gulati in a false case of heinous offence of gang rape. On 9th April, 2001 Sushil Gulati was got discharged by the police from the Court of the Metropolitan Magistrate and the present petitioner and three others, out of whom one is an advocate by profession, were arrested and charge-sheeted for the offences noted already. Sushil Gulati and the girl who had earlier got him implicated in this case for having raped her with two others on the night of 29th August, 2000 were cited as the prosecution witnesses. One of the four charge-sheeted accused expired after the commitment of the case to Sessions Court but before the trial court could examine the case on the point of charge. So, the trial Court ordered framing of charges against the remaining three accused persons and as noticed already when seven witnesses had been examined the petitioner-accused had raised an objection in respect of the admissibility of the evidence of PWs 1, 2, 6 and 7 which was rejected by the trial Court.

2. I have heard the arguments advanced from both the sides and after having gone through the trial court record I am of the view that there is no merit in this petition and no interference is called for in the impugned order of the trial Court.

3. As far as PWs 2, 6 and 7 are concerned, they were not named by PW-1 in her initial statement to the police on 29th August, 2000 or even in her statement u/s 164 Cr. P.C. recorded on 1st September, 2000. In both of her statements she had claimed that she had been raped by Sushil Gulati and two other persons. However, when the Crime Branch took over the investigation on 3rd September and got her another statement recorded u/s 164 Cr. P.C. on 11th September, 2000 she came out with a different story and claimed that she had falsely implicated Sushil Gulati at the instance of the present petitioner who during those days was an Inspector in Delhi Police and his other two co-accused persons, Haji Mohd. Altaf, advocate, and Sub-Inspector Narinder Singh and the deceased accused Sonu. She also attributed some role to PW-2 Savita, PW-6 Balbir Kaur and PW-7 Nazma in the conspiracy to implicate Sushil Gulati. At that

stage these witnesses could have been taken by the police to the Magistrate for seeking pardon for them in order to have their evidence to be used against the suspects involved in the false implication of Sushil Gulati. However, it appears that these witnesses when interrogated by the police supported the version of false implication of Sushil Gulati and so they were made prosecution witnesses to be examined during the trial and the police was not bound to seek pardon for these witnesses.

4. Now, as far as the evidentiary value of the statements made by PWs 2, 6 and 7 before the trial Court because of PW-1 (the original complainant of rape allegations against Sushil Gulati) having attributed some role to them in the conspiracy to falsely implicate Sushil Gulati is concerned, the argument that evidence of these witnesses should not be given any weightage since they were also originally members of the conspiracy as claimed by PW-1 during her interrogation by the Crime Branch can be raised by the accused at the time when final arguments are being heard by the trial Court and which aspect can then be considered by the trial Court itself.

5. Mr. Subhash Bhuttan, learned counsel for the petitioner had also submitted, besides the aforesaid argument in respect of the evidence of PWs 2, 6 and 7, that PW-1 had herself admitted on oath before the trial Court that she had falsely implicated the discharged accused Sushil Gulati and she also could not have been examined as a witness but should have been made an accused. This argument in respect of the value of the evidence of PW-1 can also be raised before the trial Court at the stage of final arguments. Evidence of PWs 1, 2, 6 and 7 cannot be rejected by this Court in this revision petition for the reasons put forth by the petitioner-accused. This Court should not make any observation in respect of the evidentiary value of the statements made by these prosecution witnesses as that may prejudice the case of either the prosecution or the accused persons. The trial Judge is the best authority to analyse their evidence at first instance.

6. Mr. Bhuttan had then strongly argued that in view of the statement on oath made before the trial Court by PW-1 implicating herself as well as PWs 2, 6 and 7 in the conspiracy to false implicate Sushil Gulati (who is now a prosecution witness and is being examined as PW-12) Section 319 Cr. P.C. also gets attracted and these witnesses including PW-1 should be summoned as accused to face trial alongwith the accused persons who are already being tried for the conspiracy falsely implicating Sushil Gulati (PW-12). In this regard evidence of PW-1 was read out before me by the learned counsel. However, I am of the view that since no such request appears to have been made before the trial Court when the evidence of PWs 1, 2, 6 and 7 was sought to be discarded because of non-compliance of the provisions of Sections 306 and 307 Cr. P.C. it will not be appropriate for this Court to consider this request of the accused in this petition and to form any view as to whether on the basis of the statement of PW-1 she as well as PWs 2, 6 and 7 should be transposed as accused now. Even this request can be raised before the trial Court. This revision petition being devoid of any

merit is, therefore, dismissed.