

(2020) 05 MP CK 0094

In the Madhya Pradesh High Court

Case No : Criminal Revision No.760 Of 2010

Girraj S/o Mishri Lal Brahmin

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 19-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 397, 401
Indian Penal Code, 1860 — Section 34, 354, 456, 457

Citation : (2020) 05 MP CK 0094

Hon'ble Judges : Anand Pathak, J

Bench : Single Bench

Advocate : Awdhesh Kumar Sharma, Sushant Tiwari

Final Decision : Allowed/Disposed Of

Judgement

1. The present criminal revision under Section 397/401 of Cr.P.C. preferred by the petitioner against the order dated 13.07.2007 passed by 3rd Additional Sessions Judge (Fast Track Court), District Guna in Criminal Appeal No.52/2007 filed against the order dated 21.12.2006 passed by the Judicial Magistrate First Class, District Guna in Criminal Case No.339/2000 whereby appeal filed by the petitioner has been dismissed and petitioner has been convicted under Sections 354 and 457 of IPC and sentenced to undergo 6 months RI with fine of Rs.500/- and one year RI with fine of Rs.500/- for respective offence, with default stipulation.

2. As per the case of prosecution, it is alleged that on 07.09.2000 at about 5 pm when head constable Shyam Singh reached to the Village Ratnagiri, Guna, complainant Moharbai lodged the report with respect to the incident dated 02.09.2000 with the allegation that when complainant was sleeping in her house with her son namely Santosh and her niece namely Kamlesh, then present petitioner i.e. Girraj tried to outrage her modesty by pressing her breast and when she woke up, petitioner ran away alongwith other co-accused persons. Other co-accused namely Meharban Singh caught hold of the legs of complainant

and other two co-accused persons namely Leeladhar and Pappu were standing over the door.

3. On such Dehati Nalishi, case was registered against the accused persons vide Crime No.153/2000 for the offence under Sections 354, 456 and 34 of IPC. After investigation, charge-sheet was submitted.

4. Trial was conducted in the Court of Judicial Magistrate First Class I, District Guna, in which accused abjured their guilt. Therefore, trial conducted in consequences to which the petitioner was convicted under Sections 457 and 354 of IPC and sentenced to undergo one year RI for Section 457 of IPC with fine of Rs.500/- and six months RI with fine of Rs.500/- for Section 354 of IPC with default stipulation.

5. Being aggrieved by the judgment of the trial court, the petitioner alongwith other two accused persons namely Leeladhar and Pappu preferred appeal, in which appeal so far as other co-accused persons namely Leeladhar and Pappu, appellate court recorded acquittal in favour of co-accused Leeladhar and Pappu. They were acquitted for the offence under Section 457 of IPC. Since they were not convicted and sentenced under Section 354 of IPC, therefore, effectively, they were acquitted for all purposes in the present case. Co-accused Meharban Singh did not participate in the investigation as well as trial and he remained absconded. Therefore, so far as present appellant Girraj is concerned, his conviction and jail sentenced given by the trial court stood affirmed by the appellate court. Hence, this criminal revision has been preferred.

6. The present revision was earlier heard by this Court vide order dated 06.11.2012 and revision was partly allowed and while maintaining the conviction of present petitioner, his jail sentence was reduced to the period already undergone/suffered by him. State preferred SLP and vide order dated 04.07.2014 in Criminal Appeal No.1369/2014 (SLP) [Criminal Appeal No.3371/2013] same was allowed and impugned judgment of conviction and order of sentence passed by this court was set aside and revision was remanded back to this court for fresh disposal in accordance with law. Opportunity was given to the accused to raise all contentions for his acquittal.

7. Accused remained absconded for sometime and thereafter, he was arrested. After some months of confinement, he was granted benefit of bail vide order dated 16.10.2019 in which it was pleaded that out of one year of jail sentence (maximum sentence) for accused, he already suffered four and half months of incarceration. Therefore, bail was granted and matter was fixed for final hearing.

8. It is submitted by the learned counsel for the petitioner that he has good case on merits because Dehati Nalishi (Ex.P/1) and contents of statement of prosecutrix (PW-1) bear sufficient contradictions and omissions. In her Dehati Nalishi, she referred the fact that on her scream Gyan Singh also reached to the spot but in her examination-in-chief, she nowhere referred the name of Gyan Singh whereas she referred the name of her

son and her niece. She specifically made the statement in her examination-in-chief that nobody else came over her scream (मेरे चिल्लाने पर और कोई नहीं आया), but later on in para 3 of her cross-examination, she further clarified by saying that I know Gyan Singh and he was not present on the date of incident and he did not visit the place of incident. Gyan Singh (PW-4) did not support the story of prosecution and declared hostile.

9. It is further submitted that testimony of Santosh (PW-2) also indicates that Gyan Singh did not come on the date of incident. The said witness Santosh improved the case in his cross-examination when he said that he has referred the fact in his statement (Ex.D/2) that Meharban Singh and Girraj were sitting over the breast of her mother whereas as per the statement of prosecutrix/victim (PW-1), Meharban Singh caught hold of her legs and Girraj pressed her breast. Even in her Dehati Nalishi, victim referred the fact that petitioner Girraj sat over her chest whereas in her cross-examination-in-chief, she referred the act of Girraj through his hands. This is also a material contradiction and renders the case of prosecutrix doubtful. Witness Gyan Singh (PW-4) did not support the prosecution story and declared hostile. Therefore, he could not have been relied upon. Head constable Shyam Singh (PW-3) was also examined and he stated in examination-in-chief that he recorded the statement on the basis of statements of complainant and other witnesses namely Kamlesh, Santosh and Gyan Singh. He further added that he took statements of all the witnesses on the same day when Dehati Nalishi was noted. It means that in Dehati Nalishi, reference of presence of Gyan Singh (PW-4) has been specifically mentioned by the complainant/victim but at the time of cross-examination, victim as well as her son namely Santosh (PW-2) denied the presence of Gyan Singh. This omission has material bearing in the case.

10. Alternatively, learned counsel for the petitioner raised the point that petitioner already suffered four and half months of incarceration and he is facing trial for last 20 years. Therefore, leniency may be shown and he may be convicted and sentenced for the period already undergone. He is ready to pay additional sum of compensation as directed by this court.

11. Learned Public Prosecutor for the respondent/State opposed the prayer and submitted that trial court as well as appellate court have rightly passed the impugned judgment and prayed for dismissal of this revision.

12. Heard learned counsel for the parties and perused the record.

13. Here, in the case in hand to some extent submissions of the learned counsel for the petitioner deserves credence because the fact regarding presence of Gyan Singh is glaring in the case. When alleged incident took place on 02.03.2000, then immediately FIR ought to have been registered, but accepting the plea that she was afraid from accused persons, therefore, Dehati Nalishi was noted on 07.09.2000 in which complainant referred the presence of Gyan Singh immediately after the incident. Then and there only, statements of witnesses namely Santosh (PW-2) and Gyan Singh (PW-4) were taken. Gyan Singh was a

person who was present on the spot immediately after commission of offence but why victim (PW-1) and her son namely Santosh (PW-2) did not support their own submissions regarding presence of Gyan Singh in their court statements, is surprising. This is a material contradiction and it appears that when evidence of victim held on 12.10.2000 after one year, then by that time equations might have been changed and they did not have faith over other witnesses and therefore, deviated from their own stand.

14. Beside that, appellate court acquitted the co-accused persons namely Leeladhar and Pappu from the clutches of Section 457 of IPC and found on the basis of spot map (Ex.P/2) that it is not possible that co-accused persons have entered from back side of the house and if they stood over the door from front side of the house, in such situation accused persons might have been spotted by somebody. This analogy applies for the whole course of incident and applies equally for appellant Girraj also, because it is the allegation of victim that all four came from back side of the house. Evidence of two co-accused persons namely Leeladhar and Pappu cannot be treated as separate piece of evidence so far as Section 457 of IPC is concerned because in her Dehati Nalishi she referred the fact that they came from back side of the house whereas in her examination-in-chief she nowhere referred the said fact; but in her cross-examination, she admitted the fact that they have come from back side of the house while climbing up the wall. But again question comes that when entry of other two co-accused persons namely Leeladhar and Pappu stood rebutted by the appellate court then why this reasoning cannot be applied in the case in hand for petitioner Girraj. In cumulative analysis, present petitioner is also entitled for benefit of doubt.

15. In her statement under Section 313 of Cr.P.C., appellant Girraj referred the fact that complainant had constructed drainage outlet (नाली) and he stopped her to do so, therefore, she filed a false case against the petitioner. This question was put to complainant (PW-1) also in which she accepted that she constructed the drainage outlet as well as the fact that she is a Panchayat member but denied suggestion regarding false implication.

16. It appears that sufficient contradictions exist so far as course of events regarding allegations of outraging the modesty is concerned. In Dehati Nalishi and statement of victim and in statement of her son namely Santosh (PW-2) description of allegations are different. Witness Santosh (PW-2) even gone to the extent of saying that both the co-accused persons sat over the chest of complainant whereas allegation of victim was that Meharban Singh caught hold of her legs and present appellant Girraj was outraging the modesty of complainant by sitting over her chest (or alternatively pressing her breast). Therefore, two versions regarding nature of outraging the modesty exist and they further make the case doubtful.

17. Even otherwise, one more aspect deserves consideration in the case is of

protracted trial. After alleged incident on 02.09.2000, petitioner is continuously facing trial. Impugned judgement of trial Court was passed in year 2006 whereas judgment of appellate court was passed in year 2007, thereafter, revision was preferred in which judgment (of sentencing already undergone) was passed in year 2012. State of Madhya Pradesh preferred SLP in which order was passed in year 2014 and now this case has been placed before this Court for hearing in year 2020. Complete twenty years have passed.

18. In the case of S. Guin and others Vs. Grindlays Bank Ltd. reported in AIR 1986 SC 289, Radhe Shyam Vs. State of Uttar Pradesh reported in (2008) 14 SCC 558, Nand Kishore Vs. State of Rajasthan reported in 1997 CRI.L.J. 2471. Hon'ble Apex Court has considered the aspect of delayed trial. Therefore, in the facts and circumstances of the case wherein petitioner comes from lower strata and possibility of animosity between the parties cannot be ruled out and the fact that he is facing litigation for last 20 years and the hanging sword of litigation must have haunted him in these years, therefore, cumulatively, case for consideration to the extent of converting the sentence to already undergone is imperative in the interest of justice.

19. From the submissions of learned counsel for the petitioner and from record, it appears that petitioner has suffered more than period of custody i.e. four and half months tentatively of incarceration and evidence against him is not so overwhelmingly implicative which may persuade this Court to affirm the conviction and sentence with conviction. A tentativeness in the case of prosecution persuades this court further (in addition to other circumstances like protracted trial and first offence of accused) that this court intends to accept the alternative plea of counsel for the petitioner and affirm the conviction but modify the sentence to the extent of sentence already undergone by the petitioner and fine amount has been enhanced from Rs.500/- to Rs.5000/- which shall have been to be paid by the petitioner within three months from the date of judgment and shall have to deposit before the trial court and trial court shall disburse the said amount to the victim or her LRs if she is not alive. It is made clear that if petitioner fails to deposit the said amount within the stipulated period then he shall have to suffer full jail sentence of one year (excluding already suffered jail sentence).

20. Petitioner is already on bail, therefore, his bail bonds stand discharged and impugned judgment of both the courts below are modified to the extent indicated above.

21. The present criminal revision stands allowed and disposed of with aforesaid modification.