

(2016) 05 DEL CK 0255

In the Delhi High Court

Case No : Crl.Rev. P. No. 479 of 2014.

Gopal Yadav - Petitioner @HASH The State (GNCT) Delhi

Date of Decision : 25-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 354

Citation : (2016) 4 Crimes 391

Hon'ble Judges : S.P. Garg, J.

Bench : Single Bench

Advocate : Mr. Satyam Chaturvedi, Advocate, for the Petitioner; Mr. Vinod Diwakar, APP, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Garg, J.(Oral) - Present revision petition has been filed by the petitioner to challenge the legality and correctness of a judgment dated 15.07.2014 of learned District & Sessions Judge in Crl.A.73/2013 by which petitioner's conviction under Section 354 IPC recorded by the learned Metropolitan Magistrate was upheld. Vide order dated 21.10.2013, learned Metropolitan Magistrate had convicted the petitioner for committing offence under Section 354 IPC and by an order dated 21.10.2013, he was sentenced to undergo RI for one year.

2. Allegations against the petitioner in nutshell as reflected in the charge-sheet were that on 31.07.2012 at about 03.00 p.m. Zakir Nagar, Okhla, New Delhi, he outraged the modesty of the prosecutrix "X" (assumed name) aged around seven years. On the basis of a written comprehensive complaint (Ex.PW-2/A) lodged by victim's mother Rukhsar Begum on 31.07.2012, FIR was registered. The prosecutrix was medically examined; she recorded her 164 Cr.P.C. statement. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant. The prosecution examined four witnesses. In 313 Cr.P.C. statement, the petitioner denied his involvement in the crime and pleaded false implication. After hearing the learned Assistant Public Prosecutor and defence counsel, the Trial Court, by the judgment dated 21.10.2013 convicted the petitioner under

Section 354 IPC. The appeal resulted in its dismissal. The instant revision petition has been filed to challenge both the orders.

3. During course of arguments, petitioner's counsel, on instructions, stated that findings of conviction are not being challenged. He, however, prayed to take lenient view as the petitioner is aged around 70 years and has remained in custody for sufficient duration. He is not a previous convict and has a small family to take care of.

4. Since the petitioner has given up challenge to the findings on conviction, conviction under Section 354 IPC stands affirmed. Besides it, there is ample evidence on record to establish petitioner's guilt. The prosecutrix "X" and her mother categorically implicated the petitioner for sexual assault upon the child. In the absence of any history of hostility, the victim aged around seven years was not expected to level serious allegations of sexual abuse. Specific and definite role has been assigned to the appellant. "X" is consistent throughout and no discrepancies could be extracted in her cross-examination. The petitioner did not furnish plausible explanation to the incriminating circumstances proved against him. He failed to produce any evidence to show if there was any enmity prompting to the victim's mother to implicate him in a false case. The concurrent findings of the Courts below based upon fair and proper appreciation of the evidence deserve no intervention.

5. Petitioner has been sentenced to undergo RI for one year. The Trial Court has already taken a lenient view. Considering the gravity of the offence whereby an innocent child aged around seven years was sexually assaulted by the petitioner, a grown-up man, aged around 65 years, further leniency is uncalled for. The petitioner was well aware of the consequences of his act. The prosecutrix was like his grand-daughter.

6. The revision petition lacks merit and is dismissed. Trial Court record (if any) be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

7. Before parting with the case, it is noted that in the impugned judgment dated 21.10.2013 name of the prosecutrix / victim has been disclosed / mentioned. The Trial Court was not expected to indicate the victim's name in the judgment. The mistake has been carried out by the learned District & Sessions Judge too while disposing CrI.A.73/2013.

8. Learned Presiding Officers must avoid disclosing identity of the victim / prosecutrix in such cases in the judgment to protect her reputation.