

(2020) 01 DEL CK 0415

In the Delhi High Court

Case No : Criminal Revision Petition No. 1303 Of 2019, Criminal Miscellaneous
Bail No. 2196 Of 2019

Pradeep Lal Handale

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 27-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 354, 354A, 392, 394, 397, 506
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2020) 01 DEL CK 0415

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : B.K Sahi, Manoj Kumar Roy, Siddharth, Raghuvinder Verma

Final Decision : Disposed Of

Judgement

Manoj Kumar Ohri, J

1. By way of the present revision petition, the petitioner has challenged his conviction and sentence for the offences punishable under Sections 323/354 and 506 IPC in FIR No.178/2013 at P.S. Lodhi Colony.

2. Vide judgment dated 16.01.2017, the trial court convicted the petitioner for the offences punishable under Sections 323/354 and 506 IPC. Further, vide order on sentence dated 23.01.2017, the petitioner was sentenced to undergo S.I for one year and to pay fine of Rs.1,000/- for offence punishable under Section 354 IPC in default whereof to further undergo S.I for 10 days. He was further sentenced to undergo S.I for one year for offence punishable under Section 323 IPC and S.I for a period of one year for the offence punishable under Section 506 IPC. All the sentences were directed to run concurrently.

3. In appeal, vide judgment dated 27.11.19, both the conviction as well as the order on sentence were upheld. It is noted that fine of Rs. 1000/-has already been paid by the petitioner.

4. Brief facts as noted by the Appellate Court are reproduced as under:-

"Prosecution version against appellant as unfolded during trial is that on 04.11.2013, at about 12 noon near H. No. 212, Lodhi Colony, New Delhi, appellant caught hold of the hand of the complainant/victim and tried to pull her in his car. When complainant raised hue and cry, appellant passed sexually coloured remarks against her and threatened to kill complaint and her. After completing investigation, the charge-sheet was filed. The charges were framed under Sections 392/394/397/34 IPC to which the appellants pleaded not guilty. During trial, the prosecution examined total of 12 witnesses husband. When victim was going to Police Station for reporting the matter to police, appellant came there in the car and started fighting with complainant as a result of which complainant received injuries on her head. FIR was registered after the conclusion of evidence, final report was laid before concerned Metropolitan Magistrate wherein appellant was chargesheeted under Section 354/354A/506/323 IPC. Thereafter, charge under same provisions of law was framed against the appellant".

5. Babita, the complainant was examined as PW-1. Rajni and Seema, eye witnesses to the incident were examined as PW-2 and PW-3 respectively. Dharambir, husband of the complainant was examined as PW-4. Dr. M. Sukumar who conducted the MLC of the complainant was examined as PW-11.

6. Mr. B.K. Sahi, learned counsel for the petitioner contended that the testimony of the complainant is not believable as there are material variations and contradictions in her statements. It was also contended that the complainant held a grudge against the petitioner as on the previous day a fight took place between husband of the complainant on one hand and Chhotu and Babu on the other hand in which the petitioner had taken the side of the latter. For the aforesaid reasons, the complainant had falsely implicated the petitioner.

7. To appreciate the contention of learned counsel for the petitioner, a perusal of the complainant's various statements reveal that whereas in her testimony recorded in the Court it was stated that while returning at 12 noon the petitioner followed her and abused her husband and tried to pull her inside the car but in her initial complaint it was stated that that while she was returning at 12 noon , the petitioner was sitting in his car outside his house when he tried to pull her inside the car and later while she was returning along with her husband from the police station, the petitioner came in his car and caught her hand because of which she received injury on her wrist. In her statement recorded under Section 164 Cr.P.C., it was stated that the petitioner was sitting in his car along with four other persons when he tried to pull her inside the car. The petitioner's sister and mother also came and they also caught her hand. On hearing the noise, when complainant's husband reached the spot, the petitioner ran away.

From above, it is apparent that in her deposition, the complainant has stated that the injury was received while she was returning from the police station along

with her husband but in her other statement recorded during investigation it was stated that the injury on her hand was received at the time when she was alone. In her testimony, the complainant did not mention about the second incident at all.

8. The complainant's husband in his testimony stated that he saw from the window of his house that the petitioner was pulling his wife by her hand. When he came out of the house, the petitioner threatened to kill him. He along with the complainant went to the police station where their complaint was not registered. Thereafter he went to the office of DCP at Moolchand from where he came back to P.S. Lodhi Road. While they were returning from the police station, the petitioner again misbehaved with him and his wife. However, the complainant did not state on above lines in any of her statements.

9. The two independent witnesses, namely Rajni and Seema have not stated about the presence of the complainant's husband at the spot. They have not stated anything about any threats given to the complainant or her husband. Both the witnesses were given the suggestions that the complainant was their friend at whose instance they had deposed to falsely implicate the petitioner. The aforesaid witnesses did not mention about the presence of any other person and the car. In the cross-examination, Seema tried to improve the case but was confronted with her statement recorded under Section 161 Cr.P.C. where she did not mention the presence of 3-4 persons along with the petitioner.

10. It is relevant to note that during the complainant's cross-examination, she admitted that on the previous night, her husband was involved in a fight with Chhotu and Babu, who were residents of the upper floor in flat adjoining to the house of the petitioner. She denied the suggestion that the petitioner along with his mother and brother took the side of Chhotu and Babu.

11. So far as MLC is concerned, it mentioned "three linear abrasions over her right wrist". Dr. M. Sukumar was examined to prove the MLC of the complainant. He stated that he did not identify the signatures of Dr. Ramender who had prepared the MLC, as he had never seen him writing and signing. He further stated that the injury might be possible by holding the hand and dragging on the wall. He could not answer whether the injuries were on the Dorsal aspect or Palmar aspect or whether they were vertical or horizontal.

12. In the opinion of this Court, there are material contradictions in the statements of the complainant which are also at variance with the testimony of her husband. The petitioner is entitled to benefit of doubt. Accordingly, the impugned order passed by the Session Court, upholding the order of conviction and sentence of the petitioner, is set aside. The revision petition is allowed and the petitioner is acquitted. The petitioner be released forthwith, if not wanted in any other case. Bail bonds are cancelled and surety discharged. The pending bail application is disposed of in above terms.

13. Copy of this order be communicated to the trial court as well as the

concerned Jail Superintendent for serving it on the petitioner and for necessary compliance.