
(2012) 05 DEL CK 0633

Delhi High Court

Case No: Criminal Rev. P. 110 of 2009

Gaddal and Another

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision: May 7, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 357
- Penal Code, 1860 (IPC) - Section 323, 34, 341, 354, 365

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: R.P.S. Bhatti, for the Appellant; Mukesh Gupta, APP for the State with SI Bhanu Kanwar, P.S. Mayur Vihar, for the Respondent

Final Decision: Dismissed

Judgement

Hon'ble Ms. Justice Mukta Gupta

1. By the present petition, the Petitioners seeks setting aside of the order dated 24th February, 2009 passed by the learned Addl. Sessions Judge upholding the order of conviction of the Petitioners passed by the learned Metropolitan Magistrate convicting the Petitioners for offences punishable under Sections 323/354/341IPC read with Section 506/34 IPC. The learned Metropolitan Magistrate vide order dated 27th September, 2008 had sentenced the Petitioners to undergo Simple Imprisonment for 6 months each for offence under Sections 323/354 IPC and Imprisonment for two months u/s 506 IPC. The petitioners were further directed to pay compensation in the sum of Rs. 4,000/- each under provisions of 357 Cr. PC. Briefly, the prosecution case is that on 2nd May, 2003 at about 10:30 p.m. near DDA Gate, Janta Flat the petitioners along with the co-accused Praveen with common intention voluntarily caused hurt to Prosecutrix and assaulted her with intent to outrage her modesty. All the accused in furtherance of common intention had kidnapped her in order to secretly confine her and threatened to kill her and not to

allow her to remain in the locality thereby causing alarm to her. On the basis of the statement of the prosecutrix, FIR No. 107/2003 u/s 323/354/365/34 IPC was registered and on investigation charge sheet was filed against the Petitioners and Praveen. After recording the statements of prosecution witnesses and statements of accused persons u/s 313 Cr.P.C. learned Metropolitan Magistrate convicted and sentenced the Petitioners as mentioned above. Aggrieved by this judgment and order on sentence, the Petitioners preferred an appeal. Learned Addl. Sessions Judge vide order dated 24th February, 2009 dismissed the appeal and upheld the judgment passed by the learned Metropolitan Magistrate.

2. Learned counsel for the Petitioner contends that the impugned orders passed by the learned Trial Court and the learned Appellant Court are based upon conjectures and surmises. Learned courts below have erred in ignoring the facts of the case. It is contended that Petitioner No. 2 and the prosecutrix are friends which fact stands proved by the photographs which are placed on record. Petitioner No.2 was having an affair with prosecutrix. It is contended that the allegations leveled by the prosecutrix as well as her sister PW2 are false and frivolous. Furthermore, the learned below courts have not given due credence to the testimony of DW 1. PW6, Dr. R.N. Dass has categorically stated that there were no marks of injury on the person of the prosecutrix. On a specific question being put to the prosecutrix in regard to the love letter written by her to Petitioner No.2, there was no denial on her part. Thus there was no reason for the Petitioners to molest or outrage her modesty.

3. Per contra, learned APP for the State contends that PW1, the prosecutrix/Complainant has specifically stated that the Petitioners and Praveen grappled her, did indecent act and forcibly pulled her. This witness was cross examined but nothing substantial could be elicited from her testimony. PW2 has fully supported the testimony of PW1. Also the Petitioners have not denied the act. The only defence pleaded by them is that Petitioner No. 2 was having a love affair with the prosecutrix so there was no molestation as alleged by the prosecutrix. The evidence placed on record is clear which attract the provisions under which the petitioners are convicted. The present petition has no merit and is liable to be dismissed.

4. I have heard learned counsels for the parties and perused the record.

5. The primary contention of learned counsel for the Petitioners is that Petitioner No.2 was having love affair with the prosecutrix and the present case has been filed to harass the Petitioners. PW1 in her testimony has deposed that on 2nd May, 2003 at about 10:30 p.m. she along with her elder sister was returning to their house from beauty parlour. Her elder sister was ahead of her and she was following her. When she reached near the gate of Janta flats, accused Jitender @ Kodhi, Praveen and Guddan were already present there. She deposed that she knew all of them prior to the incident. Accused Jitender @ Kodhi and Praveen grappled her and did

indecent act and forcibly pulled her to 31 Block, Pusta, dirty drain, Trilokpuri. Accused Guddan kept on beating her. She has deposed that during commission of offence her clothes were torn. Her sister reached there raising an alarm "bachao bachao". Accused persons fled away seeing 4-5 persons coming from in front of pusta. The accused persons threatened to kill her while fleeing from the spot. They further stated that they will see how will she remain in this block. Despite cross-examining her at length nothing material could be elicited from the testimony of this witness. In regard to the photographs she had stated that she is present in photographs but does not know how was it taken. As regards letter PW1/D4 she has denied the same to be in her handwriting or that she had addressed the same to someone else.

6. PW2, the sister of the prosecutrix has corroborated the testimony of PW 1 stating that on the day of incident while they were coming back to their house from the parlour, accused Praveen, Guddan and Jitender came and started abusing them. When they were near Janta flats, the accused persons after abusing them gave beatings to her sister. Her sister was pulled and taken to pusta where accused Guddan gave beating to her sister and Jitender misbehaved with her. She made hue and cry and tried to rescue her sister but she could not rescue her. She then informed the mother. When her sister reached home her clothes etc. were torn and they took her to the hospital. Her sister was treated with extreme misbehavior and was badly beaten. Accused threatened them with dire consequence and challenged them for taking action against them. They were threatened and they said they will not be allowed to live in the area.

7. From a perusal of testimony of the witnesses it is clear that on the relevant day, the Petitioners along with co-accused Praveen met PW1 and PW2 on the way while they were coming from the parlour and abused them. The witnesses have withstood the lengthy cross-examination but nothing material could be elicited from their testimony. The act of petitioners grappling and then committing indecent act on the prosecutrix clearly attract the provisions for which the Petitioners are convicted of. Furthermore the prosecutrix was beaten by accused Guddan which fact has been stated by both PW1 and PW2. The contradictions pointed out by the learned counsel for the Petitioner are insignificant and do not dent the clear and cogent testimony of prosecution witnesses.

8. The contention of the learned counsel for the Petitioners that the Petitioner No.2 and the prosecutrix had a love affair holds no ground as even if it is presumed that the letters were written by the prosecutrix and they had a relationship, the same does not give them a right to molest the prosecutrix. The photographs placed on record by the Petitioner do not render the case of the prosecution to be false and frivolous. Thus, in view of the clear and cogent testimony of witnesses, I find no merit in the present petition. The petition is accordingly, dismissed. The Petitioners, who are on bail, will undergo the remaining sentence. Their bail bonds and surety

bonds are cancelled.