



2025:DHC:1958



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 6th March, 2025**

+ CRL.A. 95/2012

STATEAppellant

Through: Ms. Priyanka Dalal, APP for the State
with SI Mohit Verma, P.S.
Parliament Street

versus

SUBHASH CHANDRA LUTHRARespondent

Through: Mr. S. C. Sagar, Mr. Naeem Ahmed,
Mr. Shishu Pal Sharma and Ms.
Swati, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant appeal under Section 378(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter "Code") [now under Section 419(1)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] has been filed on behalf of the appellant seeking the following reliefs:

"A) Set aside the judgment/order dated 10.12.09 passed by the Ms. Gitanjali Goel Ld. Metropolitan Magistrate, Mahila Court, New Delhi and the accused/ respondent be convicted for the offences committed u/s 354/509 IPC arising out of FIR No. 37/07, P.S Parliament Street, New Delhi.

B) The Complete record be kindly called from the Id. Trial



Court.

C) Pass any other order(s) which may be deemed fit and proper in the given facts and circumstances of the case.”

2. The brief facts of the case, as per the prosecution, are that the accused is a Personal Assistant working in the Hindi Section with the complainant, who is an Assistant Director in the Office of Ministry of Coal, Shastri Bhawan. On 3rd March, 2007, at about 3:47 PM, the accused allegedly assaulted the complainant by touching her inappropriately and used criminal force with the intention of outraging her modesty. It is further alleged that he broke the thumb of her left hand and used filthy and abusive language in the presence of the staff members.
3. Accordingly, an FIR bearing no. 37/07 was lodged for the offences punishable under Sections 354/509/323 of the Indian Penal Code, 1860 (hereinafter “IPC”) at the Police Station – Parliament Street, New Delhi on the basis of the complaint filed by the complainant.
4. Subsequently, on 13th March, 2007, the accused was arrested at around 3 PM from Lok Nayak Bhawan by the concerned police officials.
5. Thereafter, a chargesheet filed by the police on 6th September, 2007, wherein charges under Section 354/506/323 of the IPC were levelled against the accused.
6. A notice dated 10th October, 2008 under Section 251 of the Code was framed against the accused, however, the accused pleaded not guilty and claimed trial.
7. Accordingly, the accused was acquitted from offences punishable



under Section 354/506/323 of the IPC *vide* judgment dated 10th December, 2009 (hereinafter “impugned judgment”) passed by the learned Mahila Court, New Delhi (hereinafter “Trial Court”).

8. Aggrieved by the same, the appellant filed the instant appeal seeking its reversal and setting aside.

9. Learned counsel appearing on behalf of the appellant submitted that the learned Trial Court erred in acquitting the accused by misinterpreting the provisions of law and failing to properly consider the material on record.

10. It is submitted that the learned Trial Court failed to appreciate the evidence led by the prosecution and testimonies of the witnesses, which sufficiently proves that the accused has committed offences punishable under Sections 354/506/323 of the IPC. Moreover, no evidence was produced by the respondent/accused to show that he was falsely implicated in the present case.

11. It is submitted that the accused has been sending inappropriate letters to the complainant, which are already on record, however, the learned Trial Court ignored the conduct of the accused towards the complainant while acquitting him.

12. It is submitted that the learned Trial Court erred in observing that there are discrepancies in the testimony given by the complainant and other witnesses, however, it is trite law that no corroboration of the complainant’s testimony is required unless there are compelling reasons to do the same.

13. In view of the foregoing submissions, it is prayed that the instant appeal may be allowed and the impugned judgment may be set aside.



14. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant appeal and submitted that the impugned judgment was rightly passed by the learned Trial Court after satisfying itself with the material on record.

15. It is submitted that there are major discrepancies in the testimonies given by the witnesses and the complainant, as the same failed to establish that the accused misbehaved with the complainant. Moreover, the testimony of DW-5 i.e., Ved Prakash Suri, who was present during the alleged incident, establishes that there was an argument between the accused and the complainant, however, nothing as indicated by the complainant took place in his presence, thereby debunking the complainant's case.

16. Therefore, in view of the aforesaid submissions, it is prayed that the instant appeal, being devoid of any merit, may be dismissed.

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

18. At this juncture, it is pertinent for this Court to examine the findings of the impugned judgment passed by the learned Trial Court. The relevant extracts of the same are as follows –

“61. It is thus seen that the independent witnesses examined by the prosecution other than the complainant were all hostile except that PW2 stated that the complainant told him that the accused had squeezed her thumb but that was only hearsay evidence. DW5 had stated about some hot talks taking place in his presence but he had not stated about accused squeezing the thumb of the complainant. The medical was got done only on 5.3.2007 and even the complaint was made to the department for the first time on 5.3.2007. Even otherwise if the contention of the prosecution is accepted that the accused had squeezed



the thumb of the complainant there is nothing to show that the same was with Intention to outrage the modesty of the complainant. There is also nothing to establish that the accused had abused her in filthy language. As such there is nothing to corroborate the testimony of the complainant or to make out offence under Section 354 IPC against the accused. Even regarding the letters allegedly written by the accused to the complainant there is nothing to establish that the same were written to the complainant by the accused or handed over to the complainant by the accused or sent to her.

62. Looking to the material on record the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and the accused Subhash Chander Luthra is acquitted for the offence under Sections 354/509 IPC Ball bond cancelled. Surety discharged. File be consigned to record room.”

19. Upon perusal of the impugned judgment, it is observed that while acquitting the accused, the learned Trial Court considered the material placed on the record i.e., the contents of the complaint, depositions of the witnesses, letters allegedly written to the complainant by the accused, statement of the accused under Section 313 of the Code etc.

20. Therefore, the issue for adjudication before this Court is whether the learned Trial Court was right in acquitting the accused vide impugned judgment.

21. It is the case of the complainant that the accused had consistently exhibited inappropriate and offensive conduct towards the complainant over a prolonged period. It is alleged that he regularly wrote vulgar and indecent letters to the complainant prior to the said incident. Furthermore, on the date of the incident, the accused allegedly behaved in an indecent manner by



inappropriately touching the complainant and using abusive language in the presence of staff members.

22. At this juncture, it is pertinent to examine the FIR filed by the complainant and her deposition as PW-5 before the learned Trial Court.

23. The complainant deposed that on 3rd March, 2007, she alongwith her staff members came to the office to dispose of some work for the budget session. She stated that the said day was a holiday and she reached the office at about 2:45PM. After 3:30PM, only four persons, namely herself, Mr. Kirpal Singh, Mr. Vinod Kumar and the accused, remained in the room. As per her statement, the accused suddenly started pinching her lips and squeezed her hips. While she was attempting to free herself from him, she broke her left hand thumb. Thereafter, she informed the incident to Mr. Kirpal Singh and Mr. Vinod Kumar and showed them her injured thumb. She further stated that the accused has been misbehaving with her earlier too wherein he gave her indecent letters, which were later seized by the police.

24. Therefore, this Court finds it apposite to examine the Lower Court Record as well as the material placed on record, which includes the letters allegedly written by the accused to the complainant, FIR, statement of the accused under Section 313 of the Code, deposition of the witnesses amongst other relevant documents.

25. In his statement under Section 313 of the Code, the accused has generally denied to have committed any offences as alleged in the instant FIR and stated that he will prove his case with the examination of Defence Witnesses.



26. It is the contention of the prosecution that the conduct and behavior of the accused has consistently been inappropriate towards the complainant, wherein the accused has written indecent letters expressing his intention with her.

27. With respect to the same, this Court has perused the depositions of the witnesses, wherein PW-4 (Mr. Mohan Singh) and PW-6 (Manoj Kumar Choudhary), who also work in the complainant's department, stated that the complainant has not mentioned or shown the alleged letters to them. PW-7 i.e., Inspector NR Lamba, stated that the complainant handed over the letters and a sanitary pad on which something was written to him, which were seized vide seizure memo Ex. PW7/A.

28. At this juncture, this Court has perused the FSL report which is part of the LCR, wherein it stated that the letters were written by the accused. Additionally, the testimony of DW-6, Mr. Sandeep Gupta, Under Secretary and Member Secretary of the Women's Cell stated that the accused admitted before the Committee that the said letters were written by him, however, the same was written to his wife and were misplaced in his drawer. He further stated that the accused has not mentioned anything regarding the sanitary pad.

29. The letters allegedly written to the complainant by the accused are on record and upon examining the same, there is no mention or indication that the accused has written the same to the complainant.

30. Further perusal of the depositions reveals that there are discrepancies in the statement given by the complainant as well as the other depositions.



31. It is pertinent to note that Mr. Kirpal Singh (PW-2) stated in his examination that the complainant reached the office at 2:45 PM and after 3:15PM, he alongwith the complainant, the accused and Mr. Vinod Kumar were present in the office. He stated that the complainant called the accused in her office for some typing work, during which period, he and Mr. Vinod Kumar went to use the toilet. After returning to the office, the complainant told them that the accused squeezed her thumb. Moreover, he stated that he has no knowledge of any indecent conduct by the accused towards the complainant before the alleged incident.

32. DW-3 i.e., Mr. R.N. Singh, Under Secretary deposed that his office is adjacent to that of the complainant. However, he stated that he neither saw nor heard anything unusual on the date of the incident. He stated that at around 3:45 PM, the complainant's office was closed.

33. DW-5, Mr. Ved Prakash Suri, a retired Senior Translator, stated in his examination that on 3rd March, 2007 at 2:15 PM, he visited State Bank of Patiala and while leaving the premises, he met the complainant, who was in the same batch as him. As they began discussing about work, the complainant asked him to come to her office to discuss about some work. At about 3:30PM, the accused told the complainant that his father-in-law has suffered a heart attack and was admitted to a hospital in Sonipat and therefore, he needed to leave. Although, the accused claimed he had completed his work, the complainant asked him to stay for some more time, which led to a heated exchange between the two. According to him, the accused left the room at around 3:45PM.



34. The foregoing witness statements do not support the complainant's version of incidents as DW-5, who was present at the incident, stated that a heated argument took place between the complainant and the accused, however, no physical harm was inflicted by the accused nor was there any indecent behaviour or objectionable remarks made towards the complainant. Moreover, the complainant stated that the said incident took place before her staff members. The same seems to be incorrect as PW-2 specifically stated that he was not present at the relevant time of the incident and he was merely informed by the complainant that the accused broke her left thumb.

35. Other staff members and officers from adjacent offices i.e., PW-4, PW-6, DW-2 and DW-4 were also examined. However, they stated that they were not present at the time of the incident.

36. While the prosecution contends that minor discrepancies in witness testimonies should not be given undue weight and that complainant's testimony requires no corroboration in cases involving sexual offences, it is trite law that the same cannot be applied universally and mechanically irrespective of the factual situation.

37. The Hon'ble Supreme Court in the case of ***Rajoo and Others vs. State of M.P., 2008 INSC 1388*** observed that the general principle with respect to the prosecutrix's evidence is that no corroboration is required if the evidence of prosecutrix is reliable and the same is not to be suspected. However, it was also observed that although the statement of the prosecutrix in sexual offences holds greater weight, the same cannot be applied mechanically without considering the factual situation.



38. At this stage, it is also apposite to mention the case of *State of Rajasthan v. Shera Ram*, (2012) 1 SCC 602, wherein the Hon'ble Supreme Court reiterated the settled position of law in cases of appeal against acquittal. The relevant extracts of the same are as follows –

“7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the



materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.”

39. The foregoing extracts of the case-law categorically lays down the principle of interference of the Court in appeals against acquittal, wherein presumption of innocence in favour of the accused must be taken while adjudicating such appeal.

40. Therefore, considering the foregoing discussion and settled position of law, this Court is of the considered view that no case is made out against the accused as the evidence on record does not fortify or corroborate the complainant's allegations levelled against the accused. Moreover, the impugned judgment passed by the learned Trial Court does not suffer from any apparent illegality and therefore, there are no cogent reasons for interference of this Court to overturn the acquittal of the accused.

41. In view of the aforementioned facts and circumstances, the impugned judgment dated 10th December, 2009 passed by the learned Mahila Court, New Delhi in the case of ***State vs. Subhash Chander Luthra*** arising out of FIR bearing no. 37/2007 is, hereby, upheld.

42. Accordingly, the instant appeal stands dismissed alongwith pending applications, if any.



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43. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 6, 2025
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[Click here to check corrigendum, if any](#)