



2025:DHC:7598



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 01.09.2025*+ **CRL.REV.P. 434/2024 & CRL.M.B.545/2024**

ENAMUL HAQ

.....Petitioner

Through: Ms. Shantha Devi Raman and
Ms. Tanisha Gopal, Advs.

versus

THE STATE N.C.T OF DELHI

.....Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Sumeet Poonia.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The petitioner Enamul Haq was convicted for commission of the offence punishable under Sections 354/506 of the Indian Penal Code, 1860 [hereafter '*IPC*'] by the learned Metropolitan Magistrate (Mahila Court-02), Shahadra, Karkardooma Courts, Delhi [hereafter '*Trial Court*'] *vide* judgment dated 14.03.2023 and order on sentence dated 20.05.2023, in case arising out of FIR No. 522/2016, registered on 05.12.2016 at Police Station Vivek Vihar, Delhi, for commission of offence under Section 354A of the IPC. The appeal preferred by the petitioner against his conviction, being CA No. 82/2023, was also



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dismissed by the learned Additional Sessions Judge-04, Shahadra, Karkardooma Courts, Delhi [hereafter '*Appellate Court*'] *vide* impugned judgment dated 28.03.2024. The petitioner has now approached this Court seeking setting aside of the judgments and orders passed by the learned Trial Court as well as the Appellate Court and prays for his acquittal in the present case.

FACTUAL BACKGROUND

2. The case of the prosecution, in brief, is that the complainant had been employed as a Staff Nurse at ESI Hospital, Jhilmil, Delhi, where the petitioner/accused Enamul had also been working as a Nursing Orderly. About one month prior to the date of the incident in question, the complainant was on night duty at the Male Surgical Ward on the fourth floor of the hospital, where the petitioner/accused was also on duty. During that night, the petitioner/accused had allegedly held the hand of the complainant and rubbed his cheek against hers. On her opposing such conduct, she had reported the matter to ANS Pushpa Nagrare, but no action had been taken against the petitioner/accused. Thereafter, on 01.12.2016, when the complainant was again on duty along with the petitioner/accused in the same ward, the petitioner/accused, at about 12:10 a.m., had allegedly caught hold of her hand and forced her to sit on a chair. On her resisting, the petitioner had again approached her, asked her to kiss him, and pulled her forcefully, to which she had again pushed him away. The complainant had then immediately apprised her



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supervisor, Smt. Shirley, about the incident. On the following day, i.e. 02.12.2016, she had submitted a written complaint to the Medical Superintendent of the hospital, but no action had been taken. Subsequently, on 05.12.2016, the complainant had filed a written complaint before the SHO, P.S. Vivek Vihar, which had culminated in the registration of the present FIR, and investigation had thereafter been undertaken.

3. On 06.12.2016, the statement of the complainant was recorded under Section 164 of Cr.P.C. before the learned Magistrate. On 19.12.2016, the petitioner/accused surrendered before the concerned Court and an application for grant of bail was moved, which was allowed by the Court on the same day and the petitioner was released on bail. After completion of investigation, the chargesheet was filed before the concerned Court on 15.05.2017 against the petitioner for offences under Sections 323/354A/354/506/509 of the IPC. By way of order dated 04.02.2019, charges were framed against the petitioner for offence under Sections 354/506/509 of the IPC.

4. During the course of trial, the prosecution examined 9 witnesses in support of its case, after which the statement of accused was recorded under Section 313 of the Cr.P.C. and he examined himself as defense witness (DW-1). After conclusion of trial, the learned Trial Court *vide* judgment dated 14.03.2023 found the petitioner guilty of commission of offence punishable under Sections 354/506 of IPC, but acquitted him for offence under Section 509 of IPC. He was sentenced to undergo simple imprisonment for a period



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of one year and to pay a fine of Rs. 4,000/- for offence under Section 354 of IPC , and to pay a fine of Rs. 1,000/- for offence under Section 506 of IPC *vide* order on sentence dated 20.05.2023.

5. The appeal preferred by the petitioner against his conviction was also dismissed by the learned Appellate Court *vide* impugned judgment dated 28.03.2024 wherein it was held that the conviction of the petitioner recorded by the learned Trial Court did not suffer from any infirmity. The concluding portion of the judgment reads as under:

“23. In the instant case at hand, it is manifest from the testimony of the victim (PW3) that her testimony is completely consistent since beginning and testimonies of PW3/ victim, PW5 Ms. Naina and PW6 are corroborating each other with regard to the subsequent action taken/ conduct of the Prosecutrix soon after the incident. Complainant/ victim has withstood the test of cross-examination in as much as nothing substantive came on record, which could have demolished the substratum of her testimony. The testimony of the victim is found to be natural and consistent and it does not suffer from any prevarication.

24. The impugned judgment dated 14.03.2023 and consequent order on sentence dated 20.05.2023 of learned MM (Mahila Court) is based on correct understanding and correct appreciation of evidence which came on record as well as correct interpretation of facts of the case and applicable law. This Court has also gone through the discussion by learned Trial Court on the ingredients of offences u/s 354 and 506 IPC. The same appears to be reasonable and justified. In view of the foregoing discussion, there is nothing on record to reverse the findings of learned Trial Court qua the said offences. Accordingly, no ground to allow the present appeal is made out.”

6. Aggrieved by the aforesaid judgments and orders, the petitioner has preferred the present revision petition.



RIVAL CONTENTIONS

7. The learned counsel appearing for the petitioner has contended that the complainant had herself admitted in her testimony that about one month prior to the incident in question, the petitioner had allegedly misbehaved with her, but she had not made any written complaint regarding the same. It is argued that such conduct raises doubts about the genuineness of her allegations. It is further contended that the complainant admitted that she had not lodged any complaint with the senior authority in the night immediately after the incident dated 01.12.2016 and had only reported the matter in the morning. Further, both the complainant and the petitioner had admittedly continued with their duties in the hospital till the morning after the incident. No complaint was also made to the police on the same night, nor was the police called to the hospital.

8. The learned counsel for the petitioner has further submitted that the complainant admitted during her cross-examination that the fourth floor, where the incident had allegedly occurred, comprised several wards, staff rooms and a nursing station, and was occupied by staff and patients at the relevant time. She had also admitted that hospital rules permitted one attendant to remain overnight with patients. In these circumstances, it is argued, the allegation that such an incident could have occurred without attracting the attention of anyone else is inherently improbable. It has also been argued that the complainant admitted in her cross-examination that the site plan did not correspond with the details provided by her. The place of incident



was not shown in the site plan, the chair allegedly used in the incident was neither shown nor seized by the investigating officer (I.O.), and the site plan prepared was admittedly not an exact plan of the fourth floor. It is contended that the site plan was a crucial aspect of the investigation which was completely overlooked by the learned Trial Court.

9. The learned counsel for the petitioner has next contended that there was an unexplained delay of three to four days in lodging the complaint with the police and registration of the FIR, which itself casts serious doubt on the prosecution version. It is further contended that the learned Trial Court had erred in concluding that PW-5 had supported the prosecution case, when in fact his testimony did not advance the case of the prosecution. It is also argued that the learned Trial Court had wrongly filled in the gaps in the deposition of PW-6, who had been declared hostile and had not supported the prosecution. It has also been contended that the complainant had allegedly given a written complaint to the hospital authorities on 02.12.2016, but the same had not been proved in accordance with law. Even the previous complaint allegedly made by the complainant against the petitioner had not been proved. Lastly, it is urged that the complainant had made several improvements in her statements at different stages of the proceedings, which must be read in favour of the petitioner and entitle him to acquittal.

10. On the other hand, the learned APP appearing for the State has vehemently opposed the present petition. It is submitted by him that



the scope of interference in a revision petition is extremely limited, and unless the petitioner is able to demonstrate that the impugned judgments suffer from perversity or manifest illegality, this Court would not be justified in exercising its revisional jurisdiction. It is argued that in the present case, both the learned Trial Court as well as the learned Appellate Court have duly appreciated the evidence on record and have rightly dealt with the contentions raised on behalf of the petitioner/accused. The learned APP has further contended that minor contradictions or inconsistencies, even if assumed to exist, do not go to the root of the matter and are natural in the testimony of a witness. The version of PW-3, i.e. the complainant, has remained consistent throughout and her testimony is of sterling quality, sufficient in itself to sustain the conviction of the petitioner/accused. It is also contended that PW-5 had supported the prosecution case and his testimony lends corroboration to the version of the complainant. In these circumstances, it is argued that the impugned judgments call for no interference, and the present petition, being devoid of merit, deserves dismissal.

11. This Court has **heard** arguments addressed by learned counsel appearing for either side. The Trial Court Record and the Appellate Court record has also been perused.

ANALYSIS & FINDINGS

12. At the outset, it shall be pertinent to observe that insofar as the scope of present petition is concerned, it is well-settled that the High



Court in criminal revision against conviction is not supposed to exercise the jurisdiction akin to the appellate court and the scope of interference is limited. Nevertheless, Section 397 of the Cr.P.C. vests jurisdiction in the Revisional Court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order passed, and as to the regularity of the proceedings of the subordinate court. It is equally well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case [Ref: *Malkeet Singh Gill v. State of Chhattisgarh*: (2022) 8 SCC 204; *State of Gujarat v. Dilipsinh Kishorsinh Rao*: 2023 SCC OnLine SC 1294].

13. Having perused the judgments rendered by both the Courts below, in the light of the arguments advanced before this Court and the evidence adduced during trial, this Court finds that there are certain crucial aspects of the matter which appear to have been either overlooked or incorrectly appreciated, which go to the very root of the prosecution's case against the petitioner.

14. This Court, while exercising revisional jurisdiction, while not expected to reappreciate the entire evidence in detail, cannot remain oblivious to material omissions or misreadings which have a direct bearing on the correctness and propriety of the findings recorded. It is in this backdrop that the evidence and reasoning adopted by the learned Trial Court as well as the learned Appellate Court are required to be examined and scrutinised.



15. It shall be apposite to first take note of the testimonies of the star public witnesses. The complainant, who was examined as PW-3 before the learned Trial Court, deposed that on 01.12.2016, she had night duty in ESI Hospital and at around 12:00 a.m., while she was working on the 4th floor of the hospital, the petitioner/accused Enamul had come to her and asked her to sit beside him. She felt uncomfortable and refused, whereupon the petitioner pulled her hand, forcefully made her sit on a chair, asked her to kiss him, and also attempted to kiss her. When she objected, he started speaking to her in sexual overtones and further remarked, *“tumhare aage peeche behene hain aur tum auto se aati ho aur tum contract basis pe ho, mai permanent hun, pata nahi kahan kahan se aa jaate hain.”* Thereafter, the petitioner pulled her neck collar, pushed her to the ground, touched her inappropriately over her front body, and threatened her that as he was a permanent employee and she was on contract, no action would be taken against him. She stated that she had panicked but somehow managed to escape and immediately complained to her Supervisor in the hospital, though no action was taken. PW-3 further deposed that in the early morning, the petitioner/accused again came to her and told her, *“mera kuch nahi hoga, is mamle ko rafa dafa karo.”* After her duty hours, she had also complained to the morning staff of the hospital. They inquired from the petitioner, who admitted the incident stating that he had taken Alprex medicine, yet no action was taken against him. She also stated that about one month prior to this incident, she had orally complained



against the petitioner to the Ward Superintendent and had requested that her night duty not be assigned with him due to his inappropriate behaviour. She further deposed that she had waited for 2–3 days, hoping that the hospital management might take action, but when no action was taken, she had lodged a written complaint dated 05.12.2016 (Ex.PW3/A) with the police. Her statement was recorded, and she had taken leave for 4-5 days after the incident. When she rejoined duty, the police visited the hospital, inquired from her about the spot of the incident, and might have prepared the site plan (Ex.PW3/B) as they had noted the directions of the place. She further deposed that on 06.12.2016, the police called her to Karkardooma Courts, where her statement under Section 164 of the Cr.P.C. (Ex.PW2/C) was recorded before the learned Magistrate. She added that she had narrated the entire incident before the learned Magistrate, including those facts which she could not mention earlier in her complaint due to nervousness and fear of consequences.

16. PW-5 Naina Lal deposed before the learned Trial Court that on 01.12.2016, she was on night duty at the Male Ward on the third floor of the hospital as a Staff Nurse. On that night, the complainant had called her from the fourth floor, and upon reaching there, she had found the complainant standing in the gallery and crying. On inquiring, the complainant had told her that the petitioner/accused Enamul Haq had misbehaved with her. When PW-5 further asked what he had said, the complainant replied that he had asked her, “*ek de do*,” meaning “*ek kissi de do*.” PW-5 stated that she had then



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advised the complainant to lodge a complaint and informed her that the Incharge, Sister Shelin, was present on her floor. Thereafter, both of them went to the Incharge's office. The Incharge had suggested calling the accused, but the complainant had requested that he not be called. The Incharge had then assured them that she would inform the ANS of the ward, whereafter PW-3 and PW-5 had returned to their respective duties.

17. Having taken note of the testimonies of the two main prosecution witnesses in the case, it is first relevant to observe that in the original complaint which culminated in the FIR, the complainant had not made any mention about threats being extended by the petitioner/accused. In particular, there was no reference to his alleged statement that he was a permanent employee while she was working on contract, or that he knew her sisters, or that she used to travel by auto. These allegations of threats surfaced for the first time only in her statement under Section 164 of Cr.P.C. Though she later explained that she had disclosed all these facts before the learned Magistrate as she had earlier been nervous or fearful of consequences while lodging her complaint, this explanation does not appear convincing. The alleged incident took place on 01.12.2016, the complaint was lodged on 05.12.2016, and her statement under Section 164 of Cr.P.C. was recorded on 06.12.2016. Since there was already a gap of 3-4 days before lodging the initial complaint, the explanation of nervousness or fear preventing such disclosure appears untenable. The omission of such allegations from the initial



complaint assumes significance, particularly because the charge under Section 506 of IPC is based entirely on the threats allegedly extended by the accused.

18. Further, the complainant (PW-3) herself has been inconsistent with regard to the conduct of the accused immediately after the alleged incident. In one part of her cross-examination, she stated that after she reported the matter to her friend Naina Lal (PW-5) and her superior, the accused had fled from the spot. In her later cross-examination, however, she stated that the accused had consumed Alprex and gone to sleep in the burn room. She also admitted that even after the incident, she had directed the accused to take a patient to the operation theatre and to deliver a file, which he duly did. These contradictions cast doubt and create lack of clarity as to where the accused was after the alleged incident, and what level of interaction actually took place between the complainant and the accused thereafter.

19. It is also relevant to note that in the FIR, the complainant alleged that about a month prior to the incident of 01.12.2016, the accused had misbehaved with her and that she had complained about the same to ANS Pushpa Nagrare. However, during her cross-examination, she clarified that such a complaint was only oral. Pertinently, Pushpa Nagrare was examined as PW-8, but she did not utter a word either about any prior misconduct by the accused or about any complaint – oral or written – being made to her by the complainant. Even in her statement under Section 161 of Cr.P.C.



recorded by the Investigating Officer, Pushpa Nagrare made no mention of any such earlier incident or complaint. Thus, a crucial aspect which could have lent corroboration to the complainant's version regarding an earlier act of misconduct by the accused has not been proved, and the testimony of PW-8 does not support the complainant on this material point.

20. Equally significant is the fact that Ms. Shirley Thomas, the Night Incharge of the hospital at the relevant time, to whom the complainant had allegedly gone along with PW-5 Naina Lal on the very night of the incident to report the misconduct of the accused, was never examined before the Trial Court. Her testimony could have been material to corroborate the immediate version of the complainant, but in her absence from being examined as a prosecution witness, an important link in the prosecution case stands missing.

21. A significant aspect that cannot be overlooked is the explanation offered for the delay of 3-4 days in lodging the complaint. The complainant stated that she had initially given a written complaint to her superiors in the hospital and was waiting for the hospital administration to take action. However, there is no material on record to substantiate this claim. No copy of such a written complaint has been produced before the Court. More importantly, it is also apparent that even the I.O. did not make any inquiry with the hospital authorities regarding such a complaint. No official from the hospital has been examined, nor has any document



been seized to show that any complaint was submitted by the complainant qua the alleged incident. In effect, the explanation for delay remains wholly uncorroborated. This becomes critical because when a victim explains delay by asserting that she was awaiting redressal through her employer, it would be expected that either the complaint would have been placed on record or the I.O. would have made some efforts to enquire about the same from the hospital authorities.

22. Turning to the testimony of PW-6 Atar Singh, the security guard posted at the fourth floor on the night of the alleged incident, the case of the prosecution encounters yet another difficulty. PW-6 categorically deposed that on 01.12.2016, his duty hours were from 10.00 pm to 06.00 am and that he was posted at the gate of the fourth floor throughout. He further stated that no untoward incident came to his notice during his duty hours. He recalled that the complainant had come to him and asked him to sit at the counter, but he declined, saying he would remain at his duty post near the gate. He further stated that after completing his duty at 06.00 am, he left the hospital. This testimony is in stark contrast with the complainant's deposition, wherein she stated during cross-examination that after the accused misbehaved with her, she had pushed him and run towards the gate where the security guard usually sits, but she could not find him there. This inconsistency is glaring. If, according to PW-6, he remained at his duty post at the gate throughout the night, and if the complainant indeed ran towards the same gate immediately after the



incident, it is difficult to reconcile how she failed to find him at his spot.

23. There is yet another facet of PW-6's testimony which assumes importance. He stated that the complainant had asked him to shift from his duty position at the gate and instead sit at the counter inside the floor. This is both unusual and unexplained. The complainant did not depose that she had directed the guard to change his position, and on the contrary, her version is that the guard was not present at his designated spot. However, PW-6 revealed the said fact in his testimony. This contradiction not only creates doubt regarding the presence or interaction of the complainant with PW-6 at the time of the incident but also raises a question as to why a security guard would be asked to abandon his designated post, i.e. the point of vigilance for the safety of staff and patients at that hour of the night. The Courts below, however, treated this portion of PW-6's testimony as corroborative of the complainant's version by invoking Section 8 of the Indian Evidence Act, holding that it reflected her subsequent conduct of reporting the matter immediately to PW-6. Such a finding, with respect, is not borne out from the record. Firstly, as noted above, the complainant has nowhere stated that she had asked the guard to shift to the counter. Secondly, PW-6 has not specified at what point of time the complainant made this request. The incident is alleged to have occurred after 12:00 am, whereas PW-6 had been on duty since 10:00 pm. Thus, it is not clear whether the request was made before the alleged incident or after. The courts below, without any evidence,



assumed it to have been made immediately after the incident and thereby invoked Section 8 of the Evidence Act and recorded a categorical finding that PW-6's testimony was corroborative of the complainant's version. Such an assumption is wholly unfounded and contrary to record. In view of the above, the testimony of PW-6 does not in any manner advance the prosecution case, but it rather introduces significant doubt in the case of prosecution. The security guard, who was the only independent witness present at the spot throughout the night, not only failed to corroborate the complainant's version but rather contradicted her account of events.

24. Notably, the complainant has not specified the exact place of occurrence on the fourth floor of the hospital where the alleged incident took place. Even in her cross-examination, she conceded that the site plan does not correspond with her narration of events, since the I.O. had merely prepared a sketch of the entire hospital building, without identifying or marking the precise location of the alleged assault. The plan, therefore, fails to indicate the particular spot on the fourth floor where the incident is claimed to have happened. Furthermore, the complainant alleged that the accused had pulled her hand, forced her to sit on an iron chair, and thereafter asked her to kiss him. However, the I.O. did not inquire about the description of such a chair, nor was any such chair ever recovered or seized during investigation. The absence of this material corroboration, coupled with a faulty site plan that merely shows the plan of the entire hospital and not the actual location of the alleged offence, leaves



considerable uncertainty as to where exactly the incident is said to have occurred.

25. Another important aspect emerging from the complainant's cross-examination is that she admitted that there were staff members and patients present in the rooms and halls of the fourth-floor ward at the time of the alleged incident, and that, in accordance with hospital rules, each patient was permitted to have one attendant stay overnight. Against this backdrop, the allegation that the accused not only pulled and pushed her onto a chair but also threw her on the ground and touched her inappropriately, all within a ward full of patients and attendants, raises serious doubts. It seems highly improbable that such acts could have been carried out without attracting the notice of any person present in the ward. The complainant herself has not claimed that the ward was empty; on the contrary, she admits to the presence of patients and attendants. Yet, no independent witness has come forward to support her version, nor has the I.O. made any effort to identify and examine those who were admittedly present in the ward at the relevant time. This absence of corroboration from independent quarters, where such evidence was naturally available, also materially weakens the prosecution's case.

26. The settled principle of criminal jurisprudence is that the prosecution must prove its case beyond reasonable doubt. The standard of proof mandates that the case must be established to such a degree that a reasonable person, placed in the circumstances of the case, would have no hesitation in accepting the prosecution version



as true. If, however, on the evidence available, a reasonable doubt arises in the mind of a prudent person regarding the guilt of the accused, such doubt must be resolved in favour of the accused. The concept of “benefit of doubt” thus flows directly from the presumption of innocence, which is the foundational guarantee of criminal law.

27. The aforesaid principle further requires that where two possible and plausible views emerge from the evidence on record after conclusion of trial, the one favourable to the accused must be adopted by the Court. This is because the criminal law does not provide for punishing a person on the basis of suspicion, conjectures, or probabilities; conviction must rest on cogent, reliable, and unimpeachable evidence. The ‘benefit of doubt’ therefore implies that in situations of uncertainty or ambiguity in the prosecution case, the scales of justice must tilt towards acquittal rather than conviction, to ensure that no innocent person is condemned and punished.

28. Thus, a cumulative evaluation of the prosecution’s case shows that there are several infirmities and contradictions which have not been properly weighed by the Courts below, but which go to the very foundation of the prosecution story. The lack of clarity with respect to the actual place of occurrence of the alleged incident, coupled with the faulty site plan prepared in the case; the fact that the Guard on duty (PW-6), who was expected to be a crucial witness, being present at the spot, did not support the case of the prosecution, and similarly, the staff member to whom the complainant had allegedly made an



immediate disclosure of the incident, namely Ms. Shirley Thomas, was not examined as a witness; moreover, ANS Pushpa Nagrare (PW-8), though examined, did not support the complainant's version on the point of being informed earlier about any such act of the accused; and the possibility of such an occurrence taking place in a ward on the fourth floor of the hospital, in the presence of patients, their attendants, and the Guard, also appearing to be highly improbable; coupled with the contradictions noticed in the complainant's own statements, cast a serious shadow of doubt over the prosecution case.

29. The facts, circumstances, and evidence discussed above, in this Court's considered opinion, give rise to reasonable doubt regarding the prosecution's story. It is well-settled that while a conviction can certainly be based on the sole testimony of the prosecutrix, such testimony must be of sterling quality, wholly reliable, and free from material inconsistencies. It must inspire confidence and be corroborated by the surrounding circumstances to a degree that rules out any doubt. Sending a person to prison on a charge as grave as a sexual offence cannot rest upon testimony and circumstances which, when collectively analysed, fall under the veil of reasonable doubt. Since the present case suffers from these infirmities, this Court is unable to sustain the conviction.

30. Accordingly, the judgments passed by the learned Trial Court as well as learned Appellate Court are set aside.



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31. The petitioner is hereby acquitted of all the offences alleged against him.
32. The petitioner be released from jail, in case his custody is not warranted in any other case.
33. The petition is allowed and disposed of in above terms. Pending application is also disposed of.
34. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

SEPTEMBER 1, 2025/zp