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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 22.01.2020

Date of Decision : 31.01.2020

IN THE MATTER OF:

CRL.REV.P. 356/2016

AMAN CHAUDHARY

..... Petitioner

Through: Mr.V.C.Shukla, Mr.Tarun Gulia
and Mr.Sushant Bajaj, Advocates.

versus

STATE

..... Respondent

Through: Mr.Raghuvinder Verma, APP for
State with SI Avdhesh, P.S. Neb
Sarai, New Delhi.

AND

CRL. REV. P. 364/2016

PRATEEK GARG

....Petitioner

Through: Mr.Ramesh Gupta, Sr. Advocate
with Mr.Tejvir Singh, Mr.Ajay
P.Tushir, Mr.Shailendra Singh and
Mr. Mankaran Singh, Advocates.

versus

STATE

.....Respondent

Through: Mr.Raghuvinder Verma, APP for
State with SI Avdhesh, P.S. Neb
Sarai, New Delhi.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. By way of the present revision petitions, the petitioners have challenged the impugned judgment passed by the Appellate Court upholding their conviction for the offences punishable under Sections 354/34 IPC.
2. Initially, the trial court vide judgment dated 10.08.2015 convicted the petitioners for the offence punishable under Sections 354/34 IPC and vide order on sentence dated 14.09.2015, both were sentenced to undergo SI for one year and to pay fine of Rs.10,000/- each out of which Rs. 5,000 each had to be paid in court and the remaining Rs.5,000/- each had to be paid as compensation to the complainant in default whereof to further undergo SI for 3 months.
3. The Appellate Court, vide judgment dated 02.05.2016 upheld the conviction of the petitioners, however, reduced the sentence from 1 year to 6 months. The sentence of fine and default sentence were maintained.
4. Brief facts as noted by the Appellate Court are reproduced as under:-

“In brief the allegations are that on 23.05.2012, at about 9:50pm when the complainant was returning with her sister Neetu Ghosh, aged about 18 years, from the shop of his father situated at D-135, Krishna Park, Dveli Road, New Delhi and when both the sister’s reached Aggarwal sweets, near Murliwala Shop, Devli Road, New Delhi, two boys on a motorbike crossed from her left side and slapped on her hips, then looked behind, smiled and fled away from the spot. She further alleged that she went ahead for search of the accused persons and stood near Aggarwal Sweets. The accused

persons again returned to the spot and on seeing the complainant, they started running away from the spot. In the meanwhile, complainant caught hold of the collar of the pillion rider, whose name was later on revealed as Aman Chaudhary and the other boy was able to abscond. She was however, able to note down the number of the bike, she further alleged that accused Aman Chaudhary after being caught, started telling her that “Tu kya kar legi, I belong to Devli Village”. FIR was registered on the basis of statement of complainant.”

5. After completing investigation, a charge-sheet was filed. The charges were framed under Sections 354/34 IPC to which the petitioners pleaded not guilty and claimed trial. During trial, the prosecution examined total three witnesses out of which two were public witnesses, namely, Ms. Mausami Ghosh, the complainant and Ms. Neetu Ghosh, complainant's sister, who were examined as PW1 and PW2 respectively. ASI Ombir Singh was examined as PW-3.

6. Ms. Mausami Ghosh, the complainant, supported her allegations made in her complaint. She deposed that on 23.05.2012, the petitioners crossed her from left side on a motorbike. The petitioner Aman Chaudhary, the pillion rider hit on her hips upon which she screamed and the petitioner looked back and smiled. She further deposed that when she and her sister were walking, the bikers returned, crossed them and again smiled. The complainant chased them and on account of traffic jam she managed to catch hold of the pillion rider i.e., Aman Chaudhary. The other accused fled away from the spot. She handed over accused Aman Chaudhary to police picket. The complainant correctly identified Aman Chaudhary and identity of co-accused Prateek Garg was also not disputed. The motorbike was seized and was also identified by the

complainant. In the cross-examination, the complainant stated that when the motorbike crossed her it was in a slow speed. She also described the motorbike to be of orange colour.

7. Testimony of Ms. Neetu Ghosh, sister of the complainant and an eye-witness to the incident is cumulative to that of the complainant.

8. Mr. Ramesh Gupta, learned Senior Counsel for the petitioner Prateek Garg argued that in the initial statement of the complainant, no description of the petitioner Prateek Garg was given, inasmuch as, the TIP was also not conducted. It was further submitted that being the driver, no offence under Section 34 IPC could be made out against him as the allegations of hitting on the complainant's hip were only against Aman Chaudhary. Learned counsel for the petitioner Aman Chaudhary contended that there were material contradictions in the statement of the complainant and her sister.

9. Having perused the case records, this Court is of the opinion that the contradictions pointed by learned Senior Counsel/counsel for the petitioners are minor in nature and do not affect the credibility and reliability of the testimony of the complainant or her sister. The contention of learned Senior Counsel on the applicability of Section 34 IPC so far as petitioner Prateek Garg is concerned, it is relevant to note that the said petitioner was driving the motorbike when it crossed the complainant and the petitioner had slowed it down and after the pillion rider had hit her, the petitioner sped away. The petitioners returned on the motorbike and again smiled. The above narration of events by the complainant proved that the petitioner Prateek Garg was fully aware and had shared the common intention with the co-accused. The complainant

gave the number of the motorbike as 0453 by which Investigating Officer was able to apprehend its owner i.e., Prateek Garg.

10. In the totality of the facts and circumstances of the case, I do not find any infirmity, illegality or perversity in the impugned judgment. Accordingly, the conviction of the petitioners is upheld.

11. Learned Senior Counsel/counsel for the petitioners next submitted that Aman Chaudhary is 29 years of age; whereas Prateek Garg is M. Com and is 28 years of age. It is further stated that both the petitioners are not involved in any other case. As per the nominal roll received from jail, the petitioner Aman Chaudhary had undergone sentence of 1 month as on 02.06.2016. His sentence was suspended vide order dated 12.07.2016. As per the nominal roll of petitioner Prateek Garg, he has undergone sentence of 1 month and 26 days as on 29.06.2016. His sentence was also suspended vide order dated 12.07.2016.

12. The incident in the present case occurred on 23.05.2012 when the unamended Section 354 IPC was in force and as per which there was no minimum sentence under the aforesaid section.

13. Keeping in view the young age of the petitioners and the past clean records, while upholding their conviction, their sentence is reduced to the period already undergone by them, subject to payment of fine as imposed by the trial court i.e., Rs.10,000/- each and also subject to further compensation of Rs.5,000/- each to be paid to the complainant within a period of two weeks from the passing of this judgment. The proof of deposits be filed before the concerned trial court.

14. The above-noted revision petitions are allowed to the aforesaid extent.

15. A copy of this judgment be communicated to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 31, 2020
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