

**IN THE COURT OF SHRI SUNIL GUPTA
ADDITIONAL SESSIONS JUDGE-6, SOUTH DISTRICT, SAKET
COURTS, NEW DELHI**

CRIMINAL APPEAL NO. 110/2019 (RBT 164/22)

IN THE MATTER OF:

Sandeep Kumar

S/o Shri Babu Lal

R/o H.No. 146, Block-18,

DDA Flats, Dakshinpuri,

New Delhi

.....Appellant

Versus

The State

(Govt. of NCT of Delhi)

.....Respondent

Instituted on : 20.03.2019

Reserved on : 10.08.2023

Pronounced on : 11.08.2023

JUDGMENT

1. Vide this judgment, I shall dispose of Criminal Appeal U/s 374(3) Cr.P.C preferred on behalf of appellant Sandeep Kumar against the impugned judgment dated 05.02.2019 and order on sentence dated 20.02.2019 passed by Ld. MM-03, Mahila Court, Saket in case FIR No,

1040/15, PS Safdarjung Enclave whereby the appellant herein was convicted for the offences U/s 354/323/506 Part- (I) &(II) IPC and was sentenced accordingly.

2. Briefly stated the facts as per record are as under:-

An FIR No. 1040 was lodged at PS Safdarjung Enclave on 11.10.2015 on the basis of written complaint of Ms. 'L' against the appellant herein for the offences U/s 354(A)/323 IPC. It was alleged therein that the complainant and the appellant knew each other since long as the appellant was residing in the neighbourhood of her maternal grandmother. It was alleged that after her marriage in 1999, she met the appellant whereupon he requested for her phone number and they started talking to each other. It was further alleged that the appellant crossed his limits and told her that he wanted to be physical with her. It was further alleged that he asked her to meet him near Hauz Khas on 11th October at 04:00 PM failing which she was threatened that he will call her mother. On reaching there, he allegedly caught hold of her hand and tried to kiss her. On her refusal, he started beating her and slapped her. During the course of the investigation, statement U/s 164 Cr.P.C of the complainant was recorded before Ld. Magistrate. After completion of the investigation, charge-sheet for the offences U/s 354A/323/509 IPC was filed against the appellant before Ld. Magistrate on 18.07.2016. Cognizance was taken thereupon and appellant was summoned for 13.09.2016. Accused put his appearance on 05.11.2016. Charge for the offences U/s 354/354A(1)(i)/354A(1)(ii)/323/509/506(I)&(II)/354D IPC was framed against him vide order dated 01.04.2017. The statement of appellant was also recorded U/s 294 Cr.P.C whereby he admitted the factum of registration of FIR (Ex.P1),

recording of statement of complainant U/s 164 Cr.P.C (Ex.P2) and factum of recording of DD No. 41A dated 11.10.2015. Corresponding witnesses were dropped from the list of witnesses. The prosecution has examined three witnesses in support of its case:-

2.1 **PW-1** Ms. 'K' is the complainant/victim. Her testimony shall be discussed in detail later on.

2.2 **PW-2** is SI Rampal. He was the Investigating Officer of the case. He deposed about the steps taken during investigation. He has proved the memo vide which appellant was bound down as Ex.PW2/B. He was duly cross-examined by Ld. Defence Counsel.

2.3 **PW-3** is Mr. Prashant Kumar who was Alternate Nodal Officer, Vodafone Mobile Services Ltd. He proved the original CAF of the mobile number 971XXXX877 which is in the name of appellant as Ex.PW3/A (OSR). He also proved CAF of the mobile number 99XXXXXX23 which is in the name of complainant Ms. 'L' as Ex.PW3/B (OSR). He also proved CDR of the mobile number of the complainant for the period 01.09.2015 to 01.01.2016 as Ex.PW3/C. He also proved CDR of the mobile number of the appellant for the period from 10.10.2015 to 12.10.2015 as Ex.PW3/D. He further proved the certificate U/s 65B of Indian Evidence Act for the above two numbers as Ex.PW3/E and Ex.PW3/F respectively. He also proved the covering letter give to IO in regard to the notice U/s 91 Cr.P.C as Ex.PW3/G.

3. After the testimony of prosecution witnesses, statement of

accused/appellant Sandeep Kumar U/s 313/281 Cr.P.C was recorded in which he stated as under:-

“ I know the complainant since 1995 and not since 1998. We remained in love relationship for one year and due to difference in our religion, her parents were against our relation so we got separated. In the year 2006, sister of the complainant approached me and asked me to give my mobile number as complainant wanted to talk me. At that time complainant was working in KANE Company where she was working as a full-time maid for British Family. I went to meet her at that place on her request. On the date of incident i.e., 11.10.2015, I alongwith complainant went to Sarojini Nagar Market where she asked me to get 2 beers bottle for her as we were shopping together. After consuming the same, she slapped me and misbehaved with me. Thereafter, I went to my house.”

4. Appellant has examined two witnesses in his defence :-

4.1 **DW-1** is Ms. Geeta Devi. She is the wife of the appellant. She deposed about the complainant having borrowed a sum of Rs. 60,000/- from the appellant and that on the day of incident also, he had gone to give money to her. She also stated that on coming to know about the facts, one day she had gone to the house of *Nani* of the complainant in Dakshinpuri whereupon her *Nani* and *Mausi* told her that they will disclose the same to complainant. She was duly cross-examined by Ld. APP for State.

4.2 **DW-2** is Mr. Naveen Chauhan. He is friend of the appellant. He deposed that the appellant and complainant were good friends and that he

used to purchase a gifts alongwith clothes for her children from his own pocket. He also deposed that as per his knowledge, appellant had give some money to the complainant and that she used to accompany the appellant in parties. He was also duly cross-examined by Ld. APP for State.

5. Thereafter, arguments were heard from both the sides by Ld. Magistrate and vide judgment dated 05.02.2019, appellant herein was convicted for the offences U/s 342/323/506 Part (I)(II) IPC. He was acquitted for the offences U/s 354A(1)(i)/354A(1)(ii)/354D/509 IPC vide same judgment. Vide order dated 20.02.2019 the convict was sentenced as under:-

(I) For the offence U/s 354 IPC, he was sentenced to simple imprisonment for one year and to pay fine for sum of Rs. 1,000/- to be paid as compensation to the complainant. In default of payment of fine, he was sentenced to simple imprisonment for period of 30 days.

(ii) For the offence U/s 323 IPC, he was sentenced to simple imprisonment for a period of 3 months and he also directed to pay fine for sum of Rs. 1,000/- to be paid as compensation to the complainant. In default of payment of fine, he was sentenced to simple imprisonment for period of 30 days.

(iii) For the offence U/s 506(I) IPC, he was sentenced to simple imprisonment for period of 3 months.

(iv) For the offence U/s 506(II) IPC, he was sentenced to simple imprisonment for one year alongwith fine of Rs. 3,000/- to be paid as compensation to the complainant. In default of payment of fine, he was sentenced to simple imprisonment for period of 30 days.

6. Thereafter, application U/s 389 Cr.P.C for suspension of sentence and grant of bail till filing of appeal was filed on behalf of convict Sandeep Kumar which was allowed by Ld. Magistrate. Afterwards, the appeal U/s 374 Cr.P.C was filed on his behalf on 20.03.2019.

7. Arguments heard.

8. It has been argued by Ld. Counsel for the appellant that Ld. Trial Court has passed the impugned judgment without properly appreciating the material on record. It has been further argued that admittedly the complainant was in a relationship with appellant herein and she has deposed about the same in her testimony before Ld. Trial Court. Their marriage could not take place due to opposition from her parents as they were from different religions. Also, the complainant has separated from her husband and it was she who contacted the appellant herein after such a long time. The complainant used to take money from the appellant on different occasions and this way, she has borrowed a sum of around Rs. 60,000/- from him. Present case has been falsely registered against him as he simply demanded his money back from her. It has been argued that there could not have been any conviction U/s 323 IPC as no medical examination of the complainant was done. It was also stated that the complainant refused to undergo medical examination as she was drunk at that time. Ld. Counsel for the appellant has prayed that the conviction as recorded by Ld. Trial Court be set-aside and the appellant herein be acquitted.

9. On the other hand, it has been submitted by Ld. Addl. PP for State that there was no illegality in the impugned judgment. It was submitted that

the material on record was sufficient for conviction of the appellant for the alleged offences. He has prayed for dismissal of appeal.

10. I have considered the submissions from both the sides alongwith record.

11. As mentioned earlier, the appellant herein has been convicted for the offences U/s 354/323/506 Part- (I) & (II) IPC. Section 354 IPC provides as under:-

354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

11.1 Section 323 IPC provides punishment for voluntarily causing hurt which has been defined U/s 321 and 319 IPC as under:-

“321. Voluntarily causing hurt.- Whoever does any act with the intention of thereby, causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person is said “voluntarily to cause hurt”.

319. Hurt.- Whoever caused bodily pain, disease or infirmity to any person is said to cause hurt.”

11.2 Section 506 IPC provides punishment for the offence of criminal intimidation which has been defined U/s 503 IPC as under:-

“503. Criminal intimidation.— Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.— A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.- A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.”

12. The case of prosecution is that the complainant was forced to meet the appellant near Dear Park, Hauz Khas, Delhi as he had threatened her and when she so went there, he tried to kiss her. On the complainant having refused to do so, he slapped her and hit her on the face with his nails.

13. Perusal of the initial complaint Ex.PW1/A on the basis of which FIR in question was registered shows that as per the same, the appellant and complainant were merely known to each other because the appellant was a neighbour of her maternal grandmother. In her statement U/s 164 Cr.P.C the complainant admitted that the appellant was her boyfriend and that they

could not marry each other because of their different religions. Still further, in her testimony before the Trial Court she stated that they were in love relationship for six months however her parent did not agree for the matrimonial alliance between due to different in their religions. Regarding their meeting after the marriage of complainant, she stated in her initial statement Ex.PW1/A that the appellant met her around 5 years back (which means somewhere in the year 2010) in Vasant Vihar, C-Block where he requested for her phone number and they started talking. In her statement U/s 164 Cr.P.C. she stated that the appellant had met her around 2 years back (which means somewhere in the year 2013) in C-Block Vasant Vihar and they started talking after sharing the numbers. In her statement before Ld. Trial Court, she deposed that the appellant met her in Vasant Vihar, C-Block Market after around 8-9 years of her marriage which took place in the year 1999 (which means somewhere in the year 2007-2008) and that they exchanged their phone number and she started family life with him as a friend. Still further, she stated in her initial complaint Ex.PW1/A that the appellant crossed his limit and stated that he wanted to be physical with her whereupon they had a quarrel. He allegedly started harassing her by saying that he will lie to her mother, brother and maternal grandmother that she was in a relationship with him and that he also threatened her to throw acid on her face. He also threatened her to create scene by coming to her house. In her statement U/s 164 Cr.P.C. she stated that after around 1.5 years of their new relationship, the appellant told her that he wanted to have relations with her and started blackmailing her by saying that he will disclose about their relationships before marriage to everyone. He also allegedly started calling her mother and daughter and threatened that he will tell them that they both were together still before 5-6 months of her

marriage. He also threatened to call her husband to tell all these things and also to throw acid on her face and to defame her. In her testimony before the Trial Court, she stated that the appellant was under the influence of his past and that he started irritating her by continuously following her. She also stated that he used to call her mother and brother in US whenever she failed to attend his calls. She further stated that she tolerated his conduct for 1-2 years but he did not stop. She also stated that he used to defame her in the eyes of her family members by calling her a call girl and used to threaten her that he will paste the posters in front of her house mentioning that she charge money as a call girl.

14. As far as the incident dated 11.10.2015 is concerned, in her initial complaint to police, the complainant stated that she was called by the appellant near Hauz Khas by threatening her that in case, she will not come there, he will call her mother. She also stated that the appellant caught hold of her hand and tried to kiss her and on her refusal, he started beating her. She also stated that the appellant had slapped her. In her statement U/s 164 Cr.P.C., she stated that she was called to Hauz Khas by the appellant and when she reached near IIT, he was standing in the service lane. She stated that the appellant was intoxicated and he forcefully tried to hug her and kiss her whereupon she pushed him. On this, he hurt her face with his nails and also slapped her and abused her. In her testimony before Ld. Trial Court regarding the incident, she stated that the appellant called her on 11.10.2015 at 04:00 PM at Dear Park, Hauz Khas, New Delhi and on reaching there she tried to make him understand that he should stop threatening her or irritating and blackmailing her however, he started touching, he tried to hug and tried to kiss her whereupon she pushed him.

In the meanwhile, he scratched her face with 'his' nails. In her cross-examination he stated that she had gone there as he had threatened to disturb her family and her husband in case she did not do so.

15. Perusal of above shows that there are several contradictions in three different statements of the complainant on record including on the point as to why she had gone to the spot. As per one version of the complainant, she had gone there on being threatened by the appellant whereas the other version is silent about any such threat. Having said that, it is to be seen that the complainant has remained consistent on the point that the appellant had tried to kiss her on the fateful day and on her refusal, had slapped her. The defence of the appellant before this Court is that the complainant had borrowed a sum of Rs. 60,000/- from him during the period 2007-2014 and that when he demanded back said amount, she falsely implicated him in this case. Admittedly, there is no proof, documentary or otherwise to show that any such amount was in fact so borrowed by the complainant from him. Neither DW-1 Ms. Geeta Devi nor DW-2 Mr. Naveen Chauhan were witness to any such transaction between the parties. A suggestion to this effect was also put to the complainant in her cross-examination which was specifically denied by her. Although, the complainant has admitted in her examination-in-chief that the appellant alongwith his wife and children had visited her grandmother at Dakshinpuri alleging that she had borrowed a sum of Rs. 60,000/- which she was not returning, still such an admission will not be of any help to the case of appellant as the complainant has not admitted her liability towards the appellant to that extent. She has stated before Ld. Trial Court that she had even lodged a complaint against the appellant in PS Dakshinpuri (probably for approaching her maternal

grandmother with a false claim). So, this defence is of no help to the case of appellant.

16. Another ground taken by the appellant is that both the parties were in a love relationship earlier and it was the complainant who was forcing him to meet her and talk to her as she had got separated from her husband. There is no dispute to the fact that the complainant and the appellant were in a relationship somewhere in the year 1998 and that they could not get married due to opposition from the parents of the complainant as they were from different religions. There is nothing on record to suggest that it was the complainant who was forcing the appellant to meet her and to talk to her. Even if it is presumed that the complainant was more interested in meeting and talking to the appellant, that does not mean that the appellant could have taken the liberty of trying to kiss her and on her refusal/disinterest in the same, could have slapped her.

17. Another ground taken by the appellant is that there is no medical evidence to show that the complainant was so beaten up by the appellant and that she did not get herself medically examined as same would have show that she was drunk at that time. This Court is not convinced with these arguments of Ld. Defence Counsel. Mere slap to a person is sufficient to make out a case for the offence U/s 323 IPC and no medical examination can ordinarily show any proof thereof. Also, there is no law to the effect that an offence of simple hurt U/s 323 IPC cannot be proved in the absence of a medical examination of the victim especially when the allegations are pertaining to her having been slapped. Similarly, even if the medical examination of the complainant would have shown that she was drunk at

that time, that in itself would not have been of any consequence as intoxication of a lady does not give license to her male friend to take undue advantage of her condition.

18. Considering the above discussion, this Court is of the view that the prosecution has successfully proved beyond reasonable doubt the ingredients of the offences U/s 354/323 IPC. Having said that, it is to be noted that the appellant was not charge-sheeted for the offence U/s 506 IPC by Investigating Agency. Charge for the offence U/s 506 Part- (I) & (II) IPC was framed against him vide order dated 01.04.2017 of Ld. Magistrate. Perusal of charge framed in this regard shows that same was so framed for allegedly threatening the complainant to throw acid on her face and also to disclose to her family members that she had physical relations with him. Said offence was allegedly committed on 11.10.2015 in between 03:30 PM-04:15 PM in front of Dear Park, Gate No. 1, Green Park, New Delhi. The statement of complainant Ex.PW1/A shows that the appellant had threatened her to come and meet him in Hauz Khas failing which he will call her mother. This Court is unable to see as to how this can be termed as criminal intimidation because it is not clear as to what was the intention of the appellant in calling the mother of complainant. This thing is also to be seen in the context of other facts as mentioned in Ex.PW1/A wherein it was stated by the complainant that they were merely known to each other and that the appellant used to threaten her that he will lie to her relatives to the effect that they were in relationship. As mentioned earlier, the complainant has admitted in her statement U/s 164 Cr.P.C. as well as her testimony before Ld. Trial Court that they both were in relationship before their marriage. Interestingly, the complainant did not say anything about her

having been threatened by the appellant in any manner on 11.10.2015 in her statement U/s 164 Cr.P.C. In her testimony before Ld. Trial Court, she did not state anything about any such threat in her examination-in-chief. In her cross-examination by Ld. APP, she stated that she had gone to meet him on that day because he had threatened her that he will tell her family that she was in physical relationship with him. In her cross-examination by Ld. Defence Counsel, she stated that he had threatened her that he will disturb her family and her husband. Interestingly, the cross-examination of the complainant was recorded on 16.07.2018 and as per the same, she was living separately from her husband since last around 4 years which means that she was already separated from her husband on the date of incident in question. In these circumstances, it is not clear as to how the threat by the appellant to disturb her husband could have caused any alarm to her. It seems that her parents were already aware about their relationship before their marriage. Also, there is no threat extended by the appellant to her on that day to the effect that he will throw acid on her face. In these facts, this Court is of the view that the prosecution has miserably failed to prove the ingredients of offence U/s 506 Part (I)& (II) against the appellant. He is accordingly acquitted for the said offences.

19. In nutshell, the prosecution has proved that the appellant has used criminal force to the complainant knowing it that he will thereby outrage her modesty by trying to kiss her and also voluntarily caused hurt to her by slapping her. Ld. Trial Court has rightly convicted him for the offences U/s 354/323 IPC. However, the prosecution has failed to prove that the appellant had criminally intimidated the complainant on that day. So, the conviction of appellant Sandeep Kumar for the offences U/s 354/323 IPC is

upheld hereby and he is acquitted for the offences U/s 506 Part (I) & (II) IPC.

20. Order on Sentence shall be passed after compliance in terms of judgment of Hon'ble Delhi High Court titled as **Karan Vs. State NCT of Delhi Crl. Appeal 352/2020**.

**Announced in the open
Court on 11th August, 2023**

**(Sunil Gupta)
Additional Sessions Judge-06,
South, Saket Courts, New Delhi**