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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 28.02.2025*+ **CRL.REV.P. 739/2024**

ANUPENDER

.....Petitioner

Through: Mr. Manoj Kumar Mahaur,
Mr. Deenanath, Mr. Abhishek
and Mr. Mohd. Shahzad,
Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J**

1. The petitioner Anupender, by way of this revision petition preferred under Section 397 read with Section 401 of Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] seeks setting aside of the judgment dated 19.04.2024 [hereafter '*impugned judgment*'] passed by learned Additional Sessions Judge (FTSC)(RC), South West, Dwarka Courts, Delhi [hereafter '*the Appellate Court*'] in Cr. Appeal No. 539/2019 titled 'Anupender vs. The State (NCT of Delhi)', as well as judgment dated 19.11.2019, and order on sentence dated 22.11.2019 passed by the learned Metropolitan Magistrate,



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South West District, Dwarka Courts, Delhi [hereafter '*the Trial Court*'] in case arising out of FIR No. 956/2015, registered at Police Station Vikaspuri, Delhi on 06.10.2015, for offence punishable under Sections 354/509 of the Indian Penal Code, 1860 [hereafter '*IPC*'] .

2. Briefly stated, the facts of the present case are that on 06.10.2015 at around 2:30 pm, the complainant had boarded a bus *vide* route No. 817 from Khaira Mor to District Centre. It is alleged that when the bus had reached Dausa stand, the petitioner herein had boarded the bus. The complainant was sitting on the ladies seat inside the bus and the petitioner had sit just on the right side of the complainant, on men's seat. While the bus had just moved a little distance, the petitioner, had started making gestures towards the complainant, but the complainant had asked him to not do any such acts. However, the petitioner had listened to her and had rather started winking at the complainant, upon which the complainant had got angry and had slapped the petitioner, when the bus had reached near Dhauli Pyaau, at about 3:30 pm. Thereafter, a person from the public had asked the petitioner to leave the spot. When the seats had got empty, the petitioner had again come and sat on the seat next to the complainant. The same person from the public, had again asked the petitioner to get up from the seat and in the meantime, the petitioner had got up and sat on the other seat. It is further alleged that when the bus had reached near Janakpuri west metro station, the complainant had got up to get-off the bus, the petitioner had also followed her and caught the complainant and started kissing her on



her lips. Even after repeated efforts of the complainant, the petitioner had not left her, and thereafter, the members of public had caught hold of the petitioner and had taken him away. They had thereafter beaten the petitioner, whose name on being asked by the public came to be known as Anupinder. The complainant and one another person namely Sukhbir Sharma had brought the petitioner to P.S. Vikaspuri, Delhi, and had handed him over to the police. On the basis of the written complaint of the complainant, the present FIR was registered, and the petitioner was arrested.

3. After completion of investigation, the chargesheet in this case was filed before the concerned Court and the charges were framed against the petitioner for offences under Sections 354/509 of the IPC. The learned Trial Court, after the conclusion of trial, had found the petitioner guilty and had accordingly convicted him. The relevant extract of judgment dated 19.11.2019 passed by the learned Trial Court is set out below:

“26. Last but not the least, the accused has taken the defence that he has been falsely implicated by the complainant as her father is working with Delhi Police. However, nothing has been brought on record by the accused to prove his innocence. The accused has also failed to show the motive behind false implication. The accused was caught at the spot at the earliest, matter was immediately reported to police through PCR Call and he was taken to the police station. There is not even a mention by the accused as to when or at what stage, the father of the complainant came into picture. Merely because the father of complainant works with Delhi Police does not imply that she has falsely implicated the accused. In the facts of the case and on the basis of evidence on record, possibility of false implication does not arise.

27. In view of the aforesaid background, the defence's failure to prove the innocence of accused "A" is explicit and hence he is



convicted under Section 354/509 IPC.”

4. The criminal appeal preferred by the petitioner was also dismissed by the learned Appellate Court *vide* impugned judgment dated 19.04.2024. The conclusion of the learned Appellate Court is set out below:

“34. In the instant case, the learned Trial Court rightly noted that the complainant has specifically stated that the accused was making indecent gestures by repeatedly winking, rolling his eyes at her and blowing flying kisses at her. It was further noted by the learned Trial Court that no question or suggestions was given to the witnesses to discredit her on this point hence testimony of complainant remains unchallenged and uncontroverted in this regard. The act of accused repeatedly winking at her and flying kisses at her clearly amounts to intentional insult to the modesty of the complainant. The intention of the accused can further be gauged from the circumstances of the events, the fact that the two were not known to each other, the reaction of PW 4, the fact that PW-3 was made to stop the bus due to outcry raised on the actions of the accused.

35. No ground has been shown for interference with the judgment of the learned Trial Court. There is no infirmity or irregularity or impropriety in the impugned judgment. Accordingly, the appeal is without any merit and the same is dismissed...”

5. Aggrieved by the orders of the learned Trial Court and the Appellate Court, the present revision petition has been filed by the convict/petitioner, assailing the legality of the said orders.

6. The learned counsel for the petitioner argues that both the learned Appellate Court and Trial Court have failed to properly appreciate the evidence, leading to the wrongful conviction of the petitioner, who is innocent and falsely implicated. It is contended that the Investigating Officer (IO) failed to collect crucial evidence, such



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as bus tickets of the complainant, petitioner, and witnesses, and did not examine police officials from PS Tilak Nagar, where the complainant first attempted to file the FIR. There are material contradictions in the complainant's statements under Sections 161 and 164 Cr.P.C. and in the testimonies of prosecution witnesses, warranting benefit of doubt in favor of the petitioner, which was wrongly denied. The credibility of the Medical Legal Certificate (MLC) is also questioned, as the doctor initially recorded "No fresh external injury" but later altered it to "linear abrasion on the forehead", contradicting the claim that the petitioner was beaten by the public. Further, the IO failed to record the petitioner's statement before filing the charge sheet, violating fair investigation principles. The petitioner is a physically handicapped and mentally disabled person, making the allegations of criminal force improbable. Moreover, as the complainant and petitioner were strangers, the prosecution failed to establish motive or intent, essential for proving the alleged offence. The Trial Court wrongly dismissed contradictions in witness statements as minor, while the Appellate Court mechanically upheld the conviction without proper reasoning. The impugned order suffers from legal infirmities, making interference by this Court necessary.

7. On the other hand, the learned APP for the State argues that the allegations against the present petitioner are serious and grave in nature. The present petitioner has already been convicted by the learned Trial Court by way of a detailed judgment dated 19.11.2019,



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which has been passed after duly considering the evidence on record, and the said judgment has been upheld by the learned Appellate Court. It is argued that the witnesses in the present case who were present at the place of the incident had deposed against the present petitioner. It is thus prayed that the present revision petition be dismissed.

8. This Court has **heard** arguments addressed by learned counsel for the petitioner and learned APP for the State, and has perused material on record.

9. At the outset, it is apposite to note 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. Section 397 of the Cr.P.C. vests jurisdiction for the limited purpose of satisfying the Court as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such trial court. It is also well settled that while considering the same, the Revisional Court cannot dwell at length upon the facts and evidence of the case. In this regard, it was held in the case of *Malkeet Singh Gill v. State of Chhattisgarh*: (2022) 8 SCC 204 as under:

“12. As per the settled legal position and after conviction by the Trial Court and the Appellate Court on filing the revision the High Court maintained the conviction upholding the findings of the two courts. The High Court found the finding recorded by the two Courts to serve the sentence consecutively by the appellant and the other co-accused were not correct, hence set aside and



directed to run such sentence concurrently.

13. In our considered opinion, the finding of fact as recorded by the Trial Court and the Appellate Court has rightly not been interfered while maintaining the conviction against the appellant. On the issue of sentence also the direction as issued by the High Court is in consonance with the provisions of Section 31 of Cr.P.C which confer full discretion to the Trial Court as well as Appellate Court to order the sentences to run concurrently in case of conviction for two or more offences.”

10. Similarly, in *State of Gujarat v. Dilipsinh Kishorsinh Rao: 2023 SCC OnLine SC 1294*, the Hon’ble Supreme Court had observed as follows:

“13. The power and jurisdiction of Higher Court under Section 397 Cr. P.C. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings....”

11. Coming to the merits of the present case, the case of the prosecution against the petitioner herein, in brief, is that on 06.10.2015, the complainant had boarded a bus on Route No. 817, where the petitioner had made inappropriate gestures and winked at her despite her objections. When she had slapped him near Dhauli Pyaau, and a co-passenger had asked him to leave, the petitioner had again later sat next to her. Upon reaching Janakpuri West Metro Station, as the complainant was deboarding the bus, the petitioner had forcibly held and kissed her on the lips, and had refused to let her go. The public had intervened, apprehended the petitioner, and had taken him to Police Station Vikaspuri, Delhi. Based on the



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complainant's written complaint, the FIR in this case was registered.

12. During the course of trial, the prosecution had examined six witnesses. From a perusal of the judgment of the learned Trial Court as well as the Trial Court record, it is clear that the complainant's testimony has remained consistent on the core allegations against the petitioner. The complainant (PW-1) categorically stated that the petitioner herein had made inappropriate gestures, stared at her, blew kisses towards her, and later forcibly kissed her, which had also resulted in public intervention. While there may be some minor discrepancies in her statements, including the one recorded under Section 164 of Cr.P.C., such as the exact seating arrangement and the nature of physical contact before the assault, these do not materially affect the case of the prosecution, which remains overall corroborated by testimonies of other witnesses.

13. The bus conductor (PW-2) and the driver (PW-3), though not direct eyewitnesses, have deposed, having witnessed and confirming the sequence of events, including the heated arguments and altercations between the complainant and the petitioner, due to which the driver had taken the bus to the police station. The checking staff (PW-4), who was present at the spot, has also testified that he had seen the petitioner misbehaving with the complainant and had witnessed the public intervention, which further strengthens the prosecution's case.

14. The petitioner's defence of false implication by the complainant, in this Court's opinion, remains unsubstantiated. It is



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also material to note that the petitioner had not led any defence evidence in this case. His conduct of, persistently making inappropriate gestures, sitting close to the complainant despite objections, and ultimately forcibly kissing her – demonstrates a clear act of use of gestures, criminal force and assault for outraging the modesty of the complainant. Needless to say, such actions are not only indecent but are of a nature that would shock the sense of dignity and modesty of a woman, and would fall within the ambit of offences under Sections 354/509 of IPC.

15. The learned counsel for the petitioner contended before this Court that the I.O. had failed to seize the bus ticket in which the complainant was allegedly traveling. However, at the same time, the defense put forth by the petitioner himself – claiming that he had accidentally fallen on the complainant due to his physical disability – indicates that the complainant was indeed present in the said bus, making the non-seizure of the ticket immaterial. The learned counsel for the petitioner had further argued that the petitioner is mentally and physically handicapped and was not in a proper state of mind to stand trial. However, it is noteworthy that at no stage during the trial, which lasted over two years, was any application filed on behalf of the petitioner or any plea raised regarding the issue of his unfitness to stand trial. Therefore, this contention of the petitioner is clearly unmerited.

16. The petitioner also claims that it is the prosecution's case that he was beaten by the public, however, it is contended that the medical



examination of the petitioner did not indicate any external injuries on his person, which, according to him, falsifies the prosecution's case. However, the absence of external injuries cannot conclusively establish that the petitioner was not apprehended and beaten by the public, as the nature and degree of force used by the public may not necessarily result in injuries visible in the MLC. Even otherwise, the testimonies of the witnesses clearly reveal that the petitioner was in fact caught hold of by the public while indulging in the alleged acts.

17. Another contention raised by the learned counsel for the petitioner is that since the petitioner and the complainant were complete strangers, the petitioner could not have dared to outrage her modesty in a public setting, and the lack of motive further weakens the prosecution's case. However, this Court finds no merit in this argument. Sexual offenses are often opportunistic crimes, and the absence of prior acquaintance or explicit motive does not negate the possibility of such an act being committed. The presence of public witnesses and their intervention supports the complainant's version rather than discrediting it.

18. It was also contended by the learned counsel for the accused that the petitioner has been falsely implicated in this case since the victim is the daughter of a police officer. This Court finds this argument to be absurd. Merely the factum of the victim being the daughter of a police officer, does not automatically imply false implication. In fact, the petitioner's own argument contradicts this claim, as he himself concedes that the accused and the complainant



were complete strangers. If they had no prior acquaintance, there could be no apparent motive for false implication. Moreover, the fact that she is the daughter of a police officer cannot be held against her, as if it was to act as a handicap to prevent her from filing a legitimate complaint regarding the molestation she faced in a public transport.

19. This case is also one of the rare instances where independent public witnesses, who were strangers to both the victim and the accused, had the commendable courage to not only depose freely before the Magistrate but also give consistent statements to the police. The bus conductor and another passenger, Sukhbir Sharma, who were eyewitnesses to the incident, have clearly deposed against the accused, further corroborating the prosecution's case.

20. The facts of the present case reflect a deeply concerning reality—that even after decades of independence, women continue to face harassment in public spaces, including public transport, where they should feel safe and secure. Despite the existence of stringent laws aimed at protecting women's dignity and personal autonomy, incidents like these highlight the audacity of offenders who dare to commit such acts, believing they can evade consequences.

21. In this case, the presence of alert passengers who stood by the complainant, intervened, and apprehended the accused was crucial. Even in a crowded bus, the complainant had to defend herself, face public humiliation, and rely on the conscience of bystanders to secure justice.



22. Despite the existence of strong laws aimed at protecting women from harassment and assault, incidents like these expose the audacity of perpetrators who act with impunity. The fear is not just about the crime itself but about the apathy that often follows—what if no one had stood by her? What if the bus was empty? Would she have been forced to suffer in silence, with no justice in sight?

23. This case is one of the rare instances where witnesses not only intervened but also reported and deposed against the accused, reinforcing the importance of collective responsibility in ensuring women's safety. It serves as a reminder that silence and inaction empower offenders, and that every individual in society has a duty to stand against harassment and uphold the rule of law.

24. The facts of the case and the acts of the accused reflect that girls are not safe even in public spaces today. The facts of the case also reflect this being a harsh and unsettling reality. In this background, while the accused prays for leniency, this Court while adjudicating such cases, is also guided by the ultimate outcome of such cases, which will have a direct impact on the vital issue of women's empowerment, equality, and upliftment. Public transport, which is meant to ensure mobility and independence, in this case, instead became a site of fear and vulnerability for the victim, any undue leniency, to an accused caught at the spot, may embolden any future for perpetrators.

25. While this Court adjudicates the present case, and its circumstances, in the background, the Court does not lose sight of the



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fact that, judgments in such cases play an important role of sending message to the society and to the community that believe in system can be trusted to not only punish the guilty but also the social context of such judgments that if we truly aspire to uplift women, it is imperative that we first create an environment where they are safe—free from harassment, humiliation, and fear and that those who make the public spaces too unsafe will be dealt with strictly. Until that happens, all discussions on women’s progress will remain superficial—since real empowerment begins with the right to live and move freely without fear.

26. Therefore, this Court finds that the learned Sessions Court rightly upheld the conviction of the appellant, and there is no patent illegality with the findings of the learned Trial Court and the learned Appellate Court is made out.

27. In view of the above, the present revision petition stands disposed of.

28. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 28, 2025/ns