

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1269 OF 2017**

Sudhir Vitthal Medhekar

...Applicant

vs.

State of Maharashtra and Others

...Respondents

VISHAL  
SUBHASH  
PAREKAR

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Mr. Pritam Runwal, for the applicant.

Ms. Anamika Malhotra, APP for the State.

Mr. Mahadeo Choudhari, for Respondent No. 2.

**CORAM :**

**N. J. JAMADAR, J.**

**RESERVED ON :**

**28<sup>th</sup> APRIL, 2022**

**PRONOUNCED ON :**

**19<sup>th</sup> AUGUST, 2022**

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**JUDGMENT :**

1. The challenge in this application under 482 of the Code of Criminal Procedure, 1973 is to an order passed by learned Metropolitan Magistrate in CC No. 98/PS/2010 dated 29<sup>th</sup> August, 2017 whereby the charge was framed against the applicant for the offences punishable under section 354, 323 and 504 of Indian Penal Code, 1860 (the Penal Code). The applicant has also prayed for discharge in CC No.98/PS/2010.

2. The application arises in the backdrop of following facts:-

a] The respondent No. 2 is a resident of Cosmopolitan Co-Op. Housing Society, Powai, Mumbai. On 11<sup>th</sup> October, 2009 while the respondent No. 2 was taking a walk in the campus of the society,

her husband Truptesh Shraf, his friends Mahendra Pratap Singh and Manjunath Krushnapal were chatting near the water tank. At about 8.45 pm, respondent No. 2/ first informant saw the applicant initially approaching towards the lift of 'B' wing and again turning back towards the place where her husband was standing. The applicant allegedly abused Truptesh. When the applicant caught hold of Truptesh by the collar of his shirt and started assaulting him, the first informant intervened. While she and the friends of her husband, namely Mahendra Pratap Singh and Manjunath Krushnapal were trying to rescue Truptesh, the applicant allegedly placed his hand on the chest of the first informant and pushed her. Thereupon a fisticuffs ensued between Truptesh and the applicant. In-laws of the first informant also reached the scene of occurrence. The applicant allegedly assaulted the father-in-law of the first informant. Thereupon, the first informant approached Powai police station and lodged report leading to registration of C.R. No. 370 of 2009 for the offences punishable under sections 354, 323 and 504 of the Penal Code.

3. It would be contextually relevant to note that the applicant has also lodged report against the first informant, her husband Truptesh, father in law Harshad Shraf, Mahendra Pratap Singh,

Manjunath Krushnapal and Shashikant Shenoy for the offences punishable under sections 324, 323, 504 read with 34 of the Penal Code and section 3(1)(X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 leading to registration of C.R. No. 125 of 2010 in respect of the very same occurrence.

4. The learned Magistrate, by an order dated 29<sup>th</sup> August, 2017 explained the particulars of the offences punishable under sections 354, 323 and 504 of the Penal Code. The applicant abjured the guilt and claimed for trial.

5. The applicant has invoked the inherent jurisdiction of the Court to quash the charge under section 354 of the Penal Code on the ground that there was neither an intention to outrage the modesty of the first informant nor any knowledge to outrage the modesty of the first informant can be attributed to the applicant. There was no pre-meditation. The alleged incident occurred at the spur of the moment. In fact, the applicant was abused with reference to his caste and assaulted by the husband of the first informant and other co-accused in C.R. No. 125 of 2010. In such circumstances, the prosecution of the applicant for the offence punishable under section 354 of the Penal Code is an abuse of the

process of the Court.

6. I have heard Mr. Pritam Runwal, learned counsel for the applicant, Ms. Anamika Malhotra, learned APP for the State and Mr. Mahadeo Choudhari, learned counsel for Respondent No. 2 at some length. With the assistance of the learned counsels for the parties, I have perused the report under section 173 of the Code and the documents annexed with it.

7. Mr. Runwal, learned counsel for the applicant, submitted that even if the prosecution case is taken at par, the offence punishable under section 354 of the Penal Code cannot be said to have been made out. Taking the Court through the allegations in the first information report and the statements of the alleged eye witnesses to the occurrence, including Truptesh, the husband of the first informant, Mahendra Pratap Singh and Manjunath Krushnapal, the residents of the society, Mr. Runwal, endeavoured to draw home the point that the necessary mens rea to constitute the offence punishable under section 354 of the Penal Code cannot be attributed to the applicant even if the prosecution case is taken as it stands.

8. Ms. Anamika Malhotra, learned APP, on the other hand, would urge that the first informant and the eye witnesses have consistently stated about the fact that the applicant pushed away the first informant by touching her chest. At this stage, especially when the plea of the accused has been recorded, the Court may not exercise the extra-ordinary jurisdiction under section 482 of the Code, submitted Ms. Malhotra.

9. Mr. Mahadeo Choudhari, learned counsel for respondent No. 2 supplemented the submissions of Ms. Malhotra. It was urged that the question as to whether the act of the applicant was animated with necessary mens rea is essentially a question of fact and can only be adjudicated at the trial. At this juncture, in exercise of extra-ordinary jurisdiction under section 482 of the Code, this Court may not be justified in delving into the disputed questions of facts, submitted Mr. Choudhari.

10. Section 354 of the Penal Code before it was amended by Criminal Law (Amendment) Act, 2013, read as under:-

“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 may extend to two

years, or with fine, or with both.”

11. From the phraseology of section 354 of the Penal Code, it becomes abundantly clear that it provides punishment for assault or use of criminal force to woman to outrage her modesty. The following ingredients of the offence can be culled out:

- (i) The assault must be on a woman or
- (ii) The accused must have used criminal force on a woman and
- (iii) The assault or criminal force must have been used intending to outrage or knowing that the accused thereby would outrage her modesty.

12. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of **State of Punjab vs. Major Singh**<sup>1</sup> wherein the concept of modesty was instructively postulated as under:

4] I would first observe that the offence does not, in my opinion, depend on the reaction of the woman subjected to the assault or use of criminal force. The words used in the section are that the act has to be done "intending to outrage or knowing it to be likely that he will thereby outrage her modesty". This intention or knowledge is the ingredient of the offence and not the woman's feelings. It would follow that if the intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence. Likewise, if the intention or knowledge was proved, the fact that the woman did

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1 AIR 1967 SC 63.

not feel that her modesty had been outraged would be irrelevant, for the necessary ingredient would then have been proved. The sense of modesty in all women is of course not the same-, it varies from woman to woman. In many cases, the woman's sense of modesty would not be known to others. If the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew the standard of the modesty of the woman concerned, as otherwise, it could not be proved that he had intended to outrage "her" modesty or knew it to be likely that his act would have that effect. This would be impossible to prove in the large majority of cases. Hence, in my opinion, the reaction of the woman would be irrelevant.

5] Intention and knowledge are of course states of mind. They are nonetheless facts which can be proved. They cannot be proved by direct evidence. They have to be inferred from the circumstances of each case. Such an inference, one way or the other, can only be made if a reasonable man would, on the facts of the case, make it. The question in each case must, in my opinion, be: will a reasonable man think that the act was done with the intention of outraging the modesty of the woman or with the knowledge that it was likely to do so? The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In considering the question, he must imagine the woman to be a reasonable woman and keep in view all circumstances concerning her, such as, her station and way of life and the known notions of modesty of such a woman. The expression "outrage her modesty" must be read with the words "intending to or knowing it to be likely that he will". So read, it would appear that though the modesty to be considered is of the woman concerned, the word "her" was not used to indicate her reaction. Read all together, the words indicate an act done with the intention or knowledge that it was likely to outrage the woman's modesty, the emphasis being on the intention and knowledge.

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 16] I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or

imbecile, awake or sleeping, the woman Possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under [s. 354](#). The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section.

13. In the case of **Rupan Deol Bajaj vs. Kanwar Pal Singh Gill and Another**<sup>2</sup> the Supreme Court further expounded the essence of the offence of outraging the modesty in the following words:

17. “It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case. Since, however, in the instant case we are only at the incipient stage we have to ascertain, only prima facie, whether Mr. Gill by slapping Mrs. Bajaj on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of [Section 354](#) IPC. The sequence of events which we have detailed earlier indicates that the slapping was the finale to the earlier overtures of Mr. Gill, which considered together, persuade us to hold that he had the requisite culpable intention. Even if we had presumed he had no such intention he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising the elite of the society - as the names and designations of the people given in the FIR indicate. While on this point we may also mention that there is nothing in the FIR to

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2 1995 (6) SCC 194.

indicate, even remotely, that the indecent act was committed by Mr. Gill, accidentally or by mistake or it was a slip. For the reasons aforesaid, it must also be said that, - apart from the offence under [Section 354](#) IPC - an offence under [Section 509](#) IPC has been made out on the allegations contained in the FIR as the words used and gestures made by Mr. Gill were intended to insult the modesty of Mrs. Bajaj.”

14. In the case of **Raju Pandurang Mahale vs. State of Maharashtra and Another**<sup>3</sup>, after noting the provisions contained in section 354 of the Penal Code and the previous pronouncements in the case of **Major Singh** (supra) and **Rupan Deol Bajaj** (supra), the Supreme Court enunciated the law as under:-

12] What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a women, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in [IPC](#). The shorter Oxford Dictionary (Third Edn.) defines the word 'modesty' in relation to woman as follows:

"Decorous in manner and conduct; not forward or lowe; Shame-fast: Scrupulously chaste."

13] Modesty is defined as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct." It is the reserve or sense of shame

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3 AIR 2004 SC 1677.

proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patterson in *Rex v. James Llyod*, (1876) 7 C & P 817. In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her.

14] Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency, a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.), the meaning of the word 'modesty' is given as "womanly propriety of behaviour: scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions."

15] [In State of Punjab v. Major Singh](#), AIR (1967) SC 63 a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question the majority view was that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of [Section 354](#) IPC. Needless to say, the "common notions of mankind" referred to have to be gauged by contemporary societal standards. It was further observed in the said case that the essence of a woman's modesty is her sex and from her very birth she possess the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh's case (*supra*) the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted in [Rupan Deal Bajaj \(Mrs.\) and Anr. v. Kanwar Pal Singh Gill and Anr.](#), [1995] 6 SCC 194. When the

above test is applied in the present case, keeping in view the total fact situation, the inevitable conclusion is that the acts of accused appellant and the concrete role be consistently played from the beginning proved combination of persons and minds as well and as such amounted to "outraging of her modesty" for it was an affront to the normal sense of feminist decency. It is further to be noted that [Section 34](#) has been rightly pressed into service in the case to fasten guilt on the accused- appellant, for the active assistance he rendered and the role played by him, at all times sharing the common intention with A-4 and A-2 as well, till they completed effectively the crime of which the others were also found guilty.

(emphasis supplied)

15. Section 354 of the Penal Code, if construed in the light of the aforesaid exposition of law, professes to punish indecent assault or use of criminal force to a woman, as distinguished from assault simpliciter. Intent to outrage or the knowledge that by the offending act the accused would outrage, the modesty of the victim woman is the linchpin of the offence. In contrast, assault or use of criminal force to a woman simpliciter unaccompanied by such a state of mind qua the accused, may not fall within the dragnet of the offence punishable under section 354 of the Penal Code, though the accused may be liable for having committed the offence punishable under section 352 of the Penal Code and/or having caused hurt.

16. On the aforesaid touchstone, reverting to the facts of the case, on a careful perusal of the allegations in the first information report

and the statements of the alleged eye witnesses to the occurrence, the following situation emerges.

(i) Truptesh, the husband of the first informant and his friends Mahendra Pratap Singh and Manjunath Krushnapal were standing in the campus of the society near the water tank. The first informant was little afar and allegedly taking a walk.

(ii) Truptesh claimed that the applicant came thereat and while approaching towards lift, the applicant bumped into him. When Truptesh asked the applicant to be more careful, the applicant returned to the said spot.

(iii) An alternation ensued. The applicant caught hold of the shirt of Truptesh. Despite being asked to leave Truptesh, the applicant allegedly slapped Truptesh.

(iv) At that stage, according to Truptesh, the witnesses Shashikant Shenoy, Mahendra Pratap Singh, Manjunath Krushnapal and the first informant came in the frame. When the first informant tried to rescue her husband Truptesh, the applicant touched her chest and pushed her aside.

17. In the light of the aforesaid sequence of events, the question

that crops up for consideration is whether the act of pushing the first informant aside can be said to be attended with intent to outrage, or knowledge that the applicant would thereby outrage, the modesty of the first informant. The following factors, in my considered view, bear upon the determination.

18. First and foremost, it is pertinent to note that the quarrel was, in a sense, sudden. It does not appear that there was pre-meditation especially qua the role attributed to the applicant of pushing the first informant. Secondly, even altercation between the applicant and Truptesh appeared to have taken place at the spur of the moment. Truptesh and the applicant have different versions as to what caused the applicant to turn back to the place where Truptesh and his friends were standing. However, what is of salience is the fact that something made the applicant to return back to the said place and thereupon altercation ensued. Thirdly, Truptesh was accompanied by two of his friends and it was natural on their part to intervene in the quarrel so as to pacify Truptesh and the applicant, also a resident of the same society. Fourthly, it is the claim of the first informant and witnesses that the first informant came thereat while a scuffle was on between the applicant and Truptesh. Fifthly, at that moment, the applicant allegedly pushed

the first informant who claimed to have intervened to rescue Truptesh from the clutches of the applicant. Sixthly, the act of pushing the first informant was in the course of the scuffle, while the applicant was evidently grappling with her husband. Seventhly, the first informant and witnesses do not allege that the said act of pushing the first informant was accompanied by any utterances or gestures which would underscore sexual overtures. Lastly, there is no allegation of any prelude to the occurrence which would indicate that the applicant had either an evil eye or had behaved with the first informant in a manner which would appear to be indecent. If all these factors are considered in conjunction with each other, even if the prosecution case is taken as it stands, the existence of mens rea to outrage the modesty of the first informant can not be inferred.

19. I am conscious of the fact that the learned Magistrate has explained the particulars of the offence to the accused. Trial can thus be said to have commenced. Where the trial Court has applied its mind and framed charge against the accused, the exercise of extra-ordinary power under section 482 of the Code is ordinarily not advisable. In such a case, the appropriate remedy would be to approach the revisional Court.

20. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of **Minakshi Bala vs.**

**Sudhir Kumar and Others**<sup>4</sup>. Paragraph 7 reads as under:-

7] If charges are framed in accordance with [Section 240](#) CrPC on a finding that a prima facie case has been made out as has been done in the instant case the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under [Section 173](#) CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under [Section 240](#) CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in [Sections 239](#) and [240](#) CrPC; nor would it be justified in invoking its inherent jurisdiction under [Section 482](#) CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

21. The case at hand appears to be of such a nature where this Court would be justified in resorting to the exercise of inherent jurisdiction under section 482 of the Code, despite particulars of the offence having been explained to the applicant as the offence punishable under section 354 of the Penal Code cannot be said to have been made out, even if the case of the prosecution is considered rather generously. This finding, however, does not imply

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4 (1994) 4 SCC 142.

that the prosecution version as regards the occurrence in question deserves to be jettisoned away in its entirety. The applicant can very well be prosecuted for the offences which otherwise emerge from the allegations in the first information report and the statements of the witnesses, except the offence punishable under section 354 of the Code. Hence, I am inclined to partly allow the application.

Thus, the following order.

#### **ORDER**

- 1] The application stands partly allowed.
- 2] The prosecution arising out of first information report bearing C.R. No. 370 of 2009 stands quashed and set aside to the extent of the offence punishable under section 354 of the Penal Code, only.
- 3] The prosecution is however at liberty to prosecute the applicant/accused qua rest of the offences in accordance with law by resorting to necessary measures as warranted by law.
- 4] In the circumstances, there shall be no order as to costs.

**(N. J. JAMADAR, J.)**