

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.265 OF 2005

Suresh Annaso Kank .. Appellant
Versus
The State of Maharashtra .. Respondent

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Mr.Satyavrat Joshi for the Appellant.
Mr.M.R.Tidke, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 27th OCTOBER, 2023
PRONOUNCED ON : 01st NOVEMBER, 2023

JUDGMENT:-

1. The present Appeal is filed by the Appellant, being aggrieved by the conviction handed over to him, by the 2nd Adhoc Additional District and Sessions Judge, Pune in Sessions Case No.14 of 2004, on 18/01/2005 convicting him for the offence punishable under Section 354 of the Indian Penal Code (for short, “**the IPC**”) and sentencing him to suffer rigorous imprisonment (**R.I.**) for two years and imposing a fine of Rs.1,000/-, in default to undergo R.I. for two months. He also stand convicted for committing an offence under Section 506(1) of the IPC and is sentenced separately to suffer R.I. for one year. The sentences imposed on him are directed to run concurrently.

2. The Appeal filed by the Appellant is admitted on 29/03/2005 and he was directed to be released on bail, since he was on bail during trial.

On the Appeal being ready for final hearing, on receipt of the record and proceedings and preparation of paper-book, the same is taken up for hearing.

3. I have heard the learned counsel Mr.Satyavrat Joshi for the Appellants and the learned A.P.P. Ms.M.R.Tidke for the State.

The prosecution case has surfaced before the Additional Sessions Judge through the prosecution witnesses, it's star witness being PW 2, the victim girl belonging to Scheduled Caste and pursuing her education by staying in the Girls Hostel at Ashram School, Pangari, Tal.Bhor, District Pune. It is her case that while she was prosecuting her study in 9th standard, the Accused was working as Superintendent at the Boys Hostel. On 08/03/2004, when she was present in the room in the Girls Hostel, she was informed by her friend that the Accused has called her in his room. At around 8.00 to 8.30 a.m., when she alongwith her friends was sitting on the ground, in front of the school and the hostel, the Accused called her by coming out of his room and all her friends proceeded towards his room. However, he drove the other girls by saying that he had work with the victim, only.

After her friends went away, the victim was called in his room and the Accused inquired about her health and when she told that, she was not feeling well and suffering from loose

motions, he told her that he will give medicine to her and he caught her hand.

She narrated her ordeal, in the following words before the Court :-

“The accused put his hand around my waist and pressed my chest. Hence I gave the shout. The accused told me not to shout and not to disclose the incident to anybody. After hearing my shout my girl friends reached there and watched through the window. The accused pressed my face on his thigh as he was sitting. I then came out of the room. I was crying. My friends asked me what happened and I narrated the above incident to them.”

4. After the incident, though it was suggested by her friends to report about the incident to the Headmaster, Mr. More (PW 1), she was unable to do so, as he was not present in the school, but when he returned after 4-5 days, she met him and complained to him about the incident. She visited his office and the Headmaster directed her to give the complaint in writing and, hence, she scribed a complaint on 14/03/2004 in her own handwriting and signed the same.

The said complaint is exhibited through her and is marked as Exh.16.

Inquiry was made into the episode and on instructions of the superior, the complaint came to be lodged with Bhore Police Station on 25/03/2004. The same is also exhibited through the said witness, as Exh.17 and that is how the investigating machinery was set into motion.

5. The complaint filed by PW 2, resulted in registration of an F.I.R., which invoked Sections 354 and 506 of the IPC. The

subject F.I.R. also invoked Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, **“the Atrocities Act”**). The Accused was arrested and on completion of investigation, the charge-sheet was filed and the case was committed to the Court of Sessions at Pune. The charge was framed against the Accused and, since, he pleaded not guilty and claimed to be tried, he was subjected to trial in Special Sessions Case No.14 of 2004.

6. The victim of the derogatory act has proved the complaint addressed by her to the Headmaster on 14/03/2004 and she remained consistent on her version, when she deposed before the Court. She has specifically narrated the act committed by the Accused, by putting his hand around her waist and pressing her chest. Upon the act being committed, she shouted and was told by him not to do so.

In the statement, given to the Investigating Officer under Section 161 of the Code, she had given a similar version.

In order to corroborate her, the prosecution has examined her friend (PW 3), who supported her version on all material aspects.

In sync with the victim, she deposed that while they were sitting on the ground of the school on the given date, the Accused gave a call to the victim, by coming out of his room and when all the friends proceeded towards his room, they were told that he only wanted the victim girl. One of her friend remained in the Varandah, whereas other girls returned to the place where they were sitting. Thereafter, they heard shouts

from the victim and she came out of the room. The friend, who was present in the Varandah, also narrated that the Accused had caught the hands of the victim and pressed her breast, though she is not examined as a witness. When her friends inquired with her, she narrated the occurrence to them in the evening.

The version of the victim thus stands corroborated by her friend and through their testimony it is established that the Accused called the victim girl to his room and outraged her modesty in solitude, by taking advantage of her vulnerability. What had happened in the room, has come on record through the victim herself, but the fact that she was called to the room by the Accused and after some time, she shouted, lead to an inference that, by taking advantage of the situation and calling her in the room all alone, by keeping her friends outside, the Accused misbehaved with her.

7. The evidence of PW 2, is further corroborated by PW 1, the Principal of the Ashram School, when he deposed that on 08/03/2004, he had been to Bhor for collecting the bills and when he reached the school, on 12/03/2004, some girls intended to disclose something to him and, when taken in confidence, the victim narrated the incident to him, by specifically disclosing the act of the Accused, when she was called in the room. She also told PW 1, that the Accused tried to give her Rs.20/- and threatened that she shall not disclose the incident to anyone.

PW 1 directed her to give application to the Female Superintendent and also to him, so that an inquiry could be conducted and, accordingly, she lodged the complaint, which

was received by him on 15/03/2004. He directed the Female Superintendent to inquire into the episode and even he conducted an inquiry and he arrived at the conclusion that the Accused was guilty of committing the objectionable act and on 20/03/2004, he submitted the report to his superior.

On 25/03/2004, when he received direction from the superior to report the incident to the police station, he accompanied the victim in the company of the lady Superintendent and 2-3 staff members and the matter was reported to the police.

8. The prosecution has proved the case under Section 354 of the IPC through the three witnesses.

The spot panchnama, where the incident took place, is proved through PW 4 and PW 4 has deposed that the spot of incident is distinct from the school building and the room belong to the Accused. The spot panchnama also refer to a 'vharanda' in the front side of the room and an open ground ahead.

The Investigating Officer, Tukaram Surve, PSI, Bhore Police Station, is examined as PW 5, who has referred to the statement of the victim, which was recorded by him as per her say. The Dy.S.P. at Bhore is also examined only to establish the fact that the Accused was required to be re-arrested on adding the provisions of the Atrocities Act.

9. Section 354 of the IPC prescribe punishment for outraging modesty of a woman and as per the said Section,

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, he is liable for punishment under the said Section, which by Act No.13 of 2013, is punishable with imprisonment of either description for a term which shall not be less than one year but which may extend to five years and is also liable to fine.

The said section refers to two distinct acts i.e. “assault” or “criminal force”. The term “assault” is defined under Section 351 of the IPC, whereas the term “criminal force” is defined in Section 350 to mean use of force to any person, without that person’s consent, in order to commit any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force, he will cause injury, fear or annoyance to the person to whom the force is used.

Section 354 of the IPC is said to be attracted, if a person assaults or uses criminal force against any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty.

The essential ingredients of the provision, being the use of criminal force or assault.

A person is said to have used force against another if causes motion or cessation of motion to that other by his own bodily power and the force becomes criminal, when it is used with criminal intention and without other’s consent. Whoever makes any gesture, or preparation to give an apprehension to the other that he is about to use criminal force is said to commit an assault. It follows that if this is committed or

criminal force is used with the intent or knowledge specified in the Section, then the offender is guilty of outraging modesty of a woman under Section 354 of the IPC.

10. The victim at the relevant time, when the incident occurred, was between 14 to 15 years and the learned counsel Mr.Joshi has specifically argued that she never stated that her modesty is outraged.

I do not think that it is necessary for her to say so, as she may not even possess the knowledge that the act committed by the Accused would fall within the ambit and scope of Section 354 of the IPC, and what she understood at her age was, the act of the Accused was not appropriate.

The question, whether reaction of the victim as also her age are decisive or not for determining the guilt under Section 354 of the IPC, was resolved by the Hon'ble Apex Court in the case of *State of Punjab Vs. Major Singh*¹.

In the said case, the accused caused injury to vagina of 7 ½ months child by fingering and it was held that the provision does not require that the outrage must be felt by the victim and in this case, not necessarily it should have been expressed by her.

Hon'ble Justice A.K.Sarkar assigned a meaning to the term "modesty", as "an attribute of a human female irrespective of whether she had developed enough understanding to realise that an act was offensive to decent female behaviour or not". His Lordship (As he was then), expounded the proposition in the following words :-

¹ AIR 1967 SC 63

“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 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.”

The test of the outrage of modesty is, therefore, adopted as to whether a reasonable man would think that the act of the offender was intended to or was known to be likely, to outrage the modesty of a woman.

11. The act complained by the victim girl and which has been held to have been committed by the Accused/Appellant to be amounting to an offence under Section 354 of the IPC will have to be tested on the touchstone of the above parameter.

PW 2, a young girl aged 14 to 15 years, complained of an act of the Accused without stating in so many words that it outraged her modesty, but she maintained consistency, when she narrate the act of the Accused of pressing her chest/breast and putting his hand around her waist, which obviously was found inappropriate by her and as a result, she gave shrieks for help.

The version of the victim girl has been proved with cogent evidence by the prosecution and when the victim girl has not dithered and she remained resolute on her accusations against the Accused and thus assisted the Court in determining the truthfulness of the prosecution case and based on the evidence produced by the prosecution, the learned Judge has reached a conclusion that the Accused is guilty of outraging her modesty and thus, committing an offence under Section 354 of the IPC.

I see no reason to interfere with the finding of guilt recorded by the learned Judge and though Mr.Joshi with his forceful argument, made an attempt to invite my attention to certain inconsistencies in the prosecution case, but I do not find any merit in his submission, as the prosecution witnesses have corroborated each other on the material aspect of the act of the Accused and with no loopholes in the case of the prosecution, there exists no justification to reverse the finding of the guilt and the sentence imposed in the impugned judgment. Merely because more girls present with the victim are not examined is also no ground for interference, as ultimately it is not the quantity but quality of evidence, which assumes importance and in this case, the case of PW 2 is supported by her friend PW 3.

Mr. Joshi has pleaded before me that Section 354 of the IPC, before its amendment in the year 2013, was punishable with imprisonment of either description for a term which may extend to two years or with fine or with both and the discretion ought to have been exercised by the learned Judge in imposing a lesser punishment, but without citing any

reason, the maximum punishment i.e. punishment for two years has been awarded to him.

Mr.Joshi would also submit that the Appellant had to lose his job in the wake of the accusations and from the date of the alleged offence, he has never indulged himself into any act, which would amount to offence nevertheless the offence of the type with which he is charged.

12. I have given thoughtful consideration to the said submission and I have noted that the Appellant, who faced the trial was aged 38 years, and today is about 58 years of age. Though, as expressed above, I am not inclined to interfere with the finding of guilt, considering the aforesaid circumstances, I deem it appropriate to reduce the sentence imposed upon the Appellant for a period of six months and substitute the period of imprisonment in the impugned judgment accordingly.

The Appeal stands partly allowed, by modifying the sentence imposed upon the Appellant, to the above effect.

13. For the purpose of undergoing the sentence, the Appellant shall surrender before the Sessions Court, Pune within a period of six weeks from today.

(SMT. BHARATI DANGRE, J.)