

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 81 of 2016

With

CRAN 1 of 2016

(Old No. CRAN 507 of 2016)

Chandra Kanta Jana & Anr.

Vs

The State of West Bengal.

For the Appellants : Mr. Santanu Talukdar.

For the State : Mr. Md. Anwar Hossain.

Hearing concluded on : 09.02.2024

Judgment on : 12.03.2024

Shampa Dutt (Paul), J.:

The Appeal:-

1. The present appeal has been preferred against a Judgment and Order dated 02.12.2015 passed by the Learned Additional Sessions Judge Fast Track Court 1st Court, Tamluk in Sessions Case No. 492 (September) 2008 (Sessions Trial No. 28(4)2013 arising out of Tamluk Police Station Case No. 24 of 2008 dated 14.02.2008 thereby convicting the appellants for the commission of offence punishable under Section 354 of the Indian Penal Code and sentencing them to suffer simple imprisonment for 4 months and to pay a fine of Rs. 1000/- in default to suffer simple imprisonment for 1 month.

Prosecution Case:-

2. The allegations in the written complaint against the Appellants are as follows:-

“that on 10.02.2008 at about 6:30-7.00p.m. the victim girl namely Ratna Maity daughter of P.W.1, a deaf and dumb girl of 17 years, went to house of the P.W.14 at Village Biswas and was enjoying T.V. Programme. That at the time while P.W.14 was in kitchen the appellants and another person took her away forcibly against her will and ravished her. That on search, P.W.14 found her returning from the side of the river Rupnarayan and she was weeping at that time. That the victim girl indicated by her gesture to the P.W.14 and her mother that she had been raped by the appellants. That on hearing their hue and cry local villagers and neighbors assembled at the scene. That the victim girl identified the culprits in presence of a number of persons by holding hands of the accused persons.”

3. On the basis of the aforesaid written complaint lodged by the said Sankar Prasad Maity (PW-1), father of the victim girl, Tamluk Police Station Case No. 24 of 2008 dated 14.02.2008 for offences punishable under Section 376 (2)(g) of the Indian Penal Code was registered for investigation against the appellant and another.
4. Charge Sheet No. 85 of 2008 dated 29.05.2008 under Sections 376(2)(g)/551/354/34 of the Indian Penal Code was submitted against the appellant and another.
5. The case was committed to the Court of Sessions for trial.
6. Charge was framed under Sections 376/511 of I.P.C.
7. The appellants pleaded “not guilty” to such charges and claimed to be tried.
8. In course of trial the prosecution examined as many as 19 witnesses and also exhibited a number of documents.
9. The defence did not examine any witness of its own, but through a process of effective cross examination, tried to probablize its own case and improbablize the prosecution case.
10. Upon conclusion of trial, by the Judgment and Order dated 02.12.2015 passed by the Learned Additional Sessions Judge, Fast Track Court 1st Court, Tamluk in Sessions Case No. 492 (September) 2008 (Sessions Trial No. 28(4)2013) the appellant was convicted for the commission of an offence punishable under Section 354 of the Indian Penal Code and was sentenced to suffer simple imprisonment for 4

months with a fine of Rs. 1000/- in default to suffer simple imprisonment for 1 month.

11. The defense case is of innocence and false implication.

12. Hence the appeal on the grounds:-

- i) That, the trial established certain discrepancies centering the place of occurrence and manner of occurrence and that the appellants have been falsely framed in the case due to political rivalry.
- ii) That there were material contradictions between the version of the victim i.e. the P.W.4 in the First Information Report, her statement under Section 164 of the Code of Criminal Procedure and her deposition before the Learned Judge in course of trial.
- iii) That, the alleged incident took place on 10.02.2008 and the First Information Report was lodged as late as on 14.02.2008. Failure to explain such delay is indicative of the hollowness of the prosecution case.
- iv) That, there were serious discrepancies and exaggeration in the testimony of P.W.1, P.W.2 and P.W.14.
- v) That while making statement before the Learned Magistrate under Section 164 of the Code of Criminal Procedure, the victim girl referred to four persons who took her forcibly and

sexually assaulted her but the identity of other two remains a mystery.

- vi) That, nothing transpired in the evidence recorded in the court of trial to establish that the appellants herein had caused, or had been to have caused the alleged outraging of modesty of the P.W.4. In view of the same, the charge under Section 354 of the Indian Penal Code cannot be said to have been proved against the appellants beyond all reasonable doubt, and hence the conviction and sentence imposed upon the appellants are liable to be set aside.

13. A written notes of argument has been filed on behalf of appellants.

Analysis of Evidence:-

14. The Case was initially registered under Section 376(2)(g) of the IPC Charge sheet was filed under Sections 376/511 IPC and charge was framed accordingly.

15. Finally the appellants have been convicted and sentenced for offence punishable under Section 354 of IPC.

16. The prosecution case is that:-

“..... On 10.02.08 at about 6.30-7.00 pm Ratna Maity daughter of Defacto Complainant Sankar Prasad Maity, a deaf and dumb girl of 17 years, went to her Pisima’s house at village-Biswas and was enjoying TV programme. At the time while her Pisi Shibani Adak was in kitchen, accused persons namely Chadrakanta Jana and Bhuban Samanta took her away forcibly against her will and raped her. On search her pisima found her returning from the side of the river Rupnarayan and she was

weeping at the time. The victim girl indicated by her gesture to her pisima and mother that she had been raped by the accused persons. On hearing their hue and cry, local villagers and neighbors assembled at the scene. Ratna identified the culprits in presence of a number of persons by holding hands of the accused persons. Attempt was made to settle the matter amicably by the co-villagers but without any result.

On 14.02.2008 at 13.45 hrs. Sri Sankar Prasad Maity, father of the victim Ratna Maity lodged the written complaint on the basis of which Tamluk P.S. case No. 24/2004 dated 14.02.2008 under Section 376(2)g of IPC was started against accused persons.....”

- 17.** Prosecution witness - 1 is the complainant and the father of the victim.

This witness has explained the delay in lodging the FIR. It appears that there was a talk of settlement but as nothing was done, the complaint was lodged.

- 18.** As per the interpretation by the Interpreter, the evidence of the victim (P.W.4) was recorded. It appears that the victim was lured with the promise of a mobile and money and taken to a house, where her mouth was gagged and her wearing appeals torn.

- 19.** P.W. 5, 6, 7, 8, 9, 16, 17 are witnesses who saw the victim identify the accused persons just after the incident as the persons who had raped her. They have further stated that the accuseds confessed their guilt and their guardian under took to compromise.

- 20.** P.W.7 in his cross examination has stated that a ‘Salish’ had taken place and that he gave the said paper to the police.

21. P.W.10 is the medical officer, who examined the victim on 15.02.2008 at Purba Midnapur District Hospital at Tamluk.

On examination the doctor/witness found as follows:-

- 1) *On examination of body – **no external injury seen.***
- 2) *On examination of breast – **no injury seen.***
- 3) *On examination of perineum – Thighs are normal, no mark of injury seen on vulvae and vaginal orifice. **Hymen remains intact.** Admits just tip of index finger. No white discharge or blood stained discharge seen pv, no foreign bodies seen in vagina.*

The medical report has been marked as exhibit - 7.

22. P.W.11, is the doctor who examined the appellant/accused.

23. P.W.12 is the mother of the victim and has stated that the victim was taken away when this witness was talking to her sister in the kitchen and the victim was watching T.V. **The victim is deaf and dumb.**

24. P.W.14, the uncle of the victim, has corroborated the incident that the victim was in his house, when she was taken away.

25. P.W.18 is the medical officer who conducted the ossification test of the victim. The final opinion given is that the age of the victim was between **17 years to 19 years** on the date of examination.

26. From the documentary evidence and the material exhibits, it appears that exhibit-3 is the Birth Certificate of the victim. Her date of birth is registered as 09.11.89.

27. The incident in this case occurred on 10.02.2008.

28. The victim was thus aged more than 18 years.

29. Exhibit 7 is the medical report of the victim. The medical opinion of the doctor is as follows:-

*“on exam of basis - **no injuries.***

*-Thighs are normal, **no mark of injury seen on vulvae and vaginal orifice. Hymen remains intact.** Admits just tip of index finger. No white discharge or blood stained discharge seen pv, no foreign bodies seen in vagina.”*

30. It appears that the trial court rightly held that there was no evidence of either rape or attempt to commit rape and the appellants were convicted of the offence punishable under Section 354 IPC.
31. The **Supreme Court** in the case of **Tarkeshwar Sahu vs State of Bihar (Now Jharkhand), Appeal (Crl.) 1036 of 2005, on 29.09.2006**, laid down the ingredients required to prove charge under Section 354 IPC. The **Bench of Justice S. B. Sinha and Justice Dalveer Bhandari**, held:-

“Section 354 IPC reads 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 may extend to two years, or with fine, or with both."

So far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of the women or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence.

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 is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex.

'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".

The ultimate test *for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady.*

The word 'modesty' is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex.

We deem it appropriate to reproduce the cases of various Courts indicating circumstances in which the Court convicted the accused under Section 354 IPC.

In State of Kerala v. Hamsa, it was stated as under:-

"What the legislature had in mind when it used the word modesty in Sections 354 and 509 of the Penal Code was protection of an attribute which is peculiar to woman, as a virtue which attaches to a female on account of her sex. Modesty is the attribute of female sex and she possesses it irrespective of her age. The two offences were

created not only in the interest of the woman concerned, but in the interest of public morality as well. The question of infringing the modesty of a woman would of course depend upon the customs and habits of the people. Acts which are outrageous to morality would be outrageous to modesty of women. No particular yardstick of universal application can be made for measuring the amplitude of modesty of woman, as it may vary from country to country or society to society."

A well known author Kenny in his book "Outlines of Criminal Law" has dealt with the aspect of indecent assault upon a female. The relevant passage reads as under:-

"In England by the Sexual Offences Act, 1956, an indecent assault upon a female (of any age) is made a misdemeanour and on a charge for indecent assault upon a child or young person under the age of sixteen it is no defence that she (or he) consented to the act of indecency."

In the case of State of Punjab v. Major Singh , a three-Judge Bench of this Court considered the question whether modesty of a female child of 7 months can also be outraged. The majority view was in affirmative. Bachawat, J., on behalf of majority, opined as under: "The offence punishable under section 354 is an assault on or use of criminal force to a woman the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define, "modesty". What then is a woman's modesty?

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 Section 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 anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section.

A female of tender age stands on a somewhat different footing. Here body is immature, and her sexual powers are dormant. In this case, the victim is a baby seven and half months old. She has not yet developed a sense of shame and has no awareness of sex. Nevertheless from her very birth she possesses the modesty which is the attribute of her sex."

In Kanhu Charan Patra v. State , the Orissa High Court stated as under:-

"The accused entered the house and broke open the door which two girls of growing age had closed from inside and molested them but they could do nothing more as the girls made good their escape. On being prosecuted it was held that the act of accused was of grave nature and they had committed the same in a dare devil manner. As such, their conviction u/s 354/34 was held proper."

The High Court of Delhi in the case of Jai Chand v. State observed as under:-

"The accused in another case had forcibly laid the prosecutrix on the bed and broken her pyzama's string but made no attempt to undress himself and when prosecutrix pushed him away, he did make no efforts to grab her again. It was held that it was not attempt to rape but only outraging of the modesty of a woman and conviction u/s 354 was proper."

In Raja v. State of Rajasthan , it was stated as under:-

"The accused took the minor to solitary place but could not commit rape. The conviction of accused was altered from Section 376/511 to one u/s 354."

The Court in State of Karnataka v. Khaleel stated as follows:

"The parents reached the sugarcane field when accused was in process of attempting molestation and immediately he ran away from the place. There was no evidence in support of allegation of rape and accused was acquitted of charge u/s 376 but he was held liable for conviction under section 354/511 IPC."

The Court in Nuna v. Emperor stated as follows:-

"The accused took off a girl's clothes, threw her on the ground and then sat down beside her. He said nothing to her nor did he do anything more. It is held that the accused committed an offence under Section 354 IPC and was not guilty of an attempt to commit rape."

The Court in Bishewhwar Murmu v. State stated as under:-

"The evidence showed that accused caught hold hand of informant/victim and when one of the prosecution witnesses came there hearing alarm of victim, offence u/s 376/511 was not made out and conviction was converted into one u/s 354 for outraging modesty of victim."

The Court in Keshab Padhan v. State of Orissa stated as under:-

"The test of outrage of modesty is 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 the instant case, the girl was 15 years of age and in the midnight while she was coming back with her mother the sudden appearance of the petitioner from a lane and dragging her towards that side

sufficiently established the ingredients of Section 354."

The Court in Ram Mehar v. State of Haryana stated as under:-

"The accused caught hold of the prosecutrix, lifted her and then took her to a bajra field where he felled her down and tried to open her salwar but could not do so as in order to make the accused powerless the prosecutrix had injured him by giving a blow of the sickle. The accused failed to give his blood sample with the result it could be presumed that his innocence was doubtful. Ocular evidence of prosecutrix was also corroborated by other evidence. It was held that conviction of accused u/s 354, 376/511 was proper but taking the lenient view only two years RI and a fine of Rs.1000/- was imposed on him."

In the case of Rameshwar v. State of Haryana , the Court observed as follows:-

"Whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependant on the nature of the offence and the steps necessary to take in order to commit it. The difference between mere preparation and actual attempt to commit an offence consists chiefly in the greater degree of determination. For an offence of an attempt to commit rape, the prosecution must establish that it has gone beyond the stage of preparation."

The Court in Shokut v. State of Rajasthan stated as follows:-

"The accused took the prosecutrix nurse for the purpose of attending a patient but on way he tried to molest her and beat her also. The accused was held guilty u/s 354/366 IPC as he by deceitful means had taken the prosecutrix from her house and had then outraged her modesty."

32. So the ultimate test to ascertain if the modesty of a woman has been outraged, is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman.

33. The act of taking away a woman by gagging her mouth, removing her clothes and touching her private parts clearly proves that the modesty of the victim has been outraged by the Appellants. The action of the appellants are clearly capable of shocking the scene of decency of a women *(Tarkeshwar Sahu vs State of Bihar (Now Jharkhand) (Supra))*. The victim has stated her case on oath before the trial court.

34. The conduct of the Appellants proved by way evidence adduced clearly proves that the prosecution has clearly proved beyond all reasonable doubt that the Appellants have committed the offence under Section 354 IPC.

35. Thus considering the materials on record and the judgment under appeal, this Court finds no reason to interfere with the judgment under appeal.

36. CRA 81 of 2016 is dismissed.

37. The Judgment and Order dated 02.12.2015 passed by the Learned Additional Sessions Judge Fast Truck Court 1st Court, Tamluk in Sessions Case No. 492 (September) 2008 (Sessions Trial No. 28(4)2013) arising out of Tamluk Police Station Case No. 24 of 2008 dated 14.02.2008 thereby convicting the appellants for the

commission of an offence punishable under Section 354 of the Indian Penal Code and sentencing them to suffer simple imprisonment for 4 months with fine of Rs. 1000/- in default to suffer simple imprisonment for 1 month, **is hereby affirmed.**

38. The appellants are to surrender before trial court within a period of 15 days from date of communication of this order, to serve out their sentence.

39. In case the appellants fail to appear as directed, the trial court to proceed in accordance with law.

40. All connected applications, if any, stand disposed of.

41. Interim order, if any, stands vacated.

42. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

43. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)