

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1576 of 2019

Sujit Mondal

Vs

The State of West Bengal.

For the Petitioner : Mr. Kusal Kr. Mukherjee,
Ms. Suchismita Dutta.

For the State : Ms. Puspita Saha.

Hearing concluded on : 05.03.2024

Judgment on : 10.04.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against a Judgment and Order of conviction/sentence dated 11th April 2019 passed by the Judge, Bench-1, City Session Court, Calcutta in connection with Criminal Appeal No. 86 of 2014 which is arising out of Burrabazar Police Station Case No. 160 of 2013 dated 25.03.2013 under Section 354 of IPC which corresponds to G.R. No. 1004 of 2013 and thereby up held the order and judgment of the Learned Metropolitan Magistrate, 21st Court, Calcutta.
2. The petitioner's case is that he was put on trial before the Learned Metropolitan Magistrate, 21st Court, Kolkata (hereinafter referred to as the Learned Magistrate), to answer the charge framed for the commission of offence punishable under Section 354 of the Indian Penal Code.
3. **The prosecution case is as follows:-**
 - i) *That the victim a South Korean Lady, on 25th March, 2013, at about 6.30 hrs. when she got up into the bus, of route no. 12D from Thakurpukur, then a group of 15/20 persons also got up into the bus and one person of the said group outraged the modesty of the victim by touching her breast several times in spite of repeated warning. After that time victim got down on the Strand Road at the crossing of Raja Woodmound Street and the said boy and his group tried to flee away from there but they were intercepted by police and then he disclosed his identity as Sujit Mondal. In the meantime, police from*

Burrabazar Police Station arrived at the spot and the complaint was lodged against the present Petitioner.

- ii) *On the basis of the aforesaid complaint Burrabazar Police Station Case No. 160/2013, dated 25.03.2013, alleging commission of offences punishable under Sections 354 of the Indian Penal Code was registered against the Petitioners and after completion of the investigation, the Investigating Agency submitted Charge Sheet in final form under Section 354 of the Indian Penal Code against the Petitioner.*

4. On completion of trial, the petitioner was convicted vide judgment and order dated 07.08.2014 passed by the Learned Metropolitan Magistrate, 21st Court, Kolkata and sentenced to undergo simple imprisonment for two years and to pay a fine of Rs. 2000/- and in default thereof he shall be liable to undergo further imprisonment of 15 days for the commission of offence punishable under Section 354 of the Indian Penal Code.
5. The petitioner preferred an appeal against the judgment and order passed by the Learned Magistrate, before the Learned Chief Judge, City Sessions Court which was registered as Criminal Appeal No. 86 of 2014. The Learned Judge after hearing the Learned Advocates of the respective parties was pleased to uphold the judgment and order of the Learned Magistrate.
6. Hence the revision.
7. During trial the prosecution examined 12 witnesses including the victim.

8. Documents, including the written complaint (Exhibit 1 series) and the statement of the victim under Section 164 Cr.P.C. (Exhibit 3 Series) have been proved.
9. **The victim as prosecution witness (P.W.1) has clearly stated on oath as follows:-**

“She came to India for her computer studies from her country South Korea. She has further stated that on 25th March, 2013 at about 6.30AM she was standing with her elder sister and two others at 3A Bus Stand at Thakurpukur for going to Burrabazar to purchase flowers. After some time a bus of route no. 12D came and as there was crowd at the bus stand, one person from behind touched her chest and she removed the hand. Again the person put his hand on her chest. When she got into the bus, the person also boarded into the bus. She has also stated that those persons were speaking about her from behind and were passing bad remarks and were disturbing her in the bus from Thakupukur to Burrabazar. When she got down at Burrabazar bus stand, her friend Bandana called the police and the matter was informed to police. After that another person in plain cloth came and took them to Burrabazar.”

10. P.W. 2 and P.W. 3 have corroborated the evidence of the de facto complainant.
11. 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 woman 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."

- 12. 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.

13. In the present case, the conduct/action of the appellant/offender is such that it is capable of shocking the sense of decency of a women. By touching the victim inappropriately time and again in spite of protest is a case where the modesty of the victim has been clearly outraged.
14. The evidence of the eyewitnesses and the statement of the victim has clearly proved the case by reasonable doubt against the petitioner.
15. **CRR 1576 of 2019 is dismissed.**
16. The judgment under revision requires no interference being in accordance with law and is thus affirmed.
17. **The petitioner/convict is directed to surrender before the trial Court within one month from the date of communication of this order failing which the trial Court shall proceed in accordance with law.**
18. All connected applications, if any, stand disposed of.
19. There will be no order as to costs.
20. Interim order, if any, stands vacated.
21. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

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

(Shampa Dutt (Paul), J.)