

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 507 of 2017

Baburam Murmu

Vs

The State of West Bengal

For the Appellant : Mr. Santanu Talukder.

For the State : Mr. Debashis Roy, Ld. P.P.
Mr. Saryati Datta.

Hearing concluded on : 22.03.2024

Judgment on : 26.04.2024

Shampa Dutt (Paul), J.:

The Appeal:-

1. The present appeal has been preferred against the Judgment and Order dated 25.07.2017 passed by the Additional Sessions Judge, Khatra District – Bankura in Session Case No. 2[6] of 2014 in Session Trial no. 2[2] of 2015 whereby convicting the appellant u/s 354 of the IPC and sentencing him to suffer rigorous imprisonment for two (2) years and six (6) months and pay fine of Rs. 1000 i.d. to suffer simple imprisonment for 2 months.

The prosecution:-

2. **The defacto complainant/victim lodged the complaint on 01.09.2015 stating therein that:-**

“I am Schedule Tribe, last on 07.03.2014 morning approximately at 8.00 A.M. Village’s man Baburam Murmu, Father – Lakshmiram Murmu in front of house, in a lonely place he pulling my hands, he abducted me in a open field. On hearing my shouting three peoples saved my life from the other side of the field. The said Baburam Murmu told me that if expressed to the other peoples I will finished you.”

3. Eight (8) witnesses were examined by the prosecution and documents for the prosecution have been marked Exhibit-1 to 6.
4. Both sides have filed their written argument.

The Evidence:-

5. Exhibit 1 is the Written Complaint.

6. Exhibit 2 is the medical report of the victim/de facto complainant aged 40 years. The report has ruled out any incident of forceful sexual intercourse.
7. Exhibit 6 is the statement of the victim recorded under Section 164 Cr.P.C. She has stated that she was raped by the accused.
8. The accused/Appellant faced trial for offence punishable under Sections 354/376/506 of IPC.

Analysis of Evidence:-

9. Prosecution witness 1 is the alleged victim/de facto complainant, who has stated that she was raped by the Appellant.
10. It appears from the record that she stated about the rape for the first time before the Magistrate while her statement was being recorded under Section 164 of Cr.P.C.
11. **There is absolutely no allegation of rape in her written complaint which was filed on 10.03.2014, three days after the alleged incident on 07.03.2014.**
12. This witness stated in her written complaint that the appellant abducted her and on hearing her shouting three people saved her life.
13. In her statement under Section 164 of Cr.P.C. she has alleged rape for the first time and has denied that she shouted at that time.
14. Considering the said contradiction in the written complaint and the evidence including the statement recorded under Section 164 of Cr.P.C., the trial Court convicted the appellant for offence punishable

under Section 354 of IPC and sentenced him to suffer rigorous imprisonment for two (2) years and six (6) months and pay fine of Rs.1000 (Rupees One Thousand Only), in default, to suffer simple imprisonment for 2 (two) months.

15. Hence the appeal.
16. From the materials and evidence on record, it is proved that on the date of incident the appellant by pulling the hand of the victim tried to abduct her, when she had been to the field alone to collect potatoes between 7 a.m. to 8 a.m.
17. The delay in filing the FIR has been duly explained by the Learned Trial Judge.

18. Section 354 of IPC, lays down:-

“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 shall not be less than one year but which may extend to five years, and shall also be liable to fine.

Ingredients of offence. -The essential ingredients of the offence under sec. 354 are as follows:-

- (1) A woman was assaulted or subjected to use of assault criminal force on her; and*
- (2) The intention of the accused was to outrage her modesty - Vidyadharan v State (2004)1 SCC 215; or*
- (3) The accused knew that her modesty will be outraged thereby.*

In Raja Pandurang v State (2004) 4 SCC 371: AIR 2004 SC 1677: 2004 Cr LJ 1441, the apex court has laid down the essential ingredients of offence under sec. 354 as under:-

- (a) that the assault must be on woman;
- (b) that the accused must have used criminal force on her; and
- (c) that the criminal force must have been used on the woman intending thereby to outrage her modesty or knowing that his acts would likely to outrage her modesty."

19. 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."

20. 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.

21. In the present appeal it has been proved beyond reasonable doubt that the victim's modesty was outraged. Accordingly the conviction under Section 354 of IPC being in accordance with law is affirmed.

22. But the sentence is modified as follows:-

The appellant to suffer imprisonment for one year and pay a fine of Rs. 1000/- in default S.I. for 2 months.

23. CRA 507 of 2017 is disposed of.

24. Appellant's bail bond stands cancelled.

25. Appellant is directed to surrender within 30 days from the date of communication of this order, failing which, trial Court to proceed in accordance with law.

- 26.** All connected applications, if any, stand disposed of.
- 27.** Interim order, if any, stands vacated.
- 28.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 29.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)