

PREMIYA @ PREM PRAKASH  
v.  
STATE OF RAJASTHAN  
(Criminal Appeal No. 1504 of 2008)

SEPTEMBER 22, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA J.]

*Penal Code, 1860:*

*s. 354 – Essential ingredients – Held: Person assaulted must be a woman – Accused must have used criminal force on woman intending thereby to outrage her modesty – Mere knowledge that modesty of woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object – On facts, from the evidence of prosecutrix, it is clear that accused outraged her modesty but did not raped her – Thus, taking into account the evidence and other aspects, conviction of accused u/s 376 altered to one u/s. 354 – Accused having undergone two years of sentence, custodial sentence would be the period already undergone.*

*s. 228-A – Object of – Held: Is to prevent social victimization or ostracism of victim of sexual offence – It makes printing or publishing name of any matter which may make known the identity of any person against whom offence u/ss 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed punishable – It would be appropriate that in the judgments of Supreme Court, High Court or lower Court, name of victim should not be indicated – Thus, on facts name of victim is not mentioned.*

*Offence of rape – Meaning of.*

**According to the prosecution case, on the fateful day, the appelland committed rape on the prosecutrix. She tried to resist but the accused threatened to kill her. She**

A again cried for help and PW-2-aunt-in-law came there. Thereafter, accused fled from the place of occurrence. Next day FIR was lodged. The prosecution was medically examined. The investigation was carried out. The witnesses were examined. Trial court relying on the evidence of prosecutrix and PW 2, convicted the accused u/s 376 IPC and imposed 7 years imprisonment. High Court upheld the order. Hence the present appeal.

Allowing the appeal, the Court

C HELD: 1.1 On a close reading of the evidence of the prosecutrix, it is clear that the accused outraged the modesty but had not raped her. Prosecutrix has not stated specifically about the act, but has loosely described as "fondling". There was no unexplained delay in lodging the FIR. So far as absence of the injury on the private parts of the prosecutrix is concerned, admittedly she was a married lady. So far as the enmity with aunt of husband of the prosecutrix is concerned it is un-natural that a married lady belonging to the rural areas would falsely implicate the accused with whom she or her husband had no enmity. [Paras 9 and 10] [774-D-F]

F 1.2 In order to constitute the offence under Section 354 IPC mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under Section 354 IPC are that the person assaulted must be a woman; that the accused must have used criminal force on her; and that the criminal force must have been used on the woman intending thereby to outrage her modesty.[Para 12] [775-F-G]

H *State of Punjab v. Major Singh* AIR 1967 SC 63 – referred to.

1.3 Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. In the instant case after careful consideration of the evidence, the trial court and the High Court have found the accused guilty. But the offence is under s. 354 IPC. The conviction of the accused is altered from Section 376 IPC to Section 354 IPC. The accused has undergone nearly two years of sentence. The occurrence is of 1987. Custodial sentence shall be the period already undergone. [Paras 13 and 14] [776-B-E]

*Co. Litt. 123-b; 1 Hon.6, 1a, 9 Edw. 4, 26 a, Hale PC 628; "Criminal Law" by Stephen 9th Ed. p.262; 'Encyclopoedia of Crime and Justice' Volume 4, p 1356; Halsbury's Statutes of England and Wales Fourth Edition Volume 12 – referred to.*

2. Section 228-A IPC makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. The restriction does not relate to printing or publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in

A the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated. It is chosen to describe her as 'victim' in the judgment. [Para 3] [772-H; 773-A-C]

B *State of Karnataka v. Puttaraja* 2003 (8) Supreme 364;  
*Dinesh alias Buddha v. State of Rajasthan* 2006 (3) SCC 771  
– referred to.

#### Case Law Reference

	2003 (8) Supreme 364	Referred to.	3
C	2006 (3) SCC 771	Referred to.	3
	AIR 1967 SC 63	Referred to.	12

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal  
No. 1504 of 2008

D From the final Judgment and Order dated 3.07.2007 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Appeal No. 243 of 1988

Ajit Kumar Pande for the Appellant.

E Kumar Kartikay, Ranivijay and Jatinder Kumar Bhatia for the Respondent.

The Judgment of the Court was delivered by

F **Dr. ARIJIT PASAYAT, J.** 1. Leave granted.

G 2. Challenge in this appeal is to the judgment of a learned Single Judge of the Rajasthan High Court at Jodhpur dismissing the appeal filed by the appellant and upholding his conviction for offence punishable under Section 376 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of 7 years imprisonment as was imposed by learned Additional Sessions Judge No.2, Hanumangarh.

H 3. We do not propose to mention name of the victim. Section 228-A of IPC makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any

matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction, does not relate to printing or publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as 'victim' in the judgment. (See *State of Karnataka v. Puttaraja* (2003 (8) Supreme 364 and *Dinesh alias Buddha v. State of Rajasthan* (2006 (3) SCC 771).

4. Background facts in a nutshell are as follows:

On 26.8.1987 at 1.30 p.m. the prosecutrix filed a report (Ex.P-1) that on the preceding day i.e. 25.8.1987 in the morning at about 9.00 or 9.30 a.m. that when she went to the field of Bhinya Raika and was returning back to village Biradhwal, accused Premiya all of a sudden came and caught hold of her. Thereafter, the accused Premiya threw her on the ground, put off his "Pajama", lifted her "Ghaghra" and committed rape on her. When she tried to resist, accused Premiya gave a blow on her eye and threatened to kill her, if she made any sound. When she again cried for help, her aunt-in-law Mst. Chandkauri (PW.2) came and challenged him. Upon this, accused Premiya fled away from the place of occurrence. The medical examination of prosecutrix was got conducted on 26.8.1987 by doctor at 2.00 PM. After investigation, the challan was filed against the accused. The accused was charged for offence punishable under Section 376 IPC to which he pleaded not guilty. During trial, the prosecution examined seven witnesses. The statement of accused Premiya was recorded under Section 313 of the Code of Criminal Procedure, 1973. He produced one Ramlal as DW1 in his defence. After hearing, the learned trial Judge convicted and sentenced the accused Premiya as noted above.

A 5. The learned trial Judge relied on the evidence of victim and Chandkauri (PW-2) who was stated to be an eye witness.

6. In appeal, the conclusions of the learned Additional Sessions Judge for convicting the appellant and sentencing him were affirmed.

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7. In support of the appeal, learned counsel for the appellant submitted that the High Court did not consider very relevant aspects viz. the delay in lodging the First Information Report, absence of injury and the admitted enmity between PW-2 and accused as affirmed by Laxman, the husband of the prosecutrix.

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8. Learned counsel for the respondent-State on the other hand supported the judgments of the trial Court and the High Court.

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9. Certain factual aspects need to be noted. There was no unexplained delay in lodging the FIR. So far as absence of the injury on the private parts of the prosecutrix is concerned, admittedly she was a married lady. But on a close reading of the evidence of the prosecutrix, it is clear that the accused outraged the modesty but had not raped her. Prosecutrix has not stated specifically about the act, but has loosely described as "fondling"

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10. So far as the enmity with aunt of Laxman (PW-4) the husband of the prosecutrix is concerned it is un-natural that a married lady belonging to the rural areas would falsely implicate the accused with whom she or her husband had no enmity.

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11. The offence of rape occurs in Chapter XVI of IPC. It is an offence affecting the human body. In that Chapter, there is a separate heading for 'Sexual offence', which encompasses Sections 375, 376, 376-A, 376-B, 376-C, and 376-D. 'Rape' is defined in Section 375. Sections 375 and 376 have been substantially changed by Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act, i.e. 376-A, 376-B, 376-C and 376-D. The fact that sweeping changes

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were introduced reflects the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is 'the ravishment of a woman, without her consent, by force, fear or fraud', or as 'the carnal knowledge of a woman by force against her will'. 'Rape' or 'Raptus' is when a man hath carnal knowledge of a woman by force and against her will (Co. Litt. 123-b); or as expressed more fully, 'rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will' (Hale PC 628). The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape; 1 Hon.6, 1a, 9 Edw. 4, 26 a (Hale PC 628). In the crime of rape, 'carnal knowledge' means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation (Stephen's "Criminal Law" 9<sup>th</sup> Ed. p.262). In 'Encyclopaedia of Crime and Justice' (Volume 4, page 1356) it is stated ".....even slight penetration is sufficient and emission is unnecessary". In Halsbury's Statutes of England and Wales (Fourth Edition) Volume 12, it is stated that even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation with violence of the private person of a woman-an-outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order.

12. In order to constitute the offence under Section 354 IPC mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. (See *State of Punjab v. Major Singh* (AIR 1967 SC 63). A careful approach has to be adopted by the court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under Section 354 IPC are as under:

- (i) that the person assaulted must be a woman;

- A (ii) that the accused must have used criminal force on her; and
- (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

B 13. Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. In the instant case after careful consideration of the evidence, the trial court and the High Court have found the accused guilty. But the offence is Section 354 IPC.

E 14. In the instant case we alter the conviction of the accused from Section 376 IPC to Section 354 IPC. The accused has undergone nearly two years of sentence. The occurrence is of 1987. Custodial sentence shall be the period already undergone. Appellant shall be released forthwith unless required in custody in connection with any other case.

F 15. The appeal is allowed.

N.J.

Appeal allowed.