

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2008
(Arising out of (SLP (Crl.) No.7428 of 2007)

Premiya @ Prem Prakash

....Appellant

Versus

State of Rajasthan

....Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
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.

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 Biradhwai, accused Premiya all of a sudden came and caught hold of her. Thereafter, the accused Premiya threw her on the ground, put off his "Paijama", 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.

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.

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.

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

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”

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.

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 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" 9th Ed. p.262). In 'Encyclopoedia 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;
- (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.

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.

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.

15. The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
September 22, 2008