

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.134 of 2012

MUSABHAI YAKUBBHAI JHALARA

..... APPEL

LANT

VERSUS

STATE OF GUJARAT

..... RESPONDEN

T

O R D E R

the 1. This appeal has been preferred against

judgment dated 12th July, 2011 of the High Court of Gujarat at Ahmedabad upholding the conviction and sentence of the appellant awarded by the trial Court under Sections 366 and 354 of the Indian Penal Code [for short "IPC"], with the modification that the sentence under Section 366 of the IPC, has been reduced to rigorous imprisonment for two and half years with fine but under Section 354 sentence for one year, has been affirmed.

been

12th

2. The case of the complainant is that on

September, 1989, she hired an auto rickshaw from the railway station for going to her house at 12.30 A.M.

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Sushil Kumar Rakheja
Date: 2015.05.20
12:00:40 IST
Reason:

along with another lady companion. After dropp

ing

the other companion at her house, the complainant was

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left alone. The accused instead of dropping her at

her house, speeded up the rickshaw and suggested that

he will take her for a stroll.

When she cried, he

put his hand on her mouth to stop her from shouting.

In the process, she gave a bite on fingers of hand of the accused and jumped out of the rickshaw. Other persons were attracted on hearing her shouts on which the accused ran away. She went to police station and lodged the First Information Report. After investigation, the accused was sent up for trial.

The accused was charged under Sections 366 and 354 IPC. The trial Court accepted the above version of the prosecutrix which was supported by medical evidence as to existence of injury on fingers of accused and convicted and sentenced him, which has been confirmed by the High Court with the modification noticed above.

3. Learned counsel for the appellant submitted that no offence under Section 366 IPC was made out as the ingredient of the said offence is kidnapping or abducting the woman with intent to compel her for marriage against her will or in order that she may be forced or seduced to illicit inter course. In the present case, the prosecution version does not contain the ingredients of the said offence. It was

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submitted that offence under Section 354 IPC was also not made out as the appellant did not assault or use criminal force intending to outrage the modesty of the prosecutrix. Alternatively, sentence awarded against the appellant may be reduced having regard to the fact that the appellant has already undergone imprisonment for about 4 months. It is pointed out that as per certificate dated 4th November, 2011 issued by the Deputy Superintendent, Jail, the appellant had undergone 3 months and 24 days and adding further period till he was released on bail in pursuance of order dated 25th November, 2011, the appellant has already suffered imprisonment for more

than 4 months.

4. We asked learned counsel for the State as to how charge under Section 366 IPC could be held to be established even if the entire version of the complainant is accepted as true. Learned counsel for the State is unable to show as to how the said charge can be held to have been established in the absence of the ingredients of the said offence. In Chot

Lal and Anr. vs. State of Haryana, it was observed :

"2. Having appreciated the entire facts and circumstances of this case, we are of the view that the conviction of neither of the appellants on any of the

1979 (4) SCC 336

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counts can be maintained. The High Court has failed to record any finding which was necessary to be recorded for the purpose of maintaining their conviction under Section 366, Indian Penal Code. By merely finding that they abducted Lajwanti, the charge under Section 366 could not be held to have been proved. It was further necessary to find that they abducted the woman for any of the purposes mentioned in Section 366. In the absence of such a finding that charge fails against both the appellants."

5. We are thus of the opinion that the conviction and sentence awarded to the appellant under Section 366 IPC is liable to be set aside.

6. As regards charge under Section 354 IPC, we are of the view that the version of the complainant does make out a case. There is no reason to disbelieve the complainant as in our society no woman will put her honour on stake unless she has reason to falsely implicate a person. Admittedly FIR was lodged with the police station immediately after the occurrence, in the night itself and the complainant had no motive against the appellant. According to the complainant, the appellant did not drop her at her house and tried

to forcibly take her away to some other place against her wish to which she reacted and gave a bite on the fingers of his hand. He also told her that instead of dropping her at her house, he will forcibly take

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her for a stroll. This did offend her dignity and in protest she raised alarm. This conduct of the accused attracts Section 354 IPC. In *Rupan Deol Bajaj and Anr. vs. Kanwar Pal Singh Gill and Anr.*, it was observed :

"14. Since the word 'modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (3rd Edn.) modesty is the quality of being modest and in relation to woman means "womanly propriety of behavior; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety, in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.) the meaning of the word 'modesty' is given as "womanly propriety of behavior; 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".

7. In view of the above, we uphold the conviction of the appellant under Section 354 IPC but having regard to the facts and circumstances of the case, we are of the view that the ends of justice will be met if the sentence awarded to the appellant is reduced to the

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(1995) 6 SCC 194

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period already undergone.

8. The appeal is disposed of accordingly.

The

appellant is on bail. He shall be discharged of his

bail bond.

.....J.
[V. GOPALA GOWDA]

.....J.
[ADARSH KUMAR GOEL]

NEW DELHI
SEPTEMBER 04, 2014

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ITEM NO.110

COURT NO.13

SECTION IIB

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Criminal Appeal No(s). 134/2012

MUSABHAI YAKUBHAI JHALARA

Appellant(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

(With appln. (s) for stay)

Date : 04/09/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. A. Rasheed Qureshi, Adv.
For Mr. Dharmendra Kumar Sinha, Adv.

For Respondent(s) Ms. Hemantika Wahi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order.
appellant is on bail. He shall be discharged of his bail bond.

The

(S.K. RAKHEJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)