

IN THE COURT OF MS. SUJATA KOHLI, PRINCIPAL DISTRICT & SESSIONS JUDGE-CUM-SPECIAL JUDGE (PC ACT) (CBI), ROUSE AVENUE DISTRICT COURT COMPLEX, NEW DELHI

Criminal Revision No.12/2020

State (Govt. of NCT of Delhi) Vs. Narayan Dutt Sharma

30.09.2020

ORDER ON REVISION PETITION

1. Matter has been taken up in terms of orders of Hon'ble High Court bearing no. 26/DHC/2020 dated 30.07.2020 and 322/RG/DHC/2020 dated 15.08.2020, through "Hyperlink URL for Conferencing Via Cisco Webex."
2. The short question, that seems to arise out of this revision is, as to whether, the acts alleged, amounted to insulting the modesty of the complainant, or not.
3. The State (Govt. of NCT of Delhi) has preferred this Revision Petition against one part of the impugned order dated 13.01.2020 passed by Sh. Vishal Pahuja, Ld. ACMM, Rouse Avenue District Court, New Delhi whereby Ld. Trial Court has discharged the accused also of the offence u/s 509 IPC besides all the other offences alleged. This revision is limited to only the offence alleged u/s 509 IPC.

Brief Facts:

4. As per prosecution case on 24.03.2018 an FIR was registered on a complaint of a lady named Alka Rawal. It is alleged that on 17.03.2018 at about 12.30 PM an ugly and unwarranted incident happened with the complainant Ms. Alka Rawal, CDPO, ICDS Project Badarpur at her office i.e. Department of Women and Child Development when she received a call on her mobile no. i.e. 09650944286 from the office of MLA i.e. the accused. The accused started shouting at her, by using derogatory, unparliamentary, abusive and insulting language i.e. "*tu hai kya? Kya samajhti hai apne aap ko? Naukri karna sikha dunga. Bahut bakwaas kar li tum logo ne. kutte ki jaat dikha di, teri jaisi ko theek karna aata hai, afsari karti hai, inquiry karva dunga, anjam bhugtegi*".

5. It is further stated that the reason for his angry, abusive, insulting, unparliamentary behaviour was that anganwadi center no. 41 running from the house of Anganwadi worker Suman was to be shifted in view of the implementation of the direction of order dated December, 19, 2017 issued by the department for shifting of AWC to safer places for the beneficiaries from 0-6 years; for better functioning of center and she has been objecting to the same.

6. It is the case of the prosecution that the accused tried to obstruct the complainant being public servant from discharging her public functions and

threatened her in an abusive and derogatory language. Hence, charge sheet U/S 186/189/506/509 IPC has been filed against the accused.

7. By the impugned order, Ld. Trial Court discharged the accused for all the offences alleged.

8. **Contention raised on behalf of the revisionist:-**

- (i) Ld. Trial Court failed to appreciate that the complainant specifically mentioned in her complaint as well as in her statement u/s 164 CrPC that accused used derogatory words against the complainant.
- (ii) Ld. Trial Court has observed contrary from the record of this case that accused has not uttered any word or made any sound gesture with intention to insult modesty of a woman. Rather complainant has specifically mentioned the words used by the accused/respondent in her complaint, which in itself sufficient to insult the modesty of a woman.
- (iii) The words used by accused are capable of shocking the sense of decency of a woman.
- (iv) Ld. Trial Court based its findings on surmises and conjectures for the discharge of accused U/s 509 IPC.
- (v) There is nothing to disbelieve the version of the complainant at this stage.

- (vi) The meticulous examination of the material provided by prosecution is not required at the stage of charge, rather court has to see only as to whether grave suspicion exists or not.
- (vii) At the stage of charge, law is well settled that if the material provided by prosecution is accepted as it is, it disclose prime facie case against the accused.

9. **Contentions raised on behalf of accused/respondent**

The incident occurred on 17.03.2018 and FIR was lodged on 24.03.2018. This delay of around one week in lodging the FIR is not explained by the complainant. Therefore, the complaint filed by the complainant is an afterthought story.

- (i) As per prosecution case, the alleged telephonic conversation between the complainant and respondent was of around 13 minutes, however, only 4-5 sentences have been mentioned by the complainant in her complaint to the police as well as statement u/s 164 CrPC. The remaining conversation has not been brought on record.
- (ii) The complainant stated in her statement u/s 164 CrPC that the accused/respondent started using derogatory, unparliamentary, abusive and insulting language, as soon as she connected herself to him on phone. It has not been stated in the complaint that what was her response to the said language.

- (iii) If the utterances by the accused/respondent are taken at their face value, there is no such word which may amount to insult to the modesty of a woman.
- (iv) The impugned order is very elaborate and reasoned order.
- (v) The present revision petition is politically motivated as the accused/respondent was an MLA from AAP party from Badarpur constituency. Later on he left the said party and joined BSP Party and was a rival candidate of the AAP party during the election in 2020, so it is just to settle the score with the respondent the present revision petition is filed on the direction of AAP Party Govt. in Delhi.
- (vi) This case is false and frivolous and the accused/respondent had never used any language to any woman which may cause insult to the modesty of a woman.

10. I have perused the record including the impugned order as well as written submissions filed on behalf of accused/respondent, carefully and have also given my thoughtful consideration to the facts of the case.

11. At the outset I deem it necessary to refer to that part of the impugned order, whereby Ld. Trial Court has dealt with the offence alleged u/s 509 IPC:-

“8. The other section which have been mentioned in the charge sheet is 509 IPC. It is the argument of the Ld. APP for the state that the abusive and un-parliamentary language used by the accused

against the complainant falls under the category of offence u/s 509 IPC. The emphasis of the prosecution to invoke the present provision of IPC is on the words used by the accused. In order to appreciate the applicability of this provision, the alleged contents are reproduced as below:-

“tu hai kya? Kya samajhti hai apnea ap ko? Naukri karna sikha dunga. Bahut bakwaas kar Ii tum logo ne. kutte ki jaat dikha di, teri jaisi ko theek karna aata hai, afsari karti hai, inquiry karva dunga, anjam bhugtegi”

9. *Section 509 IPC reads as :-*

Word, gesture or act intended to insult the modesty of a woman-

“Whoever, intending to insult the modesty of any woman, utters my word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.”

10. *As per the complaint of the complainant itself, accused has not uttered any word or made any sound or gesture with the intention to insult modesty of a woman (complainant). It is pointed out by the Ld. defence counsel that the complaint does not specify any such words which would amount to insulting modesty of a woman. Complainant has simply stated that accused has used abusive and unparliamentary language which caused her feel*

humiliated and disgraced which cannot attract section 509 IPC.

11. *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 (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; 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 Ed) the meaning of the word '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 a version to impure or coarse suggestions".*

12. *It was held by the Apex Court in **Rupen Deol Bajaj v. KPS Gill** (AIR 1996 Supreme Court) that the dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh's case, (AIR 1967 SC 63) (supra) it appears to us that the ultimate test for ascertaining whether modesty has been outraged is, is the action of the offender such as could be perceived one which is **capable of shocking the sense of decency of a woman.***

13. *When the above test is applied in the present case, keeping in view the total factual situation, it cannot be held that the alleged words of the accused amounts to insulting the modesty of complainant. None of the words uttered by the accused was suggestive of intruding upon the privacy of complainant. Apparently the words used by the accused*

could not be perceived as one which are capable of shocking the sense of decency of a woman. Thus, on the basis of charge sheet filed and accompanying documents offence under section 509 IPC is also not made out against the accused. Hence, the accused is entitled to be discharged for offence under section 509 IPC also...”

12. The contentions as raised on behalf of the accused/respondent in this revision is quite misconceived at this stage. Whether there was a delay and if so fatal to the case or otherwise, is certainly not a point to be considered at the stage of charge. Even otherwise, it is quite a settled law that delay in lodging FIR is not by itself fatal to any case so long as it can be well explained by the complainant. In any case this is not even a factor which can be taken into consideration at the stage of consideration of charge.

13. Reference by the accused/respondent of the conversation between accused/respondent and the complainant being for around 13 minutes, however, there being only 4-5 sentence mentioned by the complainant in her complaint to the police as well as in her statement u/s 164 CrPC, and the remaining conversation not being brought on record, this is also a point which can best be dealt with at the stage of trial.

14. The response of the complainant to the abusive language of the accused/respondent, not being mentioned, is again not a factor which can be considered at the stage of charge. All these may be questions which can be put by the accused/respondent to the witnesses during the cross-examination dur-

ing trial. It is well settled law that at the stage of charge, it is only the prima facie view which has to be taken i.e. the allegations leveled, and the kind of material collected by the IO and put on record, whether it would be or may be sufficient to lead to a conviction in the end.

15. Whether the case originally or the revision, is or is not politically motivated, may all be defences open to the accused/respondent to lead in trial either by way of cross-examination or by way of his own evidence. Once again, whether the case is false or frivolous or whether the accused/respondent has never used the language as alleged, would obviously be a matter of evidence to be lead next. In my considered view, the question whether the utterances by the accused/respondent, if taken at their face value, amount or do not amount to an insult to the modesty of a woman, is infact the main question which needs a decision in this revision.

16. Further in view of judgment in **Kanti Bhadra Shah Vs. State of West Bengal, 2000 CrI.L.J.746** and **Omwati Vs. State through Delhi Admn, 2001 (2) Crimes 59** at the stage of framing the charges, meticulous consideration of evidence and material by the court is not required; nor the adequacy of the evidence can be seen at this stage as it would amount to premature appreciation of evidence.

Law is also equally well settled that if the material provided by the prosecution is accepted as it is, it would disclose prima facie an offence

alleged to have been committed by the accused.

17. Coming to the main question arising out of this revision that is whether the words allegedly uttered by the accused, if taken at their face value, amount or do not amount to insulting the modesty of a woman. Reference needs to be had to certain relevant landmark case laws and also few legal articles on the aspect of modesty and as to what amounts to insult to modesty as under Section 509 IPC.

It was reported in the **Critical Analysis of Sexual Harassment under IPC (Source) Posted on November 23, 2013 by Legal India Admin.**

“.....SECTION 509 –

This section says that- Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

This section is referred as the Eve Teasing Section. The object of the section is to protect the modesty and chastity of a woman.

The essential elements of the section are:

- 1. Accused uttered any word, made any sound or made a gesture or exhibits any object or intrude the privacy.*
- 2. Accused intended that words uttered, sound made or gesture shown or object exhibited seen or heard by the woman.*
- 3. It has to be directed towards a woman or group of women.*

There is a difference between Section 354 and 509. Section 509 specifically talks about the insult and modesty of the women whereas Section 354 deals with outraging the modesty of the women.

Now the question that comes for consideration is what is meant by the term modesty. The term has not been defined in IPC. In the famous case of Major Singh Lachhman Singh vs The State on 30 May, 1963[3], the Shorter Oxford English Dictionary (Third Edition) definition of the word “modest” in relation to woman has been taken. It says that modesty is “Decorous in manner and conduct; not forward or lewd; shame fast”. Hence, when used for men, it means the quality of being modest, and in relation to woman, “womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct.....”.

When viewed in this context, the very words allegedly used by the accused to the complainant, if addressed to a man, may not amount to an offence but when they are hurled at a lady, they disrupt and shatter her grace. She would naturally feel humiliated.

(i) It has been mentioned further in the said Critical Analysis that:-

“.....Webster’s New International Dictionary of the English Language (Second Edition) amplifies the definition of “Modest” by adding “observing the proprieties; free from undue familiarity, indecency, or lewdness”.

*In the case **Swapna Barman Vs. Subir Das**, “Under Section 509 that the word ‘modesty’ does not lead only to the contemplation of sexual relationship of an indecent character. The section includes indecency, but does not exclude all other acts falling short of downright indelicacy.....”*

In the present case, the abusive language hurled at the complainant can

certainly not be excluded from the realm of indecency. In fact it would be treated as sheer indecency of a behavior indulged into by the accused towards a lady and certainly bound to have an impact upon that lady. It cannot be ignored that the said stated in her complainant and also in her statement u/s 164 CrPC that she felt humiliated thereafter. As such, the impact of these filthy words was writ large on the complainant. The intention can be self-deduced from the words and the manner in which they had been hurled at the complainant. In fact it seems that the accused clearly had an intention to indulge into a calculated lowering down of the dignity, modesty, sense of decency of the complainant by using this kind of language and bringing her stature down in her own eyes.

(ii)Further, it is also there in the said analysis :-

“.....The intention to insult the modesty of woman must be coupled with the fact that the insult is caused. It means that the other party understands that he is insulted.....”

In the present case, the complainant, when states, that she felt humiliated, shows that the insult which was intended by the accused to the modesty of the woman had its intended impact.

In fact the Section 509 IPC itself needs a broader interpretation in order to deal with the rising offence of sexual harassment of women with the degradation of the Indian Society, the Section should be enforced and applied

so as to create a deterrence effect on the society.

(iv) It is also reported in the said analysis that :-

“.....*Vishaka and ors v. State of Rajasthan JT 1997 (7) SC 384.*

Section 509 IPC criminalises a 'word, gesture or act intended to insult the modesty of a woman' and in order to establish this offence it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act as held in S. Khushboo Vs. Kanniammal and Anr (AIR2010SC3196).....”

(v) In the case of ***Rupen Deol Bajaj v. KPS Gill (AIR 1996 Supreme Court)***,

it was held as under:-

“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 (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; 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 Ed) the meaning of the word '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".

Going by this, can it really be said that the sense of shame which a wom-

an possesses would not feel revolted at the words allegedly uttered by the accused. Can it be said that her womanly propriety of behavior scrupulous chastity of thought, speech and conduct would not be shattered by this kind of language hurled at the said lady?

Though Ld. Trial Court may seem to refer to the landmark decision of *Rupen Deol Bajaj v. KPS Gill* case, however, in spirit, Ld. Trial Court seems to have gone astray and totally contradictory to the spirit of the said judgment. The provision which is a beneficial piece of provision should not be interpreted in such a literal manner.

(vi) In ‘LEGAL REASONING, Sexual Offences in IPC: Outraging Modesty, Disrobing, Voyeurism, and Stalking’ it has been mentioned as under:

“....The word ‘insult’ refers to a situation where a woman is made to feel ashamed of her sexual dignity i.e. lowering the sexual honour of a woman in her own eyes. It may be done by passing sexual obscene remarks or making such gestures, sounds or showing sexual objects to her.

The modesty of a woman is insulted without actually touching her but by uttering any word, making any sound or gesture or exhibiting any object which has a sexual connotation with the intention that it be heard, seen or intrudes upon the privacy of such woman.....”

The present case falls within the first portion i.e. when the complainant’s modesty is insulted without actually touching her by the words allegedly used by the accused/respondent and they certainly must

have put the woman to feel ashamed of her sexual dignity and lowered her sexual honour in her own eyes.

(vii) In a case decided by Kerala High Court wherein referring to a judgment of Hon'ble Supreme Court **Veeda Menezes v. Yusuf Khan, AIR 1966 SC 1773** wherein it was held that:-

“.....Act of affront to the decency and dignity of a woman cannot be considered as trivial in nature.....”

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The intention of the Legislature in adding the section of 509, inspite of the existence of the provision of Section 354 and 294 IPC, shows that legislature wanted to incorporate the said Section so that even a verbal attack of insulting the modesty of a woman could be punishable.

(viii) It has been report in **Economic Times Newspaper (Source)** that :-

“The use of the Hindi word "chhammakchhallo" may seem cool in a Bollywood song, but its use in real life can land one in legal trouble, this is what was held by one of the Courts in Thane, Maharashtra.”

Further, it was held that :

“the use of the word amounts to "insulting a woman's modesty".

The concerned Court observed therein that :

"It is a Hindi word. There is no word for it in English. The said word is to be understood in the Indian society by its use. Generally this word is used to insult a woman. It is not a word for appreciating....it causes irri-

tation and anger to any woman," the magistrate said in his order.

Going by this, the kind of words used by the accused/respondent in the present case would certainly be even much more grave than the word "*chhammakchhallo*".

(ix) '**IT for Change**', an article where **Anita Gurumuthy, founding member and executive director of IT for Change** and **Amrita Vasudevan, a research assistant at IT for Change**, discuss the requirements for a feminist jurisprudence on violence against women, drawing on IT for Change's project '**Online freedom for all = No unfreedom for women**'.

".....The Committee on the Elimination of Discrimination against Women's (CEDAW's) position on discrimination against women, which is seen as an affront to human dignity and equality, is rooted in such a discursive legacy that acknowledges a historical imbalance in power relations between men and women. The model framework for legislation on violence against women, proposed by UNDAW/DESA also interprets violence as a form of discrimination and a violation of women's human rights.

Harm as a violation of dignity and privacy

'Harm' - to the body, mind or both is often seen as 'proof' that violence has occurred. The UN Declaration on the Elimination of Violence against Women defines VAW as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women... '.

The present case pertains to psychological harm caused to a woman when she is spoken to in the manner and she is abused in the manner as allegedly abused by the accused/respondent.

(x) It is further discussed in the article:-

“.....While most States have sought to protect women from violence, at least in the language of the law, the treatment of harm in many instances continues to be problematic. The Indian Penal Code retains Victorian and patriarchal language, and phrases such as ‘outraging the modesty of women’, continue to feature, despite a major law reform in 2013. This approach of the law tends to put women on the stand for their ‘morality’ to be assessed, adopting a benign protectionism, at best, or condemning women’s ineptitude for ‘attracting harm’, at worst.

Similarly, Indian courts’ interpretation of obscenity has fixated on sexual content. The law’s intent on ‘protecting society from depravity’ has ended up treating women as objects that law must govern, rather than as subjects who have the right to legal recourse. A feminist critique would call attention in these approaches to the denial of women’s agency and the disregard of sexist content that may not necessarily be sexual.....”

The words allegedly uttered by the accused/respondent in this case are absolutely sexist when he says “*teri jaisi ko theek karna aata hai, afsari karti hai ...*” focuses on the complainant being a woman and an officer which is not being tolerated by the accused/respondent and he tries to lower her down.

(xi) It is also discussed in the said articles:-

“..... We posit the need for an alternate theory – one that addresses harm as a discriminatory act that impinges upon a woman’s dignity and a violation of her right to privacy seen as the triumvirate of bodily integrity, personal autonomy and informational privacy.

Courts have used this progressive theorisation of harm to redress violence against women.....”

The emphasis on the word ‘harm’ is what seems to have been ignored in the impugned order. The harm that is caused to the psych of an office going woman when she is spoken to in this manner by the accused, the disgust that she is left with, not only for the accused but even for herself that she has to hear these words, it is unimaginable that it should not be treated as insult to the modesty of that woman. Had she not been a woman and had it been a male employee, it is for certain that the accused/respondent would not have uttered the words “*tu hai kya? Kya samajhti hai apne aap ko? Naukri karna sikha dunga. Bahut bakwaas kar li tum logo ne. kutte ki jaat dikha di, teri jaisi ko theek karna aata hai, afsari karti hai, inquiry karva dunga, anjam bhugtegi*”.

18. Ld. Trial Court had no doubt referred to the portion of the observations made in the case of ***Rupen Deol Bajaj v. KPS Gill (AIR 1996 Supreme Court)*** landmark decision. However, it seems that the reference has been for the wrong reasons and the same has misinterpreted.

The words used i.e. "*tu hai kya? Kya samajhti hai apne aap ko? Naukri karna sikha dunga. Bahut bakwaas kar li tum logo ne. kutte ki jaat dikha di,*

teri jaisi ko theek karna aata hai, afsari karti hai, inquiry karva dunga, anjam bhugtegi”, by no stretch of imagination can it be said that they are not sufficient to shock the decency of any normal woman, that too, an office going lady from a middle class. When a woman steps outside her home, she has to face the whole world in the entire day from morning to evening, with all the different and varied experiences, in the public transport, in the office, from her colleagues, from her bosses, but inspite of all this, a working woman tries to maintain her dignity, particularly in a country like India, which indeed is quite difficult. I cannot resist from observing that indignity peeps at every nook and corner at an average normal working woman and she remains at tenterhooks on her guards, alert that she has to keep her dignity and honour intact. It is only when she returns to her home which is her refuge that she can be at ease. In this backdrop of the Indian setup for working woman, the kind of filthy words and the language used by the accused, if they are ignored and treated as not causing any shock to her sense of decency and grace and not to insult her modesty, it would be a sheer encouragement to the wrong doers of our society from the complainants who gather the courage to come forward and lodge the complaints, would feel deterred and demoralized. The impact of the impugned order is nothing sort of this, if same is not interfered with.

Had it been the intent of legislature that it is only the literally sexually coloured remarks or sexual acts or sexual exhibiting of objects, that

would be covered in 509 IPC, and would be amounting to insult to the modesty of a woman, Section 294 IPC would have suffice and covered the situation already. There would not have been any need for Section 509 IPC. Even Section 354 IPC would also have been sufficient, if it is the sexual acts, like assaults etc. which were contemplated. A provision of Law should not be taken literally, particularly when it is a beneficial legislation to curb the menace that is rampant in our country. Such like menace in order to be curbed, the provision like Section 509 IPC should be given a very wide interpretation and wherever the accused intends to lower down the dignity of a woman, it should be treated as causing insult to her modesty.

Accordingly, the revision petition is allowed and the impugned order, to the extent of discharging the accused u/s 509 IPC, stands set aside. Ld. Trial Court is directed to try the matter in accordance with law. Charge is directed to be framed against the accused/respondent.

Accused/respondent is directed to appear before Ld. Trial Court on 14.10.2020 at 10.30 am through VC.

Ahlmad is directed to return the TCR alongwith a copy of this order after completion of due formalities.

Revision file be consigned to Record Room.

**Announced in open Court
today on 30.09.2020**

(SUJATA KOHLI)
Principal District & Sessions Judge-cum-Spl. Judge
(PC Act)(CBI)/RADC/ND