

CASE COMMENTARY - S.P.S.RATHORE VS CBI & ANR.YAZHINI.S⁹¹**CASE NAME : S.P.S.RATHORE VS CBI & ANR.2016****CITATION : CRIMINAL APPEAL NO.2126 OF 2010****CORAM: HON'BLE MR.V.GOPALA GOWDA & HON'BLE MR.R.K. AGARWAL****APPELLANT :S.P.S. RATHORE****RESPONDENT : C.B.I.& ANR****PROVISIONS INVOLVED : SECTION 354 OF IPC****INTRODUCTION:**

Section 354 of IPC deals with whoever assaults or uses criminal force to anyone 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. The offence laid down by the section is cognizable as well as non-Bailable, Triable by any Magistrate.

Protection of women was only given under section 354 of the IPC for sexual harassment and section 509 for insulting the modesty of a women.

In the case of Raju Pandurang Mahale V. state of Maharashtra⁹²the Supreme Court inferred the essence of the woman's modesty is her sex. The judgement defined "*Modesty as an attribute associated with female human being as a class and virtue which attaches to a female owing to her sex*".

⁹¹ YAZHINI.S . Student at THE TAMILNADU Dr. AMBEDKAR UNIVERSITY. Email : syazhini181@gmail.com

⁹² Raju Pandurang Mahale V. State of Maharashtra Appeal,(ctrl.) 616 of 2003

In the other case state of Punjab V. Major Singh⁹³, supreme court held that even a female of tender age from her birth possess modesty which is attributable to sex. Hon'ble SC observed that *'when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that act will fall within this section. The essence of woman's modesty is her sex. The culpable intention or knowledge of the accused is the crux of the matter'*.

FACTS OF THE CASE:

Shambu pratap singh Rathore, was the former IG (Inspector General) and he was the founding president of HLTA. The appellant –accused frequently visited the tennis court.

Ms.Ruchika, daughter of Shri.S.C.Girhotra and Ms.Aradhana daughter of Shri Anand Prakash and Madhu Prakash (The complainant), Ruchika and Aradhana were good friends and enrolled in Tennis Association at the age of 15 years.

11.08.1990	Knowing about the plan of Ruchika, going abroad for Tennis coaching .The appellant –accused met her father and told not to send his daughter for tennis coaching and also he promised that special coaching would be arranged for her in HLTA itself. And he asked to send his daughter the next day to his Office. Her father notified his daughter to visit the Appellant – accused office on August 12, 1990.
12.08.1990	Ms.Ruchika went to Ms.Aradhana's house on 12.08.1990 and tell her about the invitation of the Appellant – accused .Paltoo, the ball picker approached Ruchika that Appellant – accused had called Ruchika to come to his office. So both girls entered into the Appellant accused office. The Appellant requested Aradhana called the coach, Thomas. Ms.Aradhana exited his office to call the coach but in Result, the coach refused to come. When Ms.Aradhana arrived at his office she witnessed Appellant holding one hand of Ruchika in his palm and the other hand around her waist. He was pulling towards his chest and she was attempting to push with her hand. When Aradhana enquired about the incident, Ruchika narrated the whole

⁹³ State of Punjab V. Major Singh,1967 AIR 63,1966 SCR (2)

	<p>story. Both girls decided not to inform their parents because the Appellant is the IG of police, they have a chance to harass their families.</p>
14.08.1990	<p>Ms.Ruchika and Ms.Aradhana went to the lawn tennis court at 4:30 pm on august 14, 1990. Instead of their customary time to avoid the Appellant. Paltoo, the ball picker informed Ms.Aradhana that the Appellant called her to his office. She refused to meet him and said to another girl that since they had not informed their parents he was feeling emboldened and called her again to his office to molest her again. So they decided to tell their parents about what incident took place on 12, August 1990.</p>
15.08.1990	<p>A Memorandum was submitted to Secretary (Home), Haryana by Ms.Ruchika, Ms. Aradhana and her parent's .Shri R.R. Singh directed DGP to initiate an enquiry into the accusations brought against the Appellant accused in the memorandum.</p>
03.09.1990	<p>In the report of Shri R.R. Singh , he concluded that the allegation of molestation is based on the true facts and a cognizable case is made out against the appellant accused under the provisions of Indian Penal Code, 1860 after conducting an Enquiry. He forwarded his report to the Secretary (Home), Government of Haryana.</p>
29.08.1993	<p>During the investigation, it was also discovered that Ms. Ruchika restricted herself to her home following the incidence of molestation. She later committed herself by eating poison on December 28, 1993 and she died on December 29, 1993.</p>

21.08.1998	<p>Madhu Prakash, the complainant no.2 in this case, requested registration of a case from several agencies in the government of Haryana, but no action was taken, therefore she filed a criminal writ petition before the Punjab and Haryana High court.</p> <p>The High court in an order dated August 21, 1998, directed the Superintendent of Police, Panchkula, to hand over the investigation to the Central Bureau of Investigation (CBI) once the cases are registered.</p>
14.12.1999	<p>The court upheld the order of the High Court dated 21.08.1998 that resulted in the registration of First Information Report (FIR) No.516 of 1999 against the appellant accused under the sections 354 and 509 of the IPC at PS Panchkula, Haryana.</p>
16.11.2002	<p>On November 16, 2000 before the court of Special Judicial Magistrate, CBI filed a charge sheet under section 354 of the IPC.</p>
05.12.2000	<p>On December 5, 2000 the court of Special Judicial Magistrate allowed the petition under 473 of Criminal Procedure, 1973 by the CBI for condoning the delay in filing the charge sheet and for taking Cognizance.</p>
18.04.2001	<p>The petition was dismissed by the High Court on April 18, 2001, with a direction to the trial court to resolve the case within six Months.</p>
23.10.2001	<p>The trial court in its order allowed the petition which was filed for the addition of section 306 IPC in the charge sheet.</p>
12.02.2002	<p>Being aggrieved by the order of the trial court dated 23.10.2001, the appellant accused preferred criminal Misc. petition before the High Court. The High Court, by its order dated 12.02.2002, set aside the order dated 23.10.2001 passed by the trial court. In appeal, this court also upheld the order dated 12.02.2002 passed by the High Court.</p>
21.12.2009	<p>The court of Chief Judicial Magistrate, Chandigarh, found the appellant accused guilty of an offence under section 354 of IPC and sentenced him to six months of Rigorous Imprisonment and a Fine of Rs.1000</p>

12.01.2010	The appellant accused filed a Criminal Appeal No.5 of 12.01.2010 with the court of Additional Sessions Judge, Chandigarh, after being aggrieved by the decision and decree dated 21.12.2009. The CBI and MadhuPrakash, also filed criminal appeals No.26 of 12.01.2010 and 22 on 05.02.2010 with the court for enhancement of sentence.
25.05.2010	Additional Session Information by his order dated 25.05.2010, Judge Chandigarh dismissed the appellant appeal while allowing the CBI and Madhu Prakash appeals for inadequacy of the sentence and enhancement of the sentence and Imprisonment , and the appellant accused was sentenced to
	Rigorous Imprisonment for one and a half years for committing an offence under section 354 of the IPC .The fine sentence stayed the same.
01.09.2010	The appellant accused filed criminal revision No.1558 of 2010 before the High Court after being aggrieved by the judgement and decree of May 25, 2010. The appellant accused was dismissed by the High Court in a ruling dated September 1, 2010.
11.11.2010	The appellant accused, who is dissatisfied, has filed this motion for special leave in this court .By ruling dated November 11, 2010, this court granted the appellant – bail accused’s petition.

ISSUES ARAISED:

1. Whether the act of molestation took place or not?
2. Why no complaints filed in the Police Station?
3. Whether SHRI.R.R Singh, and DGP is legally competent to investigate the Facts?

ARGUMENTS ON BEHALF OF APPELLANT:

1. Learned senior counsel, SHRI K.V. Viswanathan for the appellant accused contented that given the situation of the HLTA makeshift office in a garage at the relevant point of time along with the presence of a number of people including labourers, it would be impossible to even try for such an act, knowing well that the act can be seen by others.

2. Learned senior counsel further contended that the prosecution story is absolutely false and frivolous and the appellant has been framed in present case by the complainant party and the high level officers of the state with an ulterior motive. The appellant accused neither visited the house of Shri. Gerhart nor asked for a meeting with Ruchika on 12.08.1990 in HLTA office
3. Learned senior counsel further contended that no complainant was filed by Ms. Ruchika or her father Shri S.C.Girhotra or shri Ashu – elder brother of MS.Ruchika or Mrs.Madhu Prakash or Shri. Anand Prakash or Ms.Aradhana in the police station. Even after that incident, when both girls allegedly informed their parents, none of them approached the police to get the FIR registered. In this way undue and unexplained delay resulted in manipulations and proper versions could not be put forth before the court.
4. Learned senior counsel further contended that the signature of Ms.Ruchika on the alleged memorandum is false and forged and on the ground, the document cannot be relied upon. This document does not disclose the details of the incident and merely suggests that the appellant misbehaved with Ms. Ruchika which does not attract section 354 of IPC.
5. The name of the players who were allegedly accompanying Ms.Ruchika at the relevant time has not been mentioned in the memorandum intentionally and later on Ms.Aradhana has been planted on ‘Sathi Khiladi ’. It was contended that the words ‘Sathi Khiladi’ have been mentioned in the memorandum for the purpose of introducing an eye witness of the choice.
6. The material witnesses like ball picker - paltoo and coach - K.T.Thomas who were allegedly present at the place of the alleged incident, have not been examined by the prosecution.
7. It was further submitted by learned senior counsel that the media has played a negative role in the present case and published the selective news items only in collusion with the complainant party .Learned senior counsel for the appellant accused further contended that that the inquiry conducted by Shri R.R.Singh was without the jurisdiction as the appellant accused , at the relevant point of time, was on deputation with the BBMB and was not under the administrative control of the Government of Haryana.The enquiry conducted by Shri. R.R.Singh cannot be relied upon because no enquiry could be marked to him and also he has not held the enquiry in proper manner.

ARGUMENTS ON BEHALF OF PROSECUTION:

1. Learned Senior Counsel of CBI, Shri Vikas Mehta submitted that the incident is well proved by the unimpeachable testimony of Ms.Aradhana. Even Shri. S.C.Girhotra deposed that the appellant met him and told him to not send his daughter abroad and he also promised to give special tennis coaching in HLTA itself and insisted him to send his daughter to appellant's office on next day. So both girls went to meet the appellant's accused at his office.
2. Learned senior counsel submitted that Ms.Ruchika was the best person to depose about the genuineness of her signature, but she is no more so she could not appear in the witness box. The reason for not mentioning in the memorandum is that she could have been harassed by the appellant accused, IG of police. Because of this, both girls and their parents did not approach the police station to file an FIR.
3. Further pointed out that Shri R.R.Singh was legally competent to investigate the facts and he was asked by the Government of Haryana to enquire about the facts and to submit a report.
4. Further on the contention with regard to FIR registration learned counsel for CBI argued words in the memorandum clearly shows the sequence of events which had been happening from the beginning. And she also argued that there is no manipulation since the language of the memorandum is like that the people have tried to show their resentment against the alleged act and demanded action against the accused.

ANALYSIS AND JUDGEMENT:

The important judgements given by the Hon'ble Chief Justice, as follows:

- by considering the contentions of learned senior counsel regarding health problems, accused's age, responsibility for caring for an unmarried daughter with congenital heart disease, previous meritorious service, of the appellant's accused and regarding the length of trial it won't be appropriate to put him back in jail.
- the sequence of events which we have detailed earlier indicates that the appellant accused had the requisite intention. In a case *Vidyadharan V. State of Kerala*⁹⁴ held as under "*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*

⁹⁴ *Vidyadharan V. State of Kerala*, (2004)1 SCC 215

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 ”.

- it is clearly observed that the act of the appellant accused is proved by the unimpeachable testimony of the eye witness Ms.Aradhana to the incident. A set number of witnesses is not required to prove a particular fact. It is the quality of the witnesses, not the quantity that counts.
- so the court decided to reduce the appellant’s sentence to the period which is already served in jail. And upheld the appellant’s conviction under Section under 354 of IPC through changing the punishment to the time he had already undergone.
- the appeal is dismissed on the criteria stated above.

CONCLUSION:

In spite of, there are a number of laws to protect and safeguard the rights of women, the rate of crime against women is growing day by day. There should be more strict and stringent laws so any other person could not commit such crimes. Culpable intention and knowledge, are the reasons for impugned cases. Many women are struggling to voice out their daily harassment. They undergo various past trauma and affected through mental sufferings. Most of the women are afraid to tell their traumas because of the judgemental society. Victims must have a counselling to come out from the traumatic incidents.