

Madhya Pradesh High Court

Girdhar Gopal vs State on 18 December, 1952

Equivalent citations: 1953 CriLJ 964

Author: Dixit

Bench: Dixit

ORDER Dixit, J.

1. In this case the petitioner Girdhar Gopal has been convicted by the City Magistrate, Lashker for offences under Sections 342 and 354, Penal Code and sentenced to six months and one year rigorous imprisonment respectively for each of the offences. The sentences were directed to run concurrently. The Sessions Judge of Gwalior rejected an appeal preferred by the accused against the convictions and sentences. The applicant has now come up in revision to this Court.

2. Before me, Mr. Bhagwandas Gupta learned Counsel for the applicant did not challenge the conviction and sentence of the applicant under Section 342, Penal Code, His contention was that Section 354, Penal Code offended against the provisions of Articles 14 and 15 of the Constitution of India and that therefore, Section 354 being void, the conviction of the applicant under that section was illegal. The argument of Mr. Gupta is that as the Penal Code does not make the act of assault or use of criminal force to any man with intent "to outrage his modesty" an offence, Section 354, Penal Code contravenes Article 14 of the Constitution and that in enacting Section 354, Penal Code, the legislature has discriminated in favour of women only on the ground of sex and that therefore, Section 354 offends against Article 15(1). In my view this argument is unsound and must be rejected. The offence under Section 354 is committed only when a person assaults or uses a criminal force to a woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty. It is not the act of outraging the modesty that is made an offence under this section. In order to constitute an offence under Section 354, Penal Code there must be an assault or use a criminal force to any woman with the intention or knowledge that the woman's modesty will be outraged. The offence under Section 354, Penal Code can be committed by any man or a woman with the necessary intent or knowledge. For, a woman can assault or use criminal force to any other woman as equally and effectively as any man; and the intention or knowledge that the modesty of the woman assaulted or against whom criminal force has been used will be outraged, is not of a kind which a woman on account of inherent differences from man is incapable of having. The pronoun "he" used in the expression "that he will thereby outrage her modesty" must therefore be taken under Section 8, Penal Code as importing a male or a female. It is thus clear that : under Section 354, Penal Code a man as well as a woman can be held guilty of the offence of assaulting or using criminal force to any woman with the intention or knowledge that the woman's modesty will be outraged, and be punished for the offence. Section 354, therefore, operates equally upon all persons whether males or females and it cannot be maintained that as women are exempt from any punishment under this section, it offends against the provisions of Article 14 of the Constitution.

3. It is true that the act of assault or use of criminal force to any man with the intention or knowledge of "outraging his modesty" is not made an offence under the Penal Code. Learned Counsel for the applicant was, however, unable to say what according to him was the meaning of the expression "outraging the modesty of a man" or whether the expression meant "offending the

impudence of man" or dishonouring him. It would however, appear from Section 353 that an assault or use of criminal force to any man by a woman intending thereby to dishonour him otherwise than on grave provocation is punishable. Be that as it may the objection of the learned Counsel for the applicant that the Penal Code gives no protection to man against assault or criminal force with intent to "outrage his modesty" is really an objection as to the policy of law in not creating a particular offence. It is not an objection as to the infringement of Article 14 of the Constitution. This Article provides that the State shall not deny to any person equality before the law or the equal protection of laws within the territories of India. Article 14 has been construed by the Supreme Court in several cases See Raning Rawat v. State of Saurashtra ; Charanjitlal v. Union of India and by this Court also in Miss Sumitra Devi v. State of Madhya Bharat 1952 Madh B LR 385 (C) and in effect it means that every law that the State makes shall operate alike upon all persons, and property under the same conditions and circumstances. It does not mean that all persons, property or occupation must be treated alike by the State. As pointed out by His Lordship Das J. in :

While Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act.

4. From these observations it is clear that a reasonable classification of groups for purposes of legislation is permissible and what is prohibited is discrimination between persons who are included in the group to which the law applies. If, therefore, the Legislature has in its wisdom thought it fit to treat men differently from women in regard to modesty and to make an assault or use of criminal force with intent to outrage the modesty punishable under Section 354 when committed only with respect to women, the provisions contained in Section 354, Penal Code cannot be condemned as repugnant to Article 14 of the Constitution.

5. The contention of the learned Counsel for the applicant that Section 354 violates the provisions of Article 15(1) of the Constitution is equally untenable. This Article says that the State shall not discriminate on grounds only of religion, race, caste, sex, place of birth or any of them. The word "only" is important and deserves to be noted. It emphasises the fact that the discrimination that is prohibited; under Article 15(1) is a discrimination based on the ground of sex, or race, etc. alone. If the discrimination is based not merely on any of the grounds stated in Article 15(1) but also on considerations of propriety, public morals, decency, decorum and rectitude, the legislation containing such discrimination would not be hit by the provisions of Article 15(1). It cannot be denied that an assault or criminal force to a woman with intent to outrage her modesty is made punishable under Section 354 not merely because women are women, but because of the factors enumerated above. Our country is not peculiar in making the acts described in Section 354 punishable as an offence. Such acts constitute a penal offence in all other civilised countries. After all civilisation depends on morality. In any country claiming or aspiring to be a civilised country morality and all the incidents of morality are as essential as justice to the citizen and personal

liberty. No civilised country whose action is directed towards securing "the greatest good of the greatest number" can allow assaults or criminal force to women with intent to outrage their modesty to go unpunished and permit the position of women to be injuriously affected by chartered libertines. In my opinion, the contention advanced on behalf of the applicant that Section 354 offends Article 15(1) must be rejected.

6. As to the facts of the case, I see no reason to differ from these concurrent conclusions arrived at by the Courts below. On the evidence on record it is conclusively established that on the afternoon of 10.2.1951 at about -4-30 p.m., the applicant who is a Pujari of a Mandir caught hold of a young girl named Saroj of about 9 years of age, took her to his house on the pretext of giving "Parshad" to her and then when she was inside he closed the door of the room, made her lie on a bed, put a covering on her and then sat upon her for some time. Later on the applicant became naked and asked Saroj, to remove all her clothes. When the girl shouted and called her brother, who happened to come near the house in search of Saroj, the applicant forcibly closed her mouth. Saroj was then rescued by the neighbours who forcibly opened the door and entered the room. On her return home, Saroj then complained to her mother. Mr. Bhagwandas Gupta urged that as Saroj was a little girl of nine years of age, she could not have developed the sense of modesty of a woman as contemplated by Section 354, Penal Code and further as her mother was not examined, to support her statement that she complained to her mother, it was doubtful whether the applicant had committed any offence at all under Section 354, Penal Code. Learned Counsel relied on Soko v. Emperor AIR 1933 Cal 142 (D). In that case Jack J., felt some doubt as to whether the act of a man putting a finger into the private parts of a girl of five and half years of age, constituted an offence under Section 354, Penal Code. The learned Judge was inclined to think that when the girl had no hesitation in telling her mother exactly what had happened and having regard to her age, it could not be said that she Had developed a sense of modesty, Ghose J., who was the other member of the Bench which decided that case did not agree with the view taken by his learned brother that the case did not fall under Section 354, Penal Code. In the Calcutta case, the accused was ultimately convicted under Section 323, Penal Code and the sentence of six months rigorous imprisonment which had been awarded to him by the trial Magistrate under Section 354, Penal Code was maintained. Having regard to the circumstance that the sentence was maintained, Bose J., did not wish to differ with the conclusion arrived at by Jack J. With all respect to Jack J., I am unable to find myself in agreement with his reasoning. It is unnecessary to consider here whether a little girl of five years of age can be said to have developed a sense of modesty contemplated by Section 354, Penal Code. So far as the present case is concerned, it is clear that when the applicant asked Saroj to remove her clothes, she refused to do so and shouted. It cannot, therefore, be said that she had not developed any sense of modesty. To my mind, the act of the applicant in confining Saroj in a room, in making her lie on a bed and then sitting on her and becoming naked is clearly one amounting to use of criminal force with the intention or knowledge that the girl's modesty will be outraged. The applicant has been rightly convicted under Sections 354 and 342, Penal Code. The appropriateness of the sentences awarded to him is amply made out.

7. In the result this revision petition is dismissed.