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KANWAR PAL SINGH GILL

v.

STATE (ADMN., U.T. CHANDIGARH) THRO' SECRETARY AND ANR.

JULY 27, 2005

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[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

Penal Code, 1860; Ss. 341, 342, 352, 354, 355 and 509/Code of Criminal Procedure, 1973; Section 482:

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Accused Police Officer allegedly outraged the modesty of prosecutrix, another officer—Complaint against—No action by the Police—Filing of criminal complaint before the Chief Judicial Magistrate—Proceedings before CJM quashed by High Court in the Revision petition preferred by the accused—Challenge to—Supreme Court directed the trial Court to take cognizance of the offence under Sections 354 and 509—Trial Court found

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accused guilty of committing crime under Sections 354 and 509 IPC and sentenced him accordingly and also imposed fine—Sentence altered by the Court of Sessions directing payment of compensation to victim—Affirmed by High Court enhancing the compensation—Correctness of—Held: No evidence produced to suggest that the prosecutrix acted in connivance with others

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and hatched a conspiracy to malign the accused—Behaviour of the accused was not consistent with the high standard expected of a top-ranking police officer—Accused knowingly with the intent to outrage modesty of the prosecutrix used criminal force against her in the presence of high dignitaries—Ingredients of Section 354 satisfied—Courts below rightly

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arrived at findings of fact—Hence order of High Court cannot be set aside on mere assertion by the accused that the case was falsely foisted against him with ulterior motive—Since accused had completed the period of probation without any complaint/violation of terms of the bond, it is not just and proper to resort to any other punishment.

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Accused-appellant, a top ranking police officer, allegedly outraged modesty of the prosecutrix, another officer in a dinner party hosted by the Secretary to the Government of Punjab. The prosecutrix made a complaint to Police but no action was taken by them. Husband of the victim filed a complaint against accused before the Chief Judicial Magistrate. The accused preferred

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a criminal revision under Section 482 Cr.P.C. High Court quashed the complaint and further proceedings pursuant to the case registered by the Police. The verdict of the High Court was challenged by the prosecutrix and her husband before this Court. This Court directed the trial Court to take cognizance of the offence under Sections 354 and 504. Trial Court found the accused guilty of the offences punishable under Sections 354 and 509 and sentenced him to undergo imprisonment accordingly and also imposed fine. Court of Sessions confirmed the conviction but altered the sentence and directed that the accused be released on probation and enhanced the fine with the direction to pay half of it as compensation to the victim. High Court affirmed the conviction but enhanced the fine with a direction to pay the entire amount to the victim. Hence the present appeal and the cross appeal.

Dismissing the appeals, the Court

HELD: 1.1. It is true that there was some delay in filing the complaint before the Magistrate, but that by itself was not sufficient to reject the complaint put forward by the prosecutrix-officer. She recounted the entire incident immediately to the Chief Secretary and other officers and raised objections and also sought for stringent action against the accused, another police officer. When she failed in all these attempts, she and her husband filed the criminal complaint. There is nothing to suggest that the prosecutrix acted in connivance with some others and that she hatched a conspiracy to malign the accused. [839-B, C]

1.2. The findings of the courts below is that the accused gently slapped on the posterior of the prosecutrix in the presence of some guests. This act on the part of the accused would certainly constitute the ingredient of Section 354 IPC. It is proved that the accused used criminal force with intent to outrage the modesty of the prosecutrix and that he knew fully well that gently slapping on the posterior of the prosecutrix in the presence of other guests would embarrass her. Knowledge can be attributed to the accused that he was fully aware that touching the body of the prosecutrix at that place and time would amount to outraging her modesty. Had it been without any culpable intention on the part of the accused, nobody would have taken notice of the incident. The prosecutrix made such a hue and cry immediately after the incident and the reaction of the prosecutrix is very much relevant to take note of the whole incident. The accused being a police officer of the highest rank should have been exceedingly careful and failure to do so and by touching the body of the complainant with culpable intention he committed the offence

A punishable under Section 354 and 509 IPC. [839-D, E, F]

1.3. In view of the findings of fact recorded by the two courts and affirmed by the High Court, the order of the High Court cannot be set aside on the mere assertion by the accused that the whole incident was falsely foisted on him with ulterior motives. [839-G]

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2. The incident happened in 1988. Despite the accused holding a high position in the state police, the various courts found him guilty of the offence punishable under Sections 354 and 509 IPC and that by itself is setting a model for others and would enhance the faith in the judicial system. The accused had completed the period of probation. There was no occasion for any complaint or violation of any of the terms of the bond. At this juncture, it is not just and proper to resort to any other punishment. However, the amount of compensation ordered to be paid by way of compensation to the prosecutrix may be dealt with by the High Court in an appropriate manner as prayed for by her. [840-B-D]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1032 of 1998.

From the Judgment and Order dated 20.8.98 of the Punjab and Haryana High Court in CrI. R. No. 164 of 1998.

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WITH

C.A. No. 430 of 1999.

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Aloke Kumar Sen Gupta, Parijat Sinha, Mrinal Kanti Mandal, Snehasish Mukerjee, S.C. Ghosh, Suraj Prakash, Ms. Anindita Sen Gupta and Ms. Mifali Mandal for the Appellant.

Ms. Indirajaising, Sunil Kumar Jain, Manoj Swarup and Ms. Kamini Jaiswal with her for the Respondents.

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The Judgment of the Court was delivered by

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K.G. BALAKRISHNAN, J. The appellant in Criminal Appeal No. 1032 of 1998 was found guilty of the offence punishable under Sections 354 and 509 of the Indian Penal Code. He challenges his conviction and sentence in this appeal. Criminal Appeal No. 430 of 1999 has been preferred by the complainant in that case and she prays that the punishment imposed on the

accused should be enhanced. Both the appeals are heard together and disposed of by this common judgment. A

On 18.7.1988, a senior IAS officer, holding the post of Financial Commissioner and Secretary to the Government of Punjab, invited some of the IAS officers and IPS officer working at Chandigarh, for a dinner at 8.30 P.M. at his residence in Sector 16 of Chandigarh. Apart from the IAS and IPS officers, there were a few advocates, including the Advocate General of the State of Punjab and also some journalists and press correspondents working with some leading newspapers. The guests assembled around 8.30 P.M. Ladies were sitting in a semi-circle slightly away from the male guests. As per the allegation in the complaint preferred by the husband of the prosecutrix, the accused, who was then the Director General of Police of the State of Punjab, came and occupied a chair which was lying vacant at the place where the ladies were sitting. The accused then called out the prosecutrix and asked her to sit near him as he wanted to talk to her about something. When the prosecutrix was about to sit on the chair lying near the accused, the latter suddenly pulled the chair close to him and it is alleged that the prosecutrix felt slightly embarrassed and she managed to pull the chair back and sat on it. The accused again tried to pull the chair close to his chair whereupon the prosecutrix got up from the chair and returned to her original seat. The further allegation is that about ten minutes later, the accused came near the prosecutrix and asked her to come along with him. The prosecutrix strongly objected to his behaviour, but the accused was not prepared to change his tone and tenor and again he asked the prosecutrix to accompany him. The prosecutrix further alleged that she became frightened as the accused blocked her way and she tried to get away from the place whereupon the accused slapped on the posterior of the prosecutrix and the same was done in the presence of other guests. The prosecutrix then made a complaint to the host and told him that the behaviour of the accused was obnoxious and that he was not fit for a decent company. The accused was then gently removed from the place. The prosecutrix made a complaint to the Joint Director, Intelligence Bureau, who was present there. The prosecutrix narrated the incident to her husband who was also present there. On the next day, that is 19th July, 1988, the prosecutrix sought an appointment with the Chief Secretary and recounted the entire incident to him and requested him to take suitable action against the accused. The prosecutrix met the Advisor to the Governor of Punjab and gave a full and detailed account of the incident that had happened at the dinner party. The prosecutrix explained the incident to the then Secretary to the Governor and also met the Governor. On 29th July, 1988, the petitioner gave a written B
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A complaint to the police and a case was registered, but no further steps were taken. After about four months, the husband of the prosecutrix filed a complaint before the Chief Judicial Magistrate, Chandigarh, alleging commission of offence punishable under Sections 341, 342, 352, 354, 355 and 509 IPC. Thereupon the accused preferred a criminal revision under section 482 of the Cr.P.C. and the High Court quashed the complaint as well as further proceedings pursuant to the case registered by the police. The prosecutrix and her husband jointly challenged the verdict of the High Court before this court and the judgment of the High Court was set aside and the Chief Judicial Magistrate was directed to take cognizance of the offence under Sections 354 and 509 IPC. The Chief Judicial Magistrate later framed the charges and after a full-fledged trial the accused was found guilty of the offence punishable under Section 354 and 509 IPC. He was sentenced to undergo imprisonment for a period of three months and pay a fine of Rs.500 for the offence under Section 354; and for the offence under Section 509 IPC, punishment of simple imprisonment for a period of two months and a fine of Rs. 200 were imposed on the accused. In the appeal preferred by the accused, the Sessions Judge confirmed the conviction, but altered the sentence and the accused was directed to be released on probation in lieu of custodial sentence. The fine was enhanced to Rs.50,000 with a further direction to pay half of it to the complainant. The accused challenged the same in the revision before the High Court. The High Court did not interfere with the conviction of the accused under Section 354 and 509. However, the fine was enhanced to Rs.2,00,000 and the entire amount was directed to be paid to the prosecutrix. An amount of Rs.25,000 was directed to be paid as costs by the accused. The judgment of the High Court is challenged by the accused as well as the complainant.

The accused-appellant in Criminal Appeal No. 1032/98 raised many contentions before us. The counsel for the appellant disputed the correctness of the findings on various grounds, and even the factual findings entered by the court were seriously disputed. It was contended that no such incident had happened and this was a part of a conspiracy to malign the appellant who had to take so many serious actions to control the activities of the militants which were at its peak during that time. It is alleged that the accused was able to control the militant operations of the terrorists and got commendations from the Government and other administrators and this was not liked by many top-ranking bureaucrats and as part of the conspiracy, the entire case was falsely foisted on him. It was also submitted by the appellant's counsel that the complaint itself was filed after a period of three months and the witnesses who were examined were all interested witnesses and most relevant witnesses

who were alleged to have witnessed the occurrence were not examined. A pointed reference was also made to the non-examination of some of the witnesses cited by the prosecution. A

It is true that there was some delay in filing the complaint before the Magistrate, but that by itself was not sufficient to reject the complaint put forward by the prosecutrix. It is important to note that she recounted the entire incident immediately to the Chief Secretary and other officers and raised objections and also sought for stringent action against the accused. When she failed in all these attempts, she and her husband filed the criminal complaint before the Chief Judicial Magistrate. There is nothing to suggest that the prosecutrix acted in connivance with some others and that she hatched a conspiracy to malign the accused. If the whole incident is viewed in correct perspective, it is clear that the behaviour of the accused on the date of the incident was not consistent with the high standard expected of a top-ranking police officer. The findings of the various courts is to the effect that the accused gently slapped on the posterior of the prosecutrix in the presence of some guests. This act on the part of the accused would certainly constitute the ingredient of Section 354 IPC. It is proved that the accused used criminal force with intent to outrage the modesty of the complainant and that he knew fully well that gently slapping on the posterior of the prosecutrix in the presence of other guests would embarrass her. Knowledge can be attributed to the accused that he was fully aware that touching the body of the prosecutrix at that place and time would amount to outraging her modesty. Had it been without any culpable intention on the part of the accused, nobody would have taken notice of the incident. The prosecutrix made such a hue and cry immediately after the incident and the reaction of the prosecutrix is very much relevant to take note of the whole incident. The accused being a police officer of the highest rank should have been exceedingly careful and failure to do so and by touching the body of the complainant with culpable intention he committed the offence punishable under Section 354 and 509 IPC. In view of the findings of fact recorded by the two courts and affirmed by the High Court in revision, the order of the High Court cannot be set aside on the mere assertion by the accused that the whole incident was falsely foisted on him with ulterior motives. Therefore, we find no merit in the appeal preferred by the accused. The appeal is dismissed accordingly. C D E F G

In the appeal preferred by the complainant, learned senior counsel Ms. Indira Jaising contended that crimes against women are on the rise and the court should have dealt with the matter severely and the accused should not H

A have been released on probation.

The incident happened in 1988. Despite the accused holding a high position in the state police, the various courts found him guilty of the offence punishable under Section 354 and 509 IPC and that by itself is setting a model for others and would enhance the faith in the judicial system. The accused
B had completed the period of probation. There was no occasion for any complaint or violation of any of the terms of the bond. At this juncture, we do not think that it is just and proper to resort to any other punishment. In our view, the criminal appeal No. 430 of 1999 preferred by the complainant against the judgment of the High Court is without any substance and the same is dismissed accordingly.

C The counsel for the appellant in this appeal submitted that the complainant has no intention of withdrawing Rs. 2 lacs ordered to be paid to her by way of compensation and that the amount may be given to any women's organization engaged in doing service for the cause of the women.
D The amount may be lying now in the court deposit with the High Court of Punjab & Haryana. We leave the matter to the Chief Justice of the High Court of Punjab & Haryana to deal with the said compensation amount in an appropriate manner as prayed for by the complainant. A copy of this judgment shall be sent to the Registrar of the High Court of Punjab & Haryana.

S.K.S.

Appeals allowed.