IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE JAY SENGUPTA

CRR/29/2023

JANAK RAM ... PETITIONER

VS.

THE STATE ... RESPONDENT

For the petitioner : Mr. Deep Chaim Kabir,
Mr. S. Ajith Prasad

For the respondent : Ms. A. S. Zinu

Lastly Heard on : 21.02.2024

Judgment on : 01.03.2024

JAY SENGUPTA. J.

1. This is a revisional application challenging a judgment and order dated 21.11.2023 passed by the learned Additional Session Judge, North and Middle Andaman at Mayabunder, Andaman and Nicobar Islands in Criminal Appeal No. 09 of 2023, thereby affirming the judgment and order dated 24.04.2023 passed by the learned Judicial Magistrate, First Class, North and Middle Andaman at Mayabunder in connection with GR Case No. 425 of 2015 convicting the petitioner of offences punishable under sections 354-A(1)(iv) and 509 of the Indian Penal Code and sentence him to suffer simple imprisonment for terms of three months and to pay of fine of rupees five hundred each under the two provisions,

the substantive sentences having to run concurrently, along with a default clause.

2. The prosecution case is that on 21.10.2015 a police team comprising of the victim police constable and other police personnel were proceeding to Lall Tikrey for maintaining law and order in the eve of Durga Puja. When they reached near Webi junction, they received an information that one person was creating nuisance in the area. The police party reached the place, apprehended the miscreant and took him Police Station while rest of the police party including the victim stayed back at the junction. As the place was dark, they decided to go under the street light in front of a shop. When they reached the street light the accused-appellant who was standing in front of the shop, asked the complainant victim the sexually coloured question "*Kya darling challan karne aai hay kya*?" On this, Mayabunder Police Station Case No. 118 dated 21.05.2015 was registered under sections 354-A (1) (iv) and 509 of the Indian Penal Code. The accused was arrested and subsequently enlarged on bail at the police station. A chargeseet dated 08.11.2015 was submitted under the said provisions. On 14.03.2016, the said charges were framed and accused pleaded not guilty. A trial was conducted with 11 prosecution witnesses.

3. Out of the ten prosecution witnesses examined, PW-1 was the scribe of the FIR. He was a Head Constable. Apparently the time of occurrence was kept blank. PW-2 was the Police Constable and was both

pre and post occurrence witness. PW-3 was a lady Constable and an eye witness. PW-4 was a Police personnel and pre-occurrence witness. PW-5 was a male Police Constable and an eye witness. He deposed that the accused had told the said word by way of a joke. PW-6 was the victim lady. PW-7 was a lady Constable and an eye witness. PW-8 was a male Constable and was an eye witness. PW-9 was another Police personal who was apparently a post occurrence witness. But, he had a retina problem as well. PW-10 was the Investigating Officer of the case. In his cross, he stated that there was no light nearby. PW-11 was the Station House Officer of the Police Station who subsequently filed the chargesheet. He did not corroborate the victim's version that she called up from the spot.

4. By a judgment and order dated 24.04.2023 the learned Judicial Magistrate, First Class, North and Middle Andaman, Mayabunder in GR Case No. 425 of 2015, the accused-appellant was convicted under sections 354-A(1)(iv) and 509 of the Indian Penal Code and sentenced to suffer simple imprisonment for terms of three months and to pay a fine of Rupees Five Hundred for each of the two offences, the substantive sentences having made to run concurrently. In default, the appellant was directed to suffer sentence of imprisonment for fifteen days more.

5. By judgment and order dated 21.11.2023 in Criminal Appeal 09 of 2023, the learned Additional Session Judge, North & Middle Andaman

dismissed the appeal and directed the appellant to surrender within a month and serve the sentence.

6. Being aggrieved the petitioner has approached this Court.

7. Learned counsel appearing on behalf of the petitioner submitted as follows. The impugned orders of conviction and sentence suffered from complete perversity. On facts, there was a discrepancy as the time of occurrence was kept in blank in the FIR. PW-5, an independent witness belonging to the police force, admitted that the accused had used the words in question by way of a joke. The demeanor and tenor would exclude application of sections 354-A(1)(iv) and 509 of the Indian Penal Code. The victim herself deposed that she felt humiliated as she was in uniform. From the evidence of the police personnel including Investigating Officer, it appears that there was a question of clash and egos. In fact, it is doubtful whether at all such incident had occurred. Some of the interested witnesses only gave out hearsay accounts and some improved their version over the version given before the police. Admittedly, there was no light near the place of occurrence. Deposition of the Police Constable present revealed the fact that there were other persons at the nearby shop. But, no independent witness was examined. The Court took an exceedingly rigid stand and did not even consider the application of Probation of Offenders Act. The words used were not obscene, but at best, inappropriate. On the question of law, far less section 509 being made out, even section 354-A(1)(iv) of the Penal Code

was not made out in the facts and circumstances. The allegedly offensive word “darling” was not a sexually coloured a lewd remark. It was colloquial word commonly used in Indian society in conversations, movies and films and need not contain a sexual innuendo. Alternatively, and without admitting so even if it was assumed that there was a sexually coloured remark made, it could not be said that the same was done with intention to commit insulting of modesty. Section 509 of the Indian Penal Code had no manner of application. The sentences awarded were much too harsh. In case of section 354-A(1)(iv) the maximum punishment was one year out of which the petitioner was awarded three months. In fact, both the penal provisions contained fines as alternatives. Reliance was placed on the decisions of the Hon’ble Supreme Court In *State of Punjab vs. Major Singh* reported in *AIR 1967 SC 63, Rupan Deol Bajaj and others vs. Kanwar Pal Singh Gill and others,* reported in *(1995) 6 SCC 194, Additional District and Sessions Judge ‘X’ vs. Registrar General, High Court of Madhya Pradesh* reported in *(2015) 4 SCC 91, S. Khushboo vs. Kanniammal and others* reported in *(2010) 5 SCC 600, Narinder Singh and other vs. State of Punjab and others* reported in *(2014) 6 SCC 466* and decisions of the this Court *Malabika Bhattacharjee vs. The State of West Bengal and others, CRR 1441 of 2020 and CRR 1443 of 2020, Gobinda Bag vs. The State of West Bengal and others, CRA(SB) 125 of 2022.*

8. Learned counsel appearing on behalf of the State submitted as follows. In revision against acquittal, the scope of interference was very

limited. The impugned orders were all well reasoned. Considering the nature of offence committed, adequate punishments had to be given. There was no proof of an earlier acquaintance that the appellant could have any justification to use such remarks. The prosecution was able to prove its case beyond reasonable doubt.

9. I heard learned counsel appearing for the parties, perused the orders passed by the learned Original Court and the Appellate Court as well as evidence and other materials on record and written notes of arguments filed on behalf of the petitioner.

10. First, it has to be found out whether the evidently reprehensible and sexist expression "*Kya darling challan karne aai hay kya*" used by a purportedly drunken man against a lady police constable in duty on a festive night can attract convictions and sentences under sections 354-A and 509 of the Indian Penal Code.

11. Section 354-A of the Indian Penal Code penalizes use of sexual coloured remarks. Addressing an unknown lady, whether a police constable or not, on the street by a man, drunken or nor, with the word "darling" is patently offensive and the word used essentially a sexually coloured remark. The defence alleges that there is no proof that the man was drunk. If this was done in a sobre state, the gravity of the offence would perhaps be even more.

12. Section 509 of the Indian Penal Code, *inter alia*, deals with word, gesture or act intended to insult the modesty of a woman. Again, this would necessarily involve a sexually oriented act. In this regard, the inference would be the same that using such expression to an un-acquainted lady cannot but be an act intended to insult the modesty of the addressee.

13. At least as of now, the prevailing standards in our society are not such that a man on the street can gleefully be permitted to use such expression in respect of unsuspecting, unacquainted women.

14. This Court finds that the decisions relied upon on behalf of the revisionist are based on diverse facts and do not go against the above proposition.

15. As the prosecution is based primarily on the statement of the victim and the evidence of witnesses all of whom are police personnel, such evidence needs to be carefully analyzed to ensure that it is not a case of false implication, as alleged.

16. Some of the police personnel were pre and post occurrence witnesses and some were eye witnesses. Taking it as a whole, their evidence made out a clinching case for the prosecution. However, fortunately not all these witnesses have deposed in unison. For example, PW-5 deposed that the utterance made by the accused was done

jokingly. PW-9 deposed that his eye sight was not good. All these circumstances preclude the possibility of the case being a frame up.

17. The above circumstances also rule out the necessity of having any local person or an independent witness to support the prosecution case. The non-availability of such an independent witness in the facts of the case was nothing abnormal and was also borne out from the evidence that the incident happened near a street light quite away from a shop.

18. The portion of the PW-5's deposition that the utterance was made by the accused jokingly is a matter of opinion and thus, would hardly have a bearing on the case. The evidence adduced by him, however, does not have any reflection on the demeanor of the accused.

19. The facts and circumstances as brought out in evidence during trial, therefore, clearly establish the prosecution case beyond reasonable doubt.

20. Besides, two successive criminal Courts have come to the same conclusion about the culpability of the appellant. I do not find any exceptional reason to take a different view so as to set aside the conviction awarded.

21. At times, one not only has to go by the maximum punishment imposable, but also by the nature of the offence committed. Considering the nature of offence involving moral depravity and committed on a woman, the Courts quite rightly did not invoke the provisions of the

Probation of Offenders Act. On this, reliance may be placed on *Gita Ram and another vs. State of H.P, (2013) 2 SCC 694*.

22. On the question of sentence, however, one needs to carefully weigh the aggravating and the mitigation circumstances. The cardinal principle is that a sentence imposed should not be a flea-bite one, but should adequate. While under section 354-A(1)(iv) of the Indian Penal Code, the maximum imprisonment imposable is one year, the same is three years for the offences under section 509 of the Indian Penal Code. In respect of either of the offences the punishment imposed on the appellant was imprisonment for three months along with fine. However, in the instant case the appellant stopped at using the offending expression in question and did not further aggravate the act, which warrants a relook at the sentence imposed.

23. In view of the above discussions, while this Court affirms the conviction imposed by the Trial Court, as affirmed by the Appellate Court, the sentence imposed is modified to the extent that the appellant shall undergo simple imprisonment of one month for committing each of the offences instead of imprisonment of three months each, both the sentences having to run concurrently.

24. The petitioner shall forthwith surrender before the learned Trial Court to serve out the sentence.

25. The revisional application is, accordingly, disposed of.

26. Let the trial court records be sent down immediately along with copy of this judgment by special messenger.

27. Urgent Photostat certified copy of the judgment, if applied for, be supplied to the parties upon compliance of all legal formalities.

(JAY SENGUPTA, J.)