

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: October 19, 2016

Decided on: 10th January, 2017

+ **CRL.REV.P. 404/2016 & & Crl.M.B. 1114/2016**

T. MANIKADAN

..... Petitioner

Represented by: Mr. Augustine Chatterjee, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR..... Respondents

Represented by: Mr. Ravi Nayak, APP with SI
Sumer Chand PS Nabi Karim.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The petitioner faced trial in case FIR No.36/2013 under Sections 354/354A IPC and was acquitted by the learned Metropolitan Magistrate vide order dated 8th September, 2015. On an appeal filed by the State the learned Additional Sessions Judge convicted the appellant for offence punishable under Sections 354/354A IPC and directed him to undergo simple imprisonment for a period of one year and to pay a fine of ₹5,000/- for offence punishable under Section 354 IPC and rigorous imprisonment for a period of six months for offence punishable under Section 354A IPC vide the impugned judgment dated 23rd March, 2016. Hence the present petition by the petitioner.

2. FIR No. 36/2013 Ex. PW-1/A was registered under Section 354 IPC at PS Nabi Karim on the statement of PW-2 who stated that she was working at a Child Helpline. On 22nd February, 2013 around 8:15 P.M., she was going

towards New Delhi Railway Station after finishing her duty and when she reached near Paharganj bridge, a man who was in drunken condition came towards her and fondled her breast with ill intention. Before she could understand anything, he touched her private parts. When she raised alarm, two/three passersby held and handed him over to the police officials in the PCR van. The name of the man was revealed as T. Manikadan.

3. Learned counsel for the petitioner contends that the language of Section 354 and 354A(i) is similar and the legislature has failed to distinguish the offences under these two provisions. Furthermore, due to this disparity, a person who is convicted for offence punishable under Section 354A IPC shall automatically be convicted for offence punishable under Section 354 IPC. It is submitted that as the act of the petitioner falls within the special category of the offence punishable under Section 354A IPC, he cannot be convicted under the general offence as well i.e. Section 354 IPC. In the alternative, it is contended that juxtaposed together the two provisions reveal the basic difference. Whereas Section 354 IPC deals with a single act of criminal force being used to outrage a woman's modesty, Section 354 (A) (1) (i) talks about physical contact and advances both. The use of word 'and' in Section 354A requires that there should be a physical contact with sexual advances/overtures. Therefore, the newly added provision is applicable in a situation where the accused does not stop after committing a single isolated act of criminal force but rather goes on to commit several other similar acts which end up converting his actions into advances of a sexual overture. Since the petitioner can be at best held guilty of Section 354A IPC and no minimum sentence is prescribed for the said offence, the petitioner be released on the period undergone. Lastly, discretion has been granted to the

Courts to award lesser punishment when there is confusion in the wordings of two Sections.

4. Per contra learned APP for the State submits that the impugned judgment of the learned Additional Sessions Judge suffers from no illegality. There is no overlap between offences punishable under Section 354 IPC and Section 354A IPC. The offences committed by the petitioner also fulfill the ingredients of Section 354 IPC for which a minimum sentence of one year imprisonment has been provided which has been awarded to the petitioner. Hence no case for release of the petitioner on the period undergone is made out.

5. PW-2 the prosecutrix deposed in Court in sync with her statement made before the police and nothing material could be elicited in her cross-examination. It is for this reason learned counsel does not press the petition on the merits but on the legal issue as noted above.

6. Sections 354 and 354A to 354D IPC read as under:

“354. Assault or criminal force to woman with intent to outrage her modesty. —Whoever assaults or uses criminal force to any woman, 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.

354 A. Sexual harassment and punishment for sexual harassment.-(1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or*
- (ii) a demand or request for sexual favours; or*
- (iii) showing pornography against the will of a woman; or*

(iv) *making sexually coloured remarks,
shall be guilty of the offence of sexual harassment.*

(2) *Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.*

(3) *Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both*

354B. *Assault or use of criminal force to woman with intent to disrobe. – Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.*

354C. *Voyeurism.- Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.*

354D. *Stalking.- (1)Any man who—*

(i) *follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman;*

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”

7. The short issue before this Court is whether the appellant can be convicted for both the offences punishable under Section 354 and 354A IPC simultaneously. Section 354 IPC provides for the offence relating to assault or criminal force to woman with intent to outrage her modesty. Section 354A which was inserted by Criminal Law (Amendment) Act, 2013 provides for punishment for sexual harassment.

8. The two necessary ingredients of Section 354 IPC are ‘assault’ or ‘use of criminal force’ to any woman and with the intention to outrage or knowing it to be likely that he will thereby outrage her modesty. Sections 350 and 351 IPC define ‘criminal force’ and ‘assault’ as under:

350. Criminal force.—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

351. Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

9. Thus when the modesty of a woman is outraged or it is likely to be outraged coupled with an assault or criminal force, Section 354 IPC would be attracted. Though assault can be by mere gesture or preparation intending or knowing that it is likely that such gesture or preparation will cause any person present to apprehend use of criminal force. This is an act more than mere physical contact with advances involving unwelcome and explicit sexual overtures. Ingredients of Section 354 IPC would show that the same mandate an actus reus of assault or criminal force with an intention to outrage or likely to outrage the modesty whereas a mere physical contact with advances as noted above would attract Section 354A IPC. Though in certain fact situations there may be cases where there may be an overlap of both Sections 354 and 354A IPC however, there may be cases which may exclusively fall either in Section 354 or Section 354A IPC. Once an offence falls under Section 354 IPC even if ingredients of Section 354A IPC are

satisfied, the accused will be punished for Section 354 IPC the same being more serious in nature as it prescribes the minimum sentence of one year and term for imprisonment which may extend to five years.

10. In the present case the allegations proved against the petitioner are that he fondled the breast of the prosecutrix with ill intention and thereafter touched her private parts. Thus the offence committed by the appellant fulfils the ingredients of Section 354 IPC and not merely Section 354A IPC which punishes even a physical contact with advances involving unwelcome and explicit sexual overtures. Since criminal force has been used by the appellant and the modesty of the prosecutrix had been outraged by an act beyond physical contact with sexual overture, ingredients of both Sections 354 and 354A IPC being fulfilled, this Court finds no illegality in the conviction of the appellant for the offences punishable under Section 354 and 354A IPC and the sentences awarded.

11. Petition and application are accordingly dismissed

(MUKTA GUPTA)
JUDGE

JANUARY 10, 2017
‘ga’/‘vn’