

**(2004) 11 MP CK 0035**

**Madhya Pradesh High Court**

**Case No:** Criminal Revision No. 1511 of 2004

Ashok Kol

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** Nov. 2, 2004

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 354

**Citation:** (2004) 4 MPHT 464 : (2005) 1 MPLJ 35 : (2005) 1 RCR(Criminal) 898

**Hon'ble Judges:** A.K.Shrivastava, J

**Bench:** Single Bench

**Advocate:** S.K. Tiwari, for the Appellant; Sudesh Verma, Government Advocate, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

A.K. Shrivastava, J.

The applicant has knocked the door of this Court by preferring a revision u/s 397/401 of the Code of Criminal Procedure, 1973 against the judgment, of conviction and order of sentence passed by the Trial Court and affirmed by the Appellate Court convicting him for the offence punishable u/s 354, IPC and sentencing him to suffer rigorous imprisonment of one year and fine of Rs. 1,000/-, in default simple imprisonment of one month.

No exhaustive statements of facts are necessary for the disposal of this revision. Suffice it to state that in the night of the fateful date, according to the case of the prosecution, the applicant entered in side a Khalihan where the prosecutrix was sleeping and just to outrage her modesty, removed quilt as well as sari of the prosecutrix. According to the prosecution, the prosecutrix screamed, as a result of which Ramswaroop arrived at the spot.

On the next day, i.e., 15-1-1999 FIR was lodged by the prosecutrix. On lodging of the FIR the criminal law was triggered off and the prosecution agency investigated the matter and a charge-sheet was submitted.

The Trial Court on bare perusal of the charge-sheet framed a charge punishable u/s 354, IPC against the applicant. Needless to emphasis, the applicant denied the charge and requested for trial.

In order to prove the charge, the prosecution examined as many as 6 witnesses and placed Exs. P-1 and P-2, the documents, on record.

After scrutinizing the evidence on record, the Trial Court came to the conclusion that the applicant did commit the offence for which he was charged and eventually convicted him and passed the sentence which I have mentioned hereinabove. An appeal preferred by applicant was also dismissed by the impugned judgment. Hence this revision.

In this revision Shri S.K. Tiwari, learned Counsel for the applicant has submitted that if the entire case of the prosecution is considered in toto, no offence is made out. In this regard the learned Counsel has invited my attention to the testimony of the prosecutrix.

On the other hand Shri Sudesh Verma, learned Govt. Advocate submits that the two Courts below have assigned cogent reasons for convicting the applicant and, therefore, this revision be dismissed.

After hearing learned Counsel for the parties I am of the view that this revision deserves to be allowed.

Learned Counsel for the applicants has invited my attention to the testimony of the prosecutrix and submitted that if the evidence of the prosecutrix is considered in proper perspective, it would reveal that no offence is made out so as to attract the provision of Section 354, IPC In this regard it would be apposite to re-write that portion of the testimony of the prosecutrix which reads thus:--

^^1 eSa gkftj vnkyr vfHk;qDr dks tkurh gwaA vkt ls yxHkx nks lky igys dh ?kVuk gSA jkr ds le; eSa vius [ksr esa ftlesa xsgwa cks;k gqvk Fkk j[kokyh ds fy, xbZ Fkh vkSj lks jgh Fkh jkt ds yxHkx rhu cts vkjksih esjs >ksyk esa x;k vkSj esjh vks<+h gqbZ jtkbZ dks [khap fn; vkSj esjh lkM+h [khap fn;kA eSa ugha crk ldrh fd vkjksih fd fu;r esjh csbZtrh djus dh Fkh ;k eq>s ekjus dh FkhA eSa fpYybZ ekSds ij esjk ukSdj jke feyu Hkh Fkk vkSj jkeLo:i ;kno vk x;kA jkefeyu cpkus yxk vkSj jkeLo:i cpkus yxs rc vfHk;q jkeLo:i ls fyiV iM+k FkkA ftl le; vfHk;qDr us esjh lkM+h gVkbZ Fkh ml le; vfHk;q us dqN dgk ugha FkkA\*\*

On going through the evidence of the prosecutrix it is luminously clear like a noon day that the prosecutrix herself was not certain whether the applicant snatched the quilt and sari in order to outrage her modesty or to kill her.

At this juncture, it would be relevant to refer to Section 354, IPC which reads thus :--

"354. Whoever assaults or uses criminal force to any woman, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

If the provision of Section 354, IPC is kept in juxtaposition to Para 1 of the evidence of the prosecutrix, which I have quoted hereinabove, it would reveal that the prosecutrix herself was not certain whether the applicant snatched her sari in order to outrage her modesty. Therefore, according to me, no offence u/s 354, IPC is hereby made out.

Learned two Courts below by ignoring this material piece of evidence had passed the impugned judgment and convicted the applicant u/s 354, IPC, which according to me, can not be sustained in the eye of law.

Resultantly this revision succeeds. The conviction of the applicant u/s 354, IPC is set aside. The applicant is in jail. He be released forthwith, if not required in any other case.