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Research Paper Law

SEXUAL HARASSMENT: SECTION 354 OF INDIAN PENAL CODE, 1860

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ABSTRACT

The purpose of this paper was to review the Sexual Harassment of women according to Section 354 of Indian Penal code, 1860. The paper described the Sexual Harassment of women as a social problem. On the behalf of this study, it's concluded the offence like Sexual Harassment is heinous and horrible crime which left so many marks and spot on the society as well as on the mind, reputation and memories. On the behalf of this study, we can suggest to the complainant of sexual assault cases should be provided with legal representation.

KEYWORDS : Sexual Harassment, Women, Section 354 of Indian Penal code, 1860

INTRODUCTION

In India the sexual offences rate against woman is very high, recently we have seen so many rape cases in the News or read that in newspapers. According the Law and Justice Minister, Ashwani kumar, who has stated in Rajya Sabha, "More than 24,000 cases concerning sexual harassment and rape are pending before the High Courts and the Supreme Court".

- The High Court of Allahabad has the highest pending cases of all the High Courts.
- A total of 1192 fast-track courts were reported functional as on 31st March, 2011.
- The state government and chief justices of the respective High Courts have been informed that they may utilize the fresh posts of judges to create fast- track Courts also.
- The Centre has requested the Chief Justice of the 21 high Courts to set up fast-track courts for speedy trails of pending rape cases in district and subordinate courts with high pendency.1

Normal sexual activity can be divided in to three phase: desire, excitement, and orgasm. The physiology of desire is complex involving psychological as well as hormonal factors. Testosterone is necessary for a normal libido in the male and is said to play a facultative role in the female. The endocrine control of sexual desire in the female remains a mystery; however, it is known that estrogens are necessary for adequate vaginal lubrication. During the stage of excitement the penis becomes erect and the vagina balloons. These changes are due to increased local blood flow which is controlled via the sacral parasympathetic outflow. Psychological factors as well as hormones, at least in the male, play a part in maintaining excitement and engorgement. Orgasm is dependent on hormones in the male and the psyche in both sexes. Orgasm in the male is accompanied by emission which involves contraction of the smooth muscle of the vas deferens, seminal vesicles, prostate, and prostatic urethra, and ejaculation which is seen as the rhythmic contraction of the striated muscle of the perineum and penis. The female orgasm is analogous with contraction of the perianal and vaginal muscles. The nervous pathways for this are centred on the lumbar sympathetic. In the male there is a refractory period after orgasm.[2]

Objective of the Study

The objective is to study the Sexual Harassment of women according to Section 354 of Indian Penal code, 1860.

Research Methodology

In the study the following research methodology is used:

Research Design

To investigate the Sexual Harassment of women according to Section 354 of Indian Penal code, 1860, is a case study which was described the Sexual Harassment of women as social a problem.

Data Collection

The required secondary data will be collected through published material i.e. books, pamphlets, articles, newspapers and reports etc.

DISCUSSION

Sexual Harassment (Section 354 of Indian Penal code, 1860):

"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 may extend to two years, or with fine, or with both."

The essential ingredients of section 354 are:-

(i) That the assault must be on a woman;
(ii) That the accused must have used criminal force on her;
(iii) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

The Supreme Court of India has held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that act will fall within this section. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be unable to appreciate the significance of the acts, nevertheless the offender is punishable under this section.[3]

The accused (two in number) entered the house of prosecutrix the accused by misusing their muscle power tore the clothes of the prosecutrix and pulled her breast, accused convicted under section 354 IPC and sentence of one year RI, conviction of accused under section 450 IPC set aside as the prosecutrix did not suffers any injury at the hands of accused.[4]

FIR and Proof

A) FIR: -

FIR was lodge by the parents of victim girls who were Primary school student of tender age against accused. Head master of the school though FIR the name of victim girl were not mentioned,, but the words "daughter and niece" were used for whom it was alleged that they were frightened of attending the school because culpable acts of the accused. FIR was proved by informant in his evidence. Nothing was elicited to show that the informant bore animosity or any grudge against the accused and in cross-examination, the informant admitted to have not disclosed the name of his daughter and niece due to shyness. It was during investigation that the police discovered incriminating facts against the accused.

B) Proof: -

A charge under this section is one which is very easy to make and very difficult to rebut, and also one which experience shows woman are sometimes apt to make from one motive to another without the slightest foundation. So when such charge are made, it is necessary to see whether they are supported by independent evidence beside that of the woman herself, or are corroborated by her conduct and the surrounding circumstances and are consistent with ordinary probabilities.[5]

The evidence of prosecutrix was found unreliable. Hence any part of her evidence is risky to be relied upon. The possibility of prosecutrix being a willing party to entire episode cannot be ruled out. The prosecution failed to prove beyond reasonable doubt, that accused has committed an offence under sections 354 or 323 of Indian Penal Code, 1860. Hence conviction and sentence set aside.[6]

Prosecution of accused for outraging modesty of a girl contention of accused that he was falsely implicated as father of prosecutrix wanted to take personal vengeance, plea not tenable it cannot be comprehended as to how a father can use his young daughter as a tool in Indian society no woman will be used by person for purpose of wreaking personal vengeance, accused rightly convicted and sentenced to 6 months simple imprisonment and to pay a fine of Rs. 2000/-.[7]

Abduction and Outraging Modesty

From the evidence on record, It clearly appears that the prosecution has proved its case beyond all reasonable doubt against the accused appellant Shoukat, as all the ingredients, which have been mentioned above to prove the offence under section 366 of Indian Penal Code, 1860, have been proved by the prosecution in the manner that the accused appellant Shoukat first induced the Prosecutrix PW-1 Rampyari by deceitful means that there was a Jappa, but actually there was no such jappa and relying on the statement of accused appellant Shoukat, prosecutrix accompanied him in the night and when they were going on the way, the accused appellant seeing lonely place outrage her modesty and thus, it is not mere case of abduction, but purpose for proved. In these circumstances, the finding of the learned Trial Judge convicting the accused appellant Shoukat for the offence under sections 366 and 354 of IPC are liable to be confirmed. Hence, the argument that no case for the offence under section 366 IPC is made out against the accused appellant Shoukat stands rejected.[8]

Attempts to Rape and Outraging the Modesty

The accused Madan Lal untied salwar of a girl Shanti and put off his own payjama also. He spread his knees on the ground and closed the mouth of the girl with his hand in order to stop her from crying and slept over her in order to commit rape on her. He could not succeed because certain other persons arrived who pulled him from over the girl while he was sleeping naked below the waist. It was held that this shows a determined intention on his part to commit rape on her and if the witnesses had not intervened, he would certainly have committed rape on her and therefore, all these series of acts performed by the accused with a clear cut, definite and determined intention to commit rape on girl clearly amounted to an attempt to commit rape. It was not a case of outraging the modesty of a girl. It cannot be accepted that if on account of intervention of the witnesses, the accused was not able to make an attempt to penetrate his penis inside the vagina of the girl, the accused cannot be held guilty of the offence under Section 376/511 of Indian Penal Code,1860.[9]

Insult the Modesty by Word or Gesture Section 509

Section 509- Word, gesture or act intended to insult the modesty of a woman –

"Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one years, or with fine, or with both."

This section deal with the offence of intentionally insulting the modesty of a woman in certain ways mentioned in this section. This section is in two parts. Both the parts contemplate the insult the modesty of the woman. Under the first part, the modesty of woman is contemplated as being insulted in the following manner, the essential elements of which are intention.

(a)To insult the modesty of woman by:

(i)Uttering the word.
(ii)Making any sound; or
(iii)Gesture; or
(iv)Exhibits any object

(b)Intrude upon the privacy of such woman,

Under both parts of the section intention to insult the modesty of the woman is essential.

1)Modesty:

Where an accused entered into a woman's apartment and tried to catch hold of her and persuade her by remerging garments, an offence under the section is committed.[10]

2)Exhibits any objects:

A letter sent by post containing indecent overtures is such as object exhibits to the complainant by whom it was received.[11]

Statement of accused published in a news magazine where accused expressed her view that incidence of pre-marital sex and live in relationship were on increase and called for social acceptance of the same does not make an offence of obscenity under the section 292 of Indian Penal Code, 1860 nor an offence under section 509 of the same.[12]

3)Privacy of Woman:

Where the offence charged consists of the accused's intrusion upon the privacy of a woman, it must be shown that the intrusion was made with intent to insult the modesty of any woman.[13]

4)Words or Gesture:

Words or gestures intending to insult the modesty of a woman fall within the ambit of this section. To abuse a woman is obscene terms near a water tap would obviously amount to an offence under this section.

5)Sentence:

Man has been the victim of precipitation by the woman, gestures, postures, un-necessary makeup, wearing of modern loose apparels are the examples which are employed to induce the man. Poor man falls in trap by making advances. Girl who is also in the beginning consenting party makes false complaints against the man to save her own skin, reputation which she may spoil or loose.

CONCLUSION

In the present study we discussed that what are the sexual harassment and outraging of modesty of a woman, by words, sign etc., but what will be the effect when the act of a person is beyond the limit of these sections applicability means when a person acted in such a manner that his act is not limited to use of criminal force only but it causes the injury on the person of a woman or causes sexual intercourse with a woman without her consent or against her will. Such a offences are more heinous and more cruel in the nature which shakes the whole life or character of the victim.

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