

Presented on : 28/09/2021.  
Registered on : 28/09/2021.  
Decided on : 05/10/2021.  
Duration : 7 D 0 M 0 Y  
Exh.

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,**

**28<sup>th</sup> COURT, ESPLANADE, MUMBAI.**

(Presided over by Yashshree Marulkar)

**C.C.No.2800650/PW/2021**

**(C.R.No.1181/2021)**

**(CNR No.MHMM11-006110-2021)**

**J U D G M E N T**

**(u/Sec. 355 of Cr.P.C.)**

- 1) The serial No. of the case : 2800650/PW/2021.
- 2) The date of the Commission of offence : Dated 18/09/2021.
- 3) The name of the Complainant (if any) : State of Maharashtra,  
Through P.S.O. of P.S.  
L.T.Marg, Mumbai.
- 4) Name of the Accused, his parentage and residence : Rajkumar Narayan Tandel,  
Age : 56 years,  
R/o. 46 A, Macchimar Nagar  
No.2, Captain Prakash  
Pethemarg, Colaba,  
Mumbai.
- 5) The offence complained of or proved : Under Sections 354, 354(A),  
354(D) of the Indian Penal  
Code.
- 6) The plea of the accused and their examination : Accused Pleaded not guilty.
- 7) The Final Order : Accused is convicted.

8) The date of such order : Date: 05/10/2021.

---

Appearance : Ld. A.P.P. For State  
Advocate Giri for the accused

---

1. Accused sitting in a dock is facing trial for the offences alleged to have been committed punishable under Sections 354, 354(A)(iv), 354(D) of the Indian Penal Code (*for the sake of brevity hereinafter referred to as the "IPC" in short*).

2. In nutshell the case of the prosecution is as under:-

The informant was working at N.N. Jain Associates at Aman Chambers, Churni Road, Mumbai. The incident took place on 18/09/2021 at about 6.45 p.m. in S.K. Patil Garden. The informant after leaving the office in the evening, had gone to S.K. Patil Garden at around 5.45 p.m. At that time, she was sitting in the said garden and watching an online C. A. lecture on her mobile. Soon after the informant noticed that, the accused was moving around her as though stalking her. Thus, the informant got up and sat on a bench in another part of the garden to get away from the accused.

3. However, the accused followed her again. As there was nobody around the garden, suddenly the accused unzipped his trouser and started walking towards the informant, exposing his genitals. The informant frightened by the accused, started running towards the exit gate of the garden while the accused still kept following her in the same position.

4. Then the informant spotted two people sitting in the garden and asked for their help. The said persons caught and restrained the accused.

Meanwhile, the informant called the police for help. After that, the security guard of S.K. Patil garden came to the spot of the incident. Shortly afterwards, a police vehicle arrived at the spot and took the accused into custody and brought him to the police station with the informant. Thereafter, the informant lodged Report against the accused.

5. On the basis of the Report of the informant, crime against the accused was registered vide C.R. No.1181/2021 vide Sections 354, 354(A), 354(D) of the IPC in L.T.Marg Police Station. Initially PSI Kadam recorded the Report. Then the investigation was handed over to API Shelar. He investigated the crime. He visited the spot of incident, and recorded statement of two eye witnesses. Thereafter, the investigation was handed over to PSI Jadhav. She recorded the statement of other witnesses. After completion of the investigation, she filed the chargesheet against the accused in the Court.

6. I framed the charge on 04/10/2021 at Exh.2 against the accused under Sections 354, 354(A)(iv), 354(D) of the IPC. The contents of the charge read over and explained to the accused in his vernacular. The accused pleaded not guilty and claimed trial. The defence of the accused and as per his statement recorded vide Section 313 of the Code of Criminal Procedure on 04/10/2021 at Exh.14, is of the total denial and false implication.

7. On the basis of the case of the prosecution and evidence led, following points arose for my determination. I have given my findings on those points for reasons to follow are as under:-

<u>Sr.</u>	<u>Points for consideration</u>	<u>Findings</u>
		<u>No</u>
1	Whether the prosecution proves that, the accused used criminal force to the	... Yes.

informant, intending to outrage her modesty by such force ?

- 2 Whether the prosecution proves that the accused, intending to outrage modesty of the informant, unzipped his trouser and exposed his genitals to the informant ? ... Yes.
- 3 Whether the prosecution proves that the accused, committed the offence of stalking by following the informant ? ... Yes.
- 4 What order? .. As per final order.

### **: R E A S O N S :**

8. In order to establish charge against the accused, the prosecution has examined in all five witnesses on 04/10/2021 i.e. the informant at Exhibit at 5, Ancito (P.W. No. 2) at Exhibit 8, PSI Kadam (P.W. No.3) at Exhibit 9, I.O. PSI Jadhav (P.W. No. 4) at Exhibit 10 and Tushar (P.W. No.5) at Exhibit 13. The prosecution has relied on the documentary evidence such as Report at Exhibit 6, Spot panchanama at Exhibit 11, Statement of the informant vide Section 164 of the Code of Criminal Procedure at Exhibit 7 and Certified copy of Judgment dtd. 21/12/20218 in Pocso Special Case No. 450/2015 at Exhibit 12. Heard the Ld. APP and the Counsel for the accused at length on 05/10/2021.

### **AS TO POINT NO. 1 To 3 :-**

9. It has come in evidence of the informant that, the incident took place on 18/09/2021 at about 6.45 p.m. in S.K. Patil Garden. She after leaving the office in the evening had gone to S.K. Patil Garden at around 5.45 p.m. At that time, she was sitting in the said garden and watching an

online C. A. lecture on her mobile. Soon after she noticed that the accused was moving around her as though stalking her. Thus, she got up and sat on a bench in another part of the garden to get away from the accused.

10. However, the accused followed her again. As there was nobody around the garden, suddenly the accused unzipped his trouser and started walking towards the informant, exposing his genitals. The informant frightened by the accused, started running towards the exit gate of the garden while the accused still kept following her in the same position.

11. It has further come in her evidence that, then she spotted two people sitting in the garden and asked for their help. The said persons caught and restrained the accused. Meanwhile, the informant called the police for help. After that, the security guard of S.K. Patil garden came to the spot of the incident. Shortly afterwards, a police vehicle arrived at the spot and took the accused into custody and brought him to the police station with the informant. Thereafter, the informant lodged Report (Exh.6) against the accused. She identified the accused in the Court. She was cross-examined at length by the defence.

12. It has come in the evidence of Ancito (P.W. No.2) and Tushar (P.W.No.5) that, on 18/09/2021 at about 6.45 p.m. in the evening, they were present in S.K. Patil garden. At that time the girl came running towards them followed by the accused, who was flashing her. She raised alarm for the aid. After that the accused fixed the zip of his trouser and tried to flee. However, they caught him. After that the girl called the police for help. The security guard of S.K. Patil garden came to the spot of the incident. Shortly afterwards, a police vehicle arrived at the spot and took the accused into custody and brought him to the police station with the informant. They also went to the police station. After reaching the police station, they came to

know about the name of the accused i.e. Rajkumar Narayan Tandel. Police have recorded their statements on the same day. They identified the accused in the court. They were also put to lengthy cross-examination.

13. It has come in the evidence of PSI Kadam (P.W. No.3) that, on 18/09/2021 she was attached to L.T.Marg police station as PSI and on that day working as Police Officer incharge of Prevention of Sexual Harassment of the Women cell. On that day at about 7.00 p.m. mobile van of the police station brought the accused by name Rajkumar Tandel and the informant. Then she recorded the Report (Exh.6) of the informant. C.R.No. 1181/2021 was registered. Then investigation was handed over to API Shelar. She identified the accused in the court.

14. It has come in the evidence of I.O. A.S.I. Jadhav (P.W.No.4) that, on 18/09/2021 she was attached to L.T.Marg police station. Investigation of C.R.No.1181/2021 was handed over to her alongwith Report (Exh.6), spot panchnama (Exh.11) and statements of two eye witnesses. During the course of further investigation, she recorded the statements of other witnesses. It also revealed in the investigation that, the accused was booked for the similar offences in Cuff Parade police station in three different cases and one in Azad Maidan police station and he has been convicted for the said offence punishable u/Secs. 354(A), 354(D), 509 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act, 2012 by the Hon'ble Special Court on 21/12/2018. She produced certified copy of Judgment of Pocso Case No. 415/2015 (Exh.12). After the completion of the investigation, she filed charge-sheet against the accused in the Court. She identified the accused in the court.

15. All prosecution witnesses were cross-examined at length by the defence.

16. I think it appropriate to refer to the ingredients of the sections with which the accused are charged.

**Section 354 :- The points requiring proof are –**

1. A women was assaulted or criminal force was used to her
2. The assault or use of criminal force was by the accused
3. The accused intended to outrage her modesty or knew that her modesty was likely to be outraged.

**Section 354 (A) - According to section 354A of Indian penal code,**

1. physical contact and advances involving unwelcome and explicit sexual overtures; or
2. a demand or request for sexual favours; or
3. showing pornography against the will of a woman; or
4. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

**Section 354 (D) (1) Any man who—**

1. 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; or
2. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking

17. Law regarding appreciation of evidence in sexual offence is now set at rest by series of the decision by the Apex Court of the land. It is now

well settled that conviction in sexual offences can safely be recorded provided evidence of the victim of sexual offence does not suffer from any basic infirmity and probability factor does not render it unworthy of credence. With development of the law regarding sexual offences, it is now crystal clear that a woman who is victim of sexual assault is not an accomplice to the crime. Her evidence is similar to the evidence of an injured informant or witness. Corroboration to her testimony is not a rule, but it is only by way of abandon caution that the Court may look for some corroboration so as to satisfy its conscious. At this juncture, it is relevant to quote the law laid down by the Hon'ble Apex Court in the matter of *State of Maharashtra Vs. Chandraprakash Kewalchand Jain [1990 SCC 5501]*, wherein it is held thus:

“A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of The Indian Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured informant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that, it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is



shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged the Court should ordinarily have no hesitation in accepting her evidence”.

18. Keeping in view the ingredients of the Section with which the accused is charged and the crystallized legal position regarding appreciation of evidence of the victim, the evidence of the prosecution needs to be scrutinized.

19. It is the case of the prosecution that, when the informant was sitting on the bench of the S.K. Garden, she noticed that, the accused was moving around her as though stalking her. Thus, she got up and sat on a bench in another part of the garden to get away from the accused. However, the accused followed her again. As there was nobody around the garden, suddenly the accused unzipped his trouser and flashed her. The informant frightened by the accused, started running towards the exit gate of the garden, while the accused still kept following her in the same position and then she seek the aid of Ancito (P.W.No.2) and Tushar (P.W.No.5) to grab the accused.

20. Evidence of the informant that, when she was sitting in the S.K. Patil Garden and watching an online C. A. lecture on her mobile, she noticed that the accused was moving around her as though stalking her. Thus, she got up and sat on a bench in another part of the garden to get away from the accused. However, the accused followed her again. As there was nobody around the garden, suddenly the accused unzipped his trouser and started walking towards the informant, exposing his genitals. The informant frightened by the accused, started running towards the exit gate of the garden while the accused still kept following her in the same position, is absolutely without a single discrepancy. Lengthy cross by the defence failed

to shatter her evidence. The defence of the accused is that, due to darkness, she could not see the person, who has done the said act properly, cannot be considered as the accused has been grabbed at the time of continuance of the incident itself by Ancito (P.W.No.2) and Tushar (P.W.No.5). Moreover, the quick natural response of the informant i.e. to take aid of Ancito ( P.W.No.2) and Tushar (P.W.No.5) and immediate dial of 100 number to seek the help of police, shows her presence of mind. Basically there is no reason to lie for the victim. There is no previous enmity with the accused, rather she was not knowing him before the said incident. Therefore, in my opinion, explicit testimony of the victim, is utterly trustworthy even in absence of any corroborative evidence. However, fortunately in the case in hand, there are two witnesses i.e. Ancito (P.W.No.2) and Tushar (P.W.No.5) who witnessed the accused flashing the informant and soon after that zipped his trouser and while he was trying to flee, they grabbed him. Independent corroborative evidence of Ancito (P.W.No.2) and Tushar (P.W.No.5) holds up the prosecution case more strongly. Nothing fruitful brought on record in their cross-examination as well.

21. Further quick lodging of Report (Exh.6) and recording of statements of Ancito (P.W.No.2) and Tushar (P.W.No.5) by police machinery on the same day of the incident, strengthens the prosecution case. There is no dispute regarding the spot of incident as the defence has admitted spot panchnama (Exh.11).

22. Quick response of the police machinery i.e. lodging of Report (Exh.6) and registration of the crime soon after the offence by PSI Kadam (P.W.No.3) shows sensitization regarding the heinous crime against women which ruins physical as well as mental health and inner soul of the victim. Further, IO PSI Jadhav (P.W.No.4) had also shown her promptitude composure by collecting the evidence regarding earlier commission of offences of the same nature by the present accused as mentioned above.

However, the said evidence cannot be considered as the previous bad character of the accused is irrelevant as per Section 54 of the Indian Evidence Act, except in reply.

23. Therefore, in view of discussions in foregoing paras as well as the ingredients constituting the offences with which the accused is charged, in my opinion, the prosecution has established the fact that, the accused by moving around the victim and compelling her to sit on the other bench in the garden, and even after that flashing her by unzipping his trouser and chasing her shows that, he has used criminal force to her intending to outrage her modesty. Further the prosecution has also succeeded to prove that, the accused unzipped and flashed to the victim and also chased her, the said act of the accused proves that he was making sexually coloured remarks and was also following the victim to contact her to foster personal interaction repeatedly despite a clear indication of disinterest as she changed the earlier place of sitting and sat on the other bench in the garden. In such circumstances, the prosecution has succeeded to bring home the guilt of the accused under Sections 354, 354 (A)(iv) and 354(D) of the Indian Penal Code. Accordingly, I answers point Nos. 1 to 3 in the Affirmative.

**AS TO POINT NO. 4 :-**

24. In view of my findings to point Nos. 1 to 3 the prosecution has successfully brought on record the guilt of the accused for the offences punishable under Section 354, 354(A)(iv), 354(D) of the Indian Penal Code.

25. In my opinion, considering the nature of the offences and age of the accused, he is not entitled for the benefit of Section 4 of the Probation of Offenders Act.

26. However, before awarding any punishment, the accused should have to be heard. Therefore, I take pause to hear the accused on the point of quantum of sentence.

27. The accused and his Ld. Advocate submitted that, he and his mother are very old and suffering from some medical problems. Therefore, he prayed that, minimum punishment may kindly be imposed.

28. The learned APP submitted that since the prosecution has proved the guilt of the accused under Sections 354, 354(A)(iv) and 354 (D) of the Indian Penal Code, maximum punishment to him be awarded.

29. Prior to 2013, there were some provisions in the Indian Penal Code regarding assault or using criminal force to women with intend to outrage her modesty. However, no specific acts were incorporated in the same. The Criminal Law (Amendment) Act, 2013 (Nirbhaya Act) is an Indian legislation passed by the Lok Sabha on 19/03/2013 and by the Rajya Sabha on 21/03/2013, which provides for amendment of Indian Penal Code, Indian Evidence Act and Code of Criminal Procedure, 1973 on laws related to sexual offences. The Act introduced unprecedented provisions in the Indian Penal Code which criminalizes sexual voyeurism and stalking and amends legal provisions to protect the privacy of individuals, such as discontinuing the practice of examination of the sexual history of the victim a sexual assault for evidence. With instances of threats to individual privacy on the rise in India, it was high time that the criminal law expands its scope to deal with offences which violate physical privacy. The Act recognizes the broad range of sexual crimes to which women may fall victim, and a number of ways in which gender based discrimination manifests itself. It also acknowledges that lesser crimes of bodily integrity often escalate to graver ones. Sexual violence apart from being a dehumanizing act is an unlawful

intrusion on the right of privacy and sanctity of a female. It is a serious blow to her Supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and where the victim. It leaves behind a traumatic experience. The accused not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e her dignity, honour, reputation and not the least her chastity. Sexual offences are not only a crime against the person of a woman, it is a crime against the entire society. Moreover, sexual offences are the most heinous crime against women under Indian Criminal Law, which not only defiles the physical health of the victim, but also ruin her inner soul. No ointment would be able to provide a relief to victim, as there is no medicine for mental distress.

30. Keeping in mind all these factors, quantum of sentence has to be determined. The act of the accused was deliberate. The accused loitered and flashed the victim in order to cause psychological harm to her and for degrading her soul. On proof of such offence, the Court is bound to show a great responsibility and utmost sensitivity while imposing the sentence on the accused. Considering the facts and circumstances of the instant case which are proved beyond all reasonable doubts, this Court is of the opinion that, the sentence should be such as to create deterrent effect not only on the accused, but even on potential criminals, who wish to venture in committing such acts. Hence, in reply to point No.4, I pass the following order.

### **ORDER**

- 1] The accused is hereby convicted vide Section 248(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 354 of the Indian Penal Code and he sentenced to suffer rigorous imprisonment for the period of 03 (three) years and to pay fine of Rs.1,000/- (Rs. One Thousand only) and in default of payment of fine to suffer rigorous imprisonment for 1 (One) month.
- 2] He is also convicted vide Section 248(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 354 (A)

(iv) of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for the period of 01 (One) year and to pay fine of Rs.500/- (Rs. Five Hundred only) and in default of payment of fine to suffer rigorous imprisonment for 15 (Fifteen) days.

- 3] He is also convicted vide Section 248(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 354(D) of the Indian Penal Code and he sentenced to suffer rigorous imprisonment for the period of 03 (three) years and to pay fine of Rs.1,000/- (Rs. One Thousand only) and in default of payment of fine to suffer rigorous imprisonment for 1 (One) month.
- 4] All the sentences shall run concurrently.
- 5] The accused is entitled to set off u/Sec. 428 of the Criminal Procedure Code for the period already undergone in custody i.e. from 18/09/2021.
- 6] Copy of the judgment and order be given to the accused free of costs.

Place: Mumbai  
Date: 05/10/2021

Sd/-  
(Yashshree Marulkar)  
Metropolitan Magistrate,  
28<sup>th</sup> Court Esplanade, Mumbai.