

THE COURT OF SH. DEV SAROHA,
METROPOLITAN MAGISTRATE-05, NEW DELHI DISTRICT,
PATIALA HOUSE COURTS, NEW DELHI

STATE

versus

Lalit De Silva
FIR No. 69/2014
PS: B.K. Road
U/s 509 IPC
CC No. 49796-2016

1. Date of commission of offence : 08.10.2009
2. Name of the complainant,
and his parentage & Residence : Smt. [REDACTED] W/o Sh. [REDACTED]
R/o [REDACTED], [REDACTED],
[REDACTED].
3. Name of the accused, and his
Parentage & residence : Lalith Desilva, s/o Sh. Piyadigamage
Chandrasena Desilva,
R/o Flat No. 6 A, 1504, Valley View
Estate, Gwal Pahari, Gurgaon.
4. Offence Complained of : U/s 509 IPC
5. Plea of accused : Pleded not guilty.
6. Final Order : 16.09.2020
7. Date of Reserving Judgment : 31.08.2020
8. Date when judgment was
pronounced : 16.09.2020

JUDGMENT

1. As per case of prosecution, on 08.10.2009 while the complainant was working as Sales Executive at Sri Lankan Airlines, Delhi Office, the accused called the complainant in his room and asked her question which intruded upon her privacy. The complainant stated in his complaint that *“The accused had asked me did your husband fuck you? I was shocked. The accused asked how was it? Then the accused said what should he call me now? Prostitute, hooker or bitch?”*. Qua above accident, FIR was lodged and case was investigated by police. After investigation, chargesheet was filed in court.

2. On the basis of charge sheet, charges of offence under section 509 IPC were framed against the accused namely Lalit De Silva and the charge was duly explained to him in vernacular to which he pleaded not guilty and claimed trial on 18.12.2014.

APPRECIATION OF EVIDENCE

3. In order to prove the above said allegations against the accused, the prosecution has examined three witnesses.

PW 1 [REDACTED] **the complainant** deposed that on 08.10.2009, she was working as sales executed at Sri Lankan Airlines, Delhi office and on that day around 2.30 pm while she was present at her office accused called her in his cabin and asked her

“how was yesterday?”. Being Karvachauth on the previous day, complainant had explained him how she celebrated the Karvachauth. She further stated that thereafter the accused had asked her *“did your husband fuck you? She was shocked. The accused asked how was it? Then the accused said what should he call her now? Prostitute, hooker or bitch? ”*. Complainant further deposed that then the accused asked her whether she was recording his statements, she said she does not know how to record. Thereafter, the accused had snatched the phone from her hand and threw it on the table. She further deposed that thereafter, she went out from his room crying and called her husband and informed him about incident. Her husband said that he will bring the police but complainant said not to do anything. Thereafter, she immediately called Mr. Mohd. Fazeel who was the head of the commercial but he did not pick the phone. Thereafter she called Mr. G.T. Jayaseelan who was the Manager China and informed about the incident, who asked her not to do anything and he will speak to the accused. Thereafter she narrated the incident to her seniors/management people also but they all stopped her for complaining to the police. She further stated that that day after the incident the accused went out of the office and at about 4.30 pm he came back and called her in his cabin, where the accused told her that she should not have informed about the incident to anybody. She immediately ran out of his room and all the management people had assured her that they will take corrective action the accused, but nothing was done.

She further deposed that in the year 2010 the accused gave her a transfer letter to go back to Kochin and taken over the station without having any discussion,

she was shocked that accused was taking revenge against her for complaining about sexual harassment committed by him. She further deposed that she had informed the accused that she was going through fertility treatment and she needed to stay with her husband. Thereafter the accused asked me to write a letter to him, the regional manager and HR. She further deposed that while she was in Delhi after the incident the accused continuously used to harass her.

She further deposed that she was transferred to Kochin and had joined her duties and while she was in Kochin the accused called her in the morning and asked her where was she and she said she was in the office, before two days I was on leave. She further deposed that the accused again told me that *“you bitch what are you doing? Why you are not answering the mail which was sent by Delhi Sales Staff”*. She told the accused that she had not received any email from Delhi Office and she will speak at Delhi office and do the needful, but the accused was very rude and threatened her *“you bitch if you dont reply immediately I will throw you out of the company”*. She further deposed that she sent a mail to the accused asking for his rude behaviour with her but never replied till date and she was writing it to the company since 2011 but not got any reply from the management and she was forced to contact to the National Commission for Women. She further deposed that accused sent a message to her manager and all the junior staff without copying her that what are the activities she was doing in the office. She further deposed that after that she had contacted the National Commission for Women and they had sent a mail to CEO and the chairman of the Sri Lankan Airlines which was never replied by both of them. Thereafter Commissioner of National Commission for Women

had sent a mail to the Delhi Police Commissioner. She further deposed that after doing the inquiry done by the Delhi Police Commissioner an FIR was filed against the accused on the basis of her statement which is Ex. PW 1/A. She further deposed that Ms. Monika Gomes had also give a statement regarding her harassment by the accused while she was working with Sri Lankan Airlines. She further deposed that Ms. Lalini Weeresinghe had also confirmed to the police about the incident which had happened with her on 08.10.2009 and at that time she had requested her not to report the matter to the police. She further deposed that after registration of FIR on 15.05.2014 on the instance of accused, Mr. Ahmad Mazahim, Manager Kerala asked her to withdraw the case, but she refused for the same, thereafter Mr. Ahmad threatened her for transfer or if she travel via Colombo she will be held in Colombo Airport by false allegations, but she denied for withdrawing her case. After that on 26.05.2014 she had applied for leave to visit her family in Delhi. But on 29.05.2014 she had been handed over transfer letter and asked to join Bangalore office on 10.06.2014 and she was supposed to join back to Cochin on 09.06.2014. She further deposed that thereafter she was under constant depression. Her statement u/s 164 Cr. P.C was also recorded which is Ex. PW 1/B.

This witness was cross examined by the Ld. Defence counsel, however, the same is not repeated herein for the sake of brevity.

PW 2 W/HC Sosan Minj deposed that on 05.04.2014 she was posted at PS B.K. Road as a DO and her duty hours was 4 am to 8 pm. She registered the FIR in the present matter and the same is Ex. PW 2/A. Thereafter she made endorsement on the

original rukka which is Ex. PW 2/B. She further deposed that she had also given certificate u/s 65 B of the Indian Evidence Act for substantiating the copy of computerized FIR, which is Ex. PW 2/C. Thereafter she handed over the copy of FIR and original complaint to W/SI Sushila for investigation. She further deposed that on 12.06.2014 she had joined the investigation of the present case. During investigation she had prepared the bail bonds / personal bonds which is Ex. PW 2/D. She further deposed that accused informed that he is a Srilankan citizen on which the copy of passport of the accused was taken. Thereafter on 13.06.2014 the information of the arrest of the accused was given to Srilankan Embassy. She further deposed that on 25.06.2014 she had prepared the challan of the present case and file before the Court.

This witness was cross examined by the Ld. Defence counsel, however, the same is not repeated herein for the sake of brevity.

PW 3 W/SI Sushila deposed that on 05.04.2014 she was posted at PS B.K. Road as a SI and on that day complainant along with her husband came at PS and narrated the incident regarding the present case. She further deposed that thereafter she recorded her statement which is Ex. PW 1/A. Thereafter, she prepared the rukka which is Ex. PW 3/A and proceed further with the investigation of the case. On 10.04.2014 she along with beat staff went for searching the accused but was not found but an employee was present there, he informed that accused is on leave till 24.04.2014 and also asked the address of accused. She further deposed that thereafter, on 21.04.2014 she along with beat staff went to the office of accused but accused was not found again. Thereafter

again on 28.04.2014 she went to the office of accused, but again accused was not found there. She further deposed that again on 15.05.2014 she along with beat staff went to the office of accused, but accused was not found. Thereafter she served the notice u/s 91 Cr. P.C and another notice u/s 160 Cr. P.C. to Amir Ali regarding the accused. She further deposed that thereafter she came to know that on 16.05.2014 bail is pending from the High Court.

She further deposed that on 16.05.2014 she attended the bail matter in the High Court and thereafter in the meantime accused reached at the PS and after that she interrogate the accused and during interrogation accused stated that he had already joined the investigation in the year 2013 and thereafter investigation was handed over to HC Sosan Minj, due to her training programme.

This witness was cross examined by the Ld. Defence counsel, however, the same is not repeated herein for the sake of brevity.

No other witness was examined in PE.

4. As all witnesses were examined by the prosecution, prosecution evidence was closed vide order dated 19.07.2018. After PE statement of accused under section 313 read with 281 Cr. P.C was recorded on 24.11.2018 . In his defence he stated that all the allegations of harassment against him are incorrect and that he is innocent and has been falsely implicated in the case, as the complainant failed to get herself transferred back to Delhi Station from Kochin, where she had been transferred by the company. He also stated that the present case was started with the allegations of harassment on different dates and then it was changed conveniently by the complainant after coming to know

that I was not in India on the said first date of alleged incident i.e. 27.10.2010 and later on she changed the date of alleged incident to 08.10.2009. Accused wish to lead evidence in his defence.

5. In order to prove his defence, the accused examined one witness.

DW 1 Malwattage Upali He produced his authority letter dated 14.02.2019 Ex. DW1/1 and power of attorney executed in his favour by the company is Ex. DW 1/2. He produced the copies of the documents obtained from the official mail ID of the company (HR department) and also from the record available with the company Ex. DW 1/3 running in 86 sheets and certificate u/s 65 B of the Indian Evidence Act Ex. DW 1/4.

This witness was cross examined by the Ld. APP for State, however, the same is not repeated herein for the sake of brevity.

6. I have heard the rival submissions and have carefully perused the record.

REASONS FOR DECISION

7. In the present matter the prosecution has examined three witnesses in total to prove its allegations qua the accused that on the date and time as earlier mentioned, the accused with intend to insult the modesty of a woman, uttered some words.

8. Further, before appreciation of evidence, it is necessary to state the essential ingredients of section 509 of Indian Penal Code. Same are as follows:-

- a. In intention to insult the modesty of a women
- b. The insult must be cause by uttering any words, or making any sound or gesture or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman or by intruding upon privacy of such woman.

9. The word 'modesty' has not been defined in the Indian Penal Code. From the dictionary meaning of modesty and the interpretation given to that word by the Supreme Court in State of Punjab vs. Major Singh, AIR 1967 SC 63, it appears that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be pursued as one which is capable of shocking the sense of decency of a woman.

10. In the case, Mr. Prasad Shirodkar vs. State, the Bombay High Court also held that in a case under section 509 IPC, the intention has to be gathered from the act complained off since there is no mechanism as yet to prove into the mind of the offender to find out as to what intention he was harboring at the relevant time.

11. Thus, from the above settled judgments it is clear that regarding the intention under section 509, the mandate of law is that the intention of the accused should be

judged from the act of the accused.

12. In this case, the accused has defended himself by submitting that he has been falsely implicated in the case by the complainant when she had failed to get herself transferred back to Delhi Station from Cochin where she had transferred by the company. He has further submitted that the complainant has also changed the date of the alleged incident from 27.10.2010 to 08.10.2009 which was given in her mail to the company sent on 28.09.2011, because she came to know that accused was not in India on 27.10.2010. He has further submitted that there have been improvement by the complainant, the complainant has failed to explain the delay in making her first complaint and that there are no witnesses to the alleged incident.

13. Thus, in my opinion the decision of the case depends upno two issues:-

- a) Whether reliance can be placed on the sole testimony of the complainant.
- b) Whether delay in lodging the FIR has been adequately explained by her.

14. In the case of State of Punjab vs. Gurmeet Singh & Ors., SC 1996 AIR 1393, the Hon'ble Supreme Court has held that in cases involving sexual molestation, supposed consideration which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throughout and other reliable prosecution case. The inherent bashfulness of the female and the tendency to

conceal outraged of sexual aggression are factors which the Court should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the Court should find no difficulty to act on testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement, before relying upon the same, as a rule, in such cases amounts to adding insult to injury caused to the victim.

15. Thus, it is clear from the above stated judgment that reliance can be placed on the sole testimony of the prosecutrix provided by her if testimony inspires confidence. In the present case the prosecutrix has been thoroughly consistent in her statement regarding the date on which the incident happened and how it happened from her statement given to police Ex. PW 1/A, In her statement under section 164 Cr. P.C. Ex. PW 1/B and his statement made before the Court while undergoing her examination in chief. The accused was given opportunity to cross examine the complainant and after a lengthy cross examination the complainant was able to stand her ground. Just because in her first complaint given to the company by mail dated 28.09.2011, she mentioned a different date of the alleged incident does not impact her unassailed testimony before the Court. Thus, in the present case reliance can be placed on the sole testimony of the complainant.

16. In Rajeevan & Ors. vs. State of Kerela, AIR 2003 SC 1813, the Hon'ble

Supreme Court held that :-

“...First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed the names of the actual culprits and the part played by them as well as the names of eye witness present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after thought. On account of delay, the report not only gets benefit of the advantage of spontaneity danger creeps in of the introduction of colored version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging the first information report should be satisfactorily explained.”

17. It is evident from the above stated judgment that though delay in lodging FIR can entail serious consequences to the prosecution case, but if the delay has been satisfactorily explained then it does not casts clouds of suspicion upon the prosecution case.

18. In the present case, the complainant has stated that immediately after the incident she made complaint to a number of her seniors and waited for an action to be taken against the accused, who is a senior employee of the company. She was throughly cross examined by the defence. She has further stated that only after realizing that no action will be taken against the accused she made a formal complaint. The complainant has

been consistent in her explanation regarding delay and she being a woman in a social setting like ours is often subjected to many pressure in matters like these. In the present case, not only the social dignity of the complainant was on line but also there must be some professional considerations, the accused being a senior officer of the company and her boss. Thus, the explanation given by the complainant is believable.

19. From the above discussion, it is clear that the accused with intend to outrage the modesty of the complainant uttered the words “*Did your husband fuck you? The accused asked how was it? Then the accused said what should he call me now? Prostitute, hooker or bitch?*” and just because there are no other witnesses to the incident the testimony of the complainant cannot be disbelieved. To conclude, it is proved beyond reasonable doubt that accused with intention to outrage the modesty of the complainant uttered the above mentioned words, as such he is liable to be convicted under section 509 of IPC.

20. Let the accused Lalit De Silva be heard on the quantum of sentence on **17.11.2020.**

Announced in the open
Court on 16th Day of September 2020.

(DEV SAROHA)
METROPOLITAN MAGISTRATE-05
NEW DELHI DISTRICT
PATIALA HOUSE COURTS, NEW DELHI