

CALCUTTA HIGH COURT

Soko

Vs

Emperor

(Jack , J.)

10.08.1932

JUDGMENT

Jack, J.

1. In this case the petitioner has been convicted under Section 354, I.P.C., and sentenced to six months rigorous imprisonment on the ground that he outraged the modesty of a little girl of five and half years of age. This rule was granted on the ground that having regard to the age of the girl and the fact that she did not take any notice of the alleged assault and never complained to any one about the offence and she never cried or made any noise, the learned Magistrate should have held that the said girl had not developed the sense of modesty of a woman as contemplated by Section 354, I.P.C., and as such the conviction under Section 354, I.P.C., is illegal and should not be allowed to stand. The circumstances were that this little girl was playing with a boy of her own age and the accused aged about 50 put his finger into her private parts and caused a mark on them. This occurred in the afternoon and when her mother returned at about 5 o'clock and bathed the child, she complained of a burning pain in her private parts. The mother saw a red mark there and asked her how it had been caused and the child said that it was caused by the accused who was a servant of another family in the house. At the trial she said that Suku poked her there with his finger.

2. The police were then sent for and the accused was sent up on this charge. When questioned the accused said that the girl scratched herself thereby causing the mark on her private parts. The girl admitted that she and the boy were playing foot ball but said that nothing had happened. Under Section 354 it must be shown that the assault was made intending to outrage or knowing it to be likely to outrage the modesty of the girl. It is urged for the petitioner that the conduct of the girl shows that in fact her modesty was not outraged. There is no suggestion that she had any hesitation in telling her mother exactly what had happened In the circumstances I think that it is therefore doubtful whether in fact the modesty of the girl was outraged, and that therefore the conviction ought not to have been under Section 354, I.P.C. As a matter of fact the charge might have been under Section 323, I.P.C. Medical evidence was taken and it showed that there was injury, namely, slight excoriation (rubbing off epithelium) with redness on the lower parts of the labia such as might be caused by a finger being turned round and round at the entrance of the vagina. In view of the nature of the offence I think that the sentence should be maintained but it should be under Section 323, I.P.C. The rule is accordingly discharged with this modification of

the offence found.

M.C. Ghose, J.

3. I am of opinion that on the facts as found by the Magistrate, Section 354, I.P.C., would apply. The learned advocate has been unable to show any authority for his contention that a man who puts his finger into the private parts of a girl of five and half years of age is not guilty under Section 354 but is guilty under Section 352, I.P.C., inasmuch as she has not developed a sense of modesty. I am of opinion that such action on the part of a man as has been committed here would tend to destroy the formation of a sense of modesty in the girl and for lack of any authority I cannot agree that the case does not come under Section 354, I.P.C. As my learned brother thinks otherwise, I do not wish to differ having regard to the circumstance that the sentence is maintained.