

MANU/UP/0034/1963

**Equivalent Citation:** AIR1963All105, 1963CriLJ273

**IN THE HIGH COURT OF ALLAHABAD (LUCKNOW BENCH)**

Criminal Revn. No. 374 of 1961

Decided On: 13.08.1962

Appellants: **Zafar Ahmad Khan**
**Vs.**
Respondent: **The State**

**Hon'ble Judges/Coram:**
R.A. Misra, J.

**Counsels:**
For Appellant/Petitioner/Plaintiff: Babu Ram Gir and R.K. Midha, Advs.

For Respondents/Defendant: Kumari Usha Chatterji, Adv.

**Subject: Criminal**

**Acts/Rules/Orders:**Indian Penal Code, 1860 - Section 294

**Cases Referred:**State v. Thakur Prasad, 1958 All LJ 578, AIR 1959 All 49

**Citing Reference:**

Discussed

 1

**Disposition:**
Revision dismissed

**Case Note:
Criminal Section 294 of Indian Penal Code,1860 obscene gestures in public area invited girls to accompany him in rickshaw whether obscene gesture no precise or arithmetical definition offensive to chastity and modesty of the girls gesture suggestive of unchaste, lustful ideas and impure, indecent and lewd.**

**ORDER**

**R.A. Misra, J.**

1. The applicant Zafar Ahmad Khan, resident of Qasba Sandila, district Hardoi, has been found guilty of an offence under Section 294, I. P. Code, and has been sentenced to three months' rigorous imprisonment by a Magistrate first class, Lucknow. His appeal was dismissed by the learned Sessions Judge, Lucknow. Aggrieved he has come up in revision to this Court.

2. The case against the applicant was that on the date of occurrence, two young girls belonging to the family of one Nasir Mian of Lucknow engaged the rickshaw of Tafazzul P.W. in Victoriaganj, Lucknow, and proceeded on it towards Nakkhas. The applicant, who happened to be present near the place where the two girls boarded Tarazzul's rickshaw, engaged the rickshaw of P.W. snanansnan and asked the latter to follow up the rickshaw of the girls. Shahanshah took the impression that the applicant was a relation of the two girls, hence he obeyed the direction of the applicant and went behind Tafazzul's rickshaw. Near the Patharwala Kuan the chain of Tafazzul's rickshaw went off the free wheel and he got down to set it right. The applicant stopped his rickshaw also and addressing the two girls, he uttered the following words In the hearing of the rickshaw wallas and some others:

"AO MERI JAN MERRY RICKSHEY PER BAITHJAO MAIN TUMKO PAHUNCHADOONGA MAIN TUMHARA INTIZAR KAR RAHA HUN."

The girls resented the applicant's misbehaviour and scolded him. Some more people collected at the spot and they also felt annoyed at the applicant's misconduct.

3. Shahanshah then took the applicant to police station Chowk where he lodged a report and handed over the applicant to the police. Investigation followed and the applicant was prosecuted.

4. The applicant pleaded not guilty and denied the Incident. He stated that he was falsely implicated in the crime on account of his enmity with one Sri Habit, an Inspector in the local police. He gave details of his enmity with the said Sri Habib. According to him he was called to the police station Kotwali by two constables and then case was concocted against him.

5. The prosecution examined three witnesses, namely Tafazzul and Shahanshah, the two rickshaw wallas, and one Amjad to prove the applicant's offence. The applicant produced four witnesses in support of his defence.

6. The lower courts accepted the statements of the prosecution witnesses and disbelieved the evidence of the defence witnesses. Holding the prosecution case proved against the applicant, they convicted and sentenced him as stated above.

7. The concurrent findings of fact reached by the lower courts are not open to challenge in a revision.

8. The learned counsel for the applicant has, however, challenged his conviction on some legal grounds. He has argued that even assuming that the applicant uttered the words attributed to him in the presence of the two girls, it does not amount to an "obscene act" within the meaning of Section 294, I. P. Code. According to the learned counsel the words do not amount to obscenity, though they may not be a very polite form of address. I find myself unable to agree with the learned counsel. There is no statutory definition of the word "obscene". In support of his argument the learned counsel for the applicant has relied on two authorities and according to him the words uttered by his client are not covered by the interpretation of the word "obscene" given in those authorities. He has first referred to Radin's Law Dictionary where "obscene" has been defined as:

"A term applied to acts or words or representations that shock public ideas of sexual purity or modesty. The test for obscenity has been said to be whether the words would tend to defame the morals of persons who would see the publication by suggesting lewd thoughts and exciting sensual desires."

Next he has referred to the case, State v. Thakur Prasad : (MANU/UP/0019/1959 : 1958 All LJ 578 : AIR 1959 All 49), wherein a Bench of this Court held :

"The word "obscene" though not defined in the Penal Code may be taken as meaning, offensive to chastity or modesty, expressing or personating to the mind or view something that delicacy, purity and decency forbid to be expressed; anything expressing or suggesting unchaste and lustful ideas, impure, indecent lewd. The idea as to what is deemed as obscene of course varies from age to age and from region to region dependent upon, particular social conditions. There cannot be an immutable standard of moral values. If a publication is detrimental to public morals and is calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come it will be seen as an obscene publication which it is the intention of the law to suppress. Anything calculated to inflame the passions is "obscene". Anything distinctly calculated to incite a reader to indulge in acts of indecency or immorality is obscene. A book may be obscene although it contains but a single obscene passage. A picture of a woman in the nude is not per se obscene. For the purpose of deciding whether a picture is obscene or not, one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture and the person or persons in whose hands it is likely to fall."

I respectfully adopt the interpretation put on the word "obscene" in the above decision. It must be conceded that Radin's definition of the word "obscene" is also correct, as nearly as possible. No precise or arithmetical definition of the word "obscene" which would cover all possible cases can be given. It will have to be judged on the facts of each case whether in the context of its surroundings the questioned act is obscene or not. How-ever the two authorities quoted above agree with each other in substance and they may be accepted as a safe guide for determining the nature of the applicant's act in the present case.

9. If the tests laid down in the above authorities are applied to the facts of the present case, the argument of the learned counsel instead of finding support stands completely contradicted by them. There cannot be two opinions that judged in the light of the above authorities the words uttered by the applicant must be held to be obscene. Translated into English, the words uttered by the applicant mean:

"My sweet heart, Come. Seat yourself on my rickshaw. I will reach you to the place. I have been waiting for you."

It is not denied that the two girls to whom these words were addressed, in public, were young in age, toeing between 16 to 18 years. They were not professionals and they belonged to a respectable, though not rich, Muslim family. It is also not suggested that the applicant had any kind of acquaintance with them from before. They were utter strangers to him. There was no occasion and the applicant had no claim to talk to the girls, much less to address them openly in the hearing of others in such amorous words suggestive of illicit sex relations with them and asking them to go along with him on his rickshaw. The words addressed by the applicant were clearly offensive to the chastity and modesty of the girls. The words were likely to express and personate to the mind of the hearers, including the girls, something which delicacy, purity and decency forbade to be expressed. The girls, as also others who were present, must have suffered a moral shock to hear such sensuous words addressed to them by an utter stranger. They were suggestive of unchaste and lustful ideas and were impure, indecent and lewd as laid down in the above authorities. I have, therefore, no doubt in my mind that by addressing the words in question to the two girls the applicant committed an "obscene act" within the meaning of Section 294, I. P. Code and the argument to the contrary is without force.

10. Next it has been urged that in order to hold an accused guilty under Section 294, Indian Penal Code there should be proof of annoyance to the person who is the aimed victim of the obscene act of the accused. According to the learned counsel for the applicant in the present case annoyance, if any, was intended and caused to the two girls and since they have not been produced as witnesses there is lack of proof of the essential ingredient "annoyance" which constitutes the offence and the applicant should be acquitted. Put in other words, the learned counsel's contention is that under Section 294, I. P. Code annoyance caused to any person other than the intended victim of the obscene act is not sufficient to prove the offence. The contention, in my opinion, is not sound and it is contradicted by the words of Section 294, I. P. Code, which reads :

"Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) (not necessary).

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

From the words of the section it is plain that annoyance by the obscene act of the accused should be caused to others. The section does not limit the scope of the word "others" to mean the person who is the intended victim of the obscene act of the accused. It is enough that the obscene act is committed in public and causes annoyance to anybody, be he the contemplated victim of the offender or not. The section, it appears, is intended to prevent obscene acts being performed in the public to the annoyance of public at large. There can be a large number of acts which by their very nature are so offensive to morality and repugnant to sense of propriety and decency that, if done in public they would cause annoyance to any and every respectable member of the society regardless that the doer of the act has or has not any particular individual or individuals in his mind whom he wants to injuriously affect when doing the act. The doing of such an act would cause annoyance to the public at large and the offender cannot escape liability on the plea that there was no particular victim intended by him. Similarly there is another class of cases in which the offender by his act intends to injuriously affect his victim only, but nonetheless since the act is done in public and it is obscene, it is bound to cause annoyance to others also who happen to see and hear it besides the victim intended. The act of the applicant in the present case was of the second category. The obscene words uttered by the applicant were intended to disgrace the two girls only. Annoyance was caused to them, but having been uttered in public and being extremely obscene, they caused annoyance to the rickshaw wallas and other bystanders who happened to hear them. They injured the sense of purity and morality of all including the three witnesses, Tafazzul, Shahanshah and Amjad. These three witnesses have been produced in the case and their statements prove that annoyance was caused to them as also to the girls. In my opinion the requirements of law are satisfied and the prosecution case does not suffer for lack of proof of annoyance caused to others which is an essential ingredient of the offence under Section 294, I. P. Code. The non-production of the two girls in my opinion does not adversely affect the prosecution case.

11. I also do not agree with the defence contention that the prosecution have withheld the two girls from the Witness box on account of any oblique motive. It is in evidence that the girls did not appear before the police also. Considering their age and the delicacy of the situation and by far the greatest apprehension to their future, if aspersions, howsoever unfounded, were made on their character in cross examination and which in all such cases-are commonly made on behalf of the accused and which cannot be restricted in a case of the present nature, the reluctance of the girls and their guardians to produce them before the police and to let them face the ordeal of cross examination in court is understandable, though it may not be legally supportable. Anyway, I am satisfied that the difficulty of the police in this case was genuine and no motive can be attributed to them for not producing the girls as witnesses. I am further of opinion that the production of the girls would not in any way materially advance the prosecution case nor does the prosecution case suiter on account of their non-production. The incident stands proved on the statements of three eye-witnesses named above. The evidence of the same witnesses also proves that annoyance was caused to them on account of the obscene words uttered by the accused to the girls and the essential ingredient of the offence under Section 294, I. P. Code, 'annoyance' is also satisfactorily proved. Thus he production of the girls in the case would not in my opinion in any manner, affect the result of the case. Anyway, their production was not indispensable and their absence from the witness box does not create any doubt in the prosecution case.

12. Lastly, it has been argued that the applicant is a youngster of 16 or 17 years of age, that he has been in jail for about a fortnight, and that, in the circumstances of the case, the sentence already undergone by him should be deemed sufficient to satisfy the ends of justice. I am not agreeable to this submission.

13. Teasing by road-side Romeos is fast on the increase in cities. Unfortunately, no offence is so easy to commit yet so difficult to be booked. The victims of the offence are mostly modest and shy girls or young women of respectable families. While on the road or passing in the by lanes, prowling desperadoes cut filthy jokes with them and pass indecent sensuous and sarcastic remarks against them. The poor victims dare not protest in order to avoid creating a scene and attracting a crowd at the spot. Publicity of such incidents sometimes leads to injurious effects against the victims themselves inasmuch as it subsequently provides material for groundless scandal and unjustified gossip against their character from interested quarters. The victims, therefore, are compelled as of necessity to silently suffer the disgrace and instinctively leave the spot as quick as they can without disclosing their identity. The offenders being riff-raffs and desperate characters, prudence dictates that even respectable passersby, who happen to hear and see the ugly incident much to their mental anguish, must pretend not to have heard or noticed it and to pass off the place quickly in their own safety. The result is that the offenders indulge in the crime freely and with impunity without any fear of consequence to themselves. The offence hardly ever is brought to the notice of the authorities. In my opinion such an offence, when proved, must be looked upon with utmost severity and should be punished deterrently. The maximum sentence of imprisonment provided under Section 294, I. P. Code is three months' rigorous imprisonment only, plus fine also in the discretion of the court and in my opinion in the present case the trial court made no mistake in awarding three months' rigorous imprisonment to the applicant without fine. In fact, I think it is time that, considering its large incidence, the Legislature thought tit to amend the law and provide severer punishment for this offence.

14. As a result I find no force in this revision petition and dismiss it. The conviction and sentence of the applicant under Section 294, I. P. Code are upheld. The applicant is on bail. He shall surrender forthwith to serve out the sentence. The learned Additional District Magistrate (Judicial), Lucknow shall issue a non-bailable warrant for the arrest of the applicant and, when arrested, he shall be remanded to jail custody for serving out the sentence.

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