

Supreme Court Case Analysis:

Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr¹.

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Introduction

This case, famously known as “the butt-slapping case” was one of the most criticised high profile cases. Mrs. Rupan Deol Bajaj, an officer of the Indian Administrative Services belonging to the Punjab Cadre was then working as the Special Secretary, Finance lodged a complaint with the Inspector General of Police, Chandigarh Union Territory alleging commission of offences under Sections 341, 342, 352, 354, and 509 of the Indian Penal Code by Mr. K.P.S. Gill, the Director General of Police, Punjab on July 18, 1988 at a dinner party. The last decision came in 2005, after an SLP was filed in the Supreme Court, which ultimately reduce the punishment to probation. An opinion can be formed from this case about the lenient judicial procedure towards the elite members of the society.

Brief Facts:

Treating the complaint filed by Mrs. Bajaj as the First Information Report (FIR) a case was registered by the Central Police Station, Sector 17, Chandigarh and investigation was taken up.

Thereafter on November 22, 1988, her husband Mr. B.R. Bajaj, who also happens to be a senior I.A.S. officer of the Punjab Cadre, lodged a complaint in the Court of the Chief Judicial Magistrate for the same offences, alleging, inter alia, that Mr. Gill being a high- ranking Police Officer the Chandigarh Police had neither arrested him in connection with the case registered by the Police on his wife's complaint nor conducted investigation in a fair and impartial manner and apprehending that the Police would conclude the investigation by treating the case as untraced he was filing the complaint.

On receipt of the complaint the Chief Judicial Magistrate transferred it to a Judicial Magistrate for disposal and the latter, in view of the fact that an investigation by the Police was in progress in relation to the same offences, called for a report from the Investigating Officer in accordance

¹ 1995 SCC (6) 194.

with Section 210 of Code of Criminal Procedure. In the meantime - on December 16, 1988 to be precise - Mr. Gill moved the High Court by filing a petition under Section 482 Cr. P.C. for quashing the F.I.R. and the complaint. On that petition an interim order was passed staying the investigation into the F.I.R. lodged by Mrs. Bajaj, but not the proceedings initiated on the complaint of Mr. Bajaj. Resultantly, the learned Judicial Magistrate proceeded with the complaint case and examined the complainant and the witnesses produced by him. Thereafter, Mr. Bajaj moved an application before the learned Magistrate for summoning Mr. Y.S. Ratra, an I.A.S. Officer of the Government of Punjab and Mr. J.F. Rebeiro, Adviser to the Governor of Punjab for being examined as witnesses on his behalf and for producing certain documents, which was allowed. Instead of appearing personally, the above two Officers sought for exemption from appearance; and the District Attorney, after producing the documents, filed an application claiming privilege under Sections 123/124 of the Evidence Act in respect of them.

The learned Magistrate rejected the prayer of the above two officers and also rejected, after going through the documents, the claim of privilege, being of the opinion that the documents did not concern the affairs of the State.

Assailing the order of the learned Magistrate rejecting the claim of privilege, the State of Punjab filed a Criminal Revision Petition which was allowed by the High Court by its Order dated January 24, 1989. The petition earlier filed by Mr. Gill under Section 482 Cr. P.C. came up for hearing before the High Court thereafter and was allowed by its order dated May 29, 1989 and both the F.I.R. and the complaint were quashed. The above two orders of the High Court are under challenge in these appeals at the instance of Mr. and Mrs. Bajaj.

- Around 10 PM on the said night, Dr. Chutani and Mr. Gill walked across the garden and sat in the ladies' circle.
- Mrs. Bajaj, who was talking to Mrs. Bijlani and Mrs. Bhandari at the time, was requested by Mr. Gill to take a seat next to him as he wanted to talk to her about something.
- Responding to his such request when Mrs. Bajaj went to sit in a chair next to him Mr. Gill suddenly pulled that chair close to his chair.
- Mrs. Bajaj was a bit taken aback when she put that chair at its original place and was about to sit down and Mr. Gill again pulled his chair closer.
- Realising something was wrong she immediately left the place and went back to sit with the ladies.

- After about 10 minutes Shri Gill came and stood in front of her so close that his legs were about 4" from her knees.
- He then, by an action with the crook of his finger asked her to "get up immediately" and come along with him.
- When she strongly objected to his behaviour and asked him to go away from there he repeated his earlier command which shocked the ladies present there.
- Being apprehensive and frightened she tried to leave the place but could not as he had blocked her way.
- Finding no other alternative when she drew her chair back and turned backwards, he slapped her on the posterior in the full presence of the ladies and guests.

Issue:

Whether the allegations constitute any of the offences mentioned.

Analysis of the Judgement

- While considering whether the allegations constitute any or all of the offences for which the case was registered, the court first looked into S. 354 and S. 509, IPC both of which relate to the modesty of women.
- Since the word modesty had not been defined in the code, the considered various dictionaries such as the Shorter Oxford English Dictionary (third edition), Webster's Third New International Dictionary of the English language and Oxford English dictionary (1933 Edition).
- The division bench also considered the judgement given in **State of Punjab v. Major Singh**, where it 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 must fall within the mischief of Section 354 IPC. The other learned Judge citing his view with regard to the case referred above stated that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex.

When the Hon'ble Court applied the test in the present case, keeping in view the total fact situation, it cannot but be held that the alleged act of Mr. Gill in slapping Mrs. Bajaj on her posterior amounted to 'outraging of her modesty' for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady - "sexual overtones" or not, notwithstanding.

- It was however strenuously urged by Mr. Tulsi, that even if it was assumed that Mr. Gill had outraged the modesty of Mrs. Bajaj still no offence under Section 354 IPC could be said to have been committed by him for the other ingredient of the offence, namely, that he intended to do so was totally lacking. He urged that the culpable intention of the offender in committing the act is the crux of the matter and not the consequences thereof.

This court took the view that it is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case.

In the instant case we are only at the incipient stage we have to ascertain, only prima facie, whether Mr. Gill by slapping Mrs. Bajaj on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of Section 354, IPC. The sequence of events which we have detailed earlier indicates that the slapping was the finale to the earlier overtures of Mr. Gill, which considered together, persuade us to hold that he had the requisite culpable intention.

- The court then considered the applicability of S. 341, 342 and 352, IPC. It was held by the court that nothing in the FIR or the facts of the case, pointed towards a situation of Wrongful restraint or Wrongful confinement. The mere act of Mr. Gill of standing in front of Mrs. Bajaj cannot be said to be wrongful restraint.
- The court next considered the applicability of S.95, IPC which talks about the act of causing slight harm. After considering the principles laid down by the court in **Veeda Menezes v. Yusuf Khan**, the court observed that S. 95 of the IPC has no application in the present case.

Talking about the High Court's decision, the court held that the settled principle of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. an F.I.R. or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused

but the High Court has not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so. The Supreme Court held that the High Court had committed a gross error of law in quashing the FIR and the complaint. Accordingly, it set aside the impugned judgment and dismissed the petition filed by Mr. Gill in the High Court under Section 482 Cr.P.C.

Judgement

The court directed the learned Chief Judicial Magistrate, Chandigarh to take cognizance upon the police report in respect of the offences under Sections 354 and 509 IPC and try the case himself in accordance with law.

They made it abundantly clear that the learned Magistrate should not in any way be influenced by any of the observations made by them relating to the facts of the case as their task was confined to the question whether a `prima facie case' to go to the trial was made out or not whereas the learned Magistrate will have to dispose of the case solely on the basis of the evidence to be adduced during the trial. Since both the offences under Sections 354 and 509 IPC are tribal in accordance with Chapter XX of the Criminal Procedure Code the court directed the learned Magistrate to dispose of the case, as expeditiously as possible.