
(1912) 09 BOM CK 0016
In the Bombay High Court
Case No : Criminal Review No. 245 of 1911

Emperor	Vs	APPELLANT
Tatia Mahadev		RESPONDENT

Date of Decision : 05-09-1912

Acts Referred:

Penal Code, 1860 (IPC) — Section 10, 352, 354

Citation : (1912) 14 BOMLR 961 : 17 Ind. Cas. 794

Hon'ble Judges : Rao, J;Batchelor, J

Bench : Division Bench

Judgement

Batchelor, J.—In this case we called for the record of our own motion and we have issued notice on the accused Tatia Mahadeo to show cause why the sentence which had been passed upon him by the Fourth Presidency Magistrate should not be enhanced. He has been convicted of common assault u/s 352 of the Indian Penal Code and sentenced to a fine of Rs. 60, or in default one month's rigorous imprisonment.

2. The finding of fact upon which that conviction and sentence proceeded is this :—" 1 find", says the Magistrate, " that the complainant with her daughter Chandribai lives on the first floor (sic) accused lived on the second floor of the same house. The girl Chandribai was taken in his room by the accused and made to lie down and he lay on her. The girl screamed and coming down reported the matter to the complainant." The facts thus found seem to us to amount to the offence defined in Section 354 of the Indian Penal Code, that is to say, an assault or use of criminal force to a woman with intent to outrage her modesty, and this view appears to us to be quite consistent with the fact that the girl Chandribai who was assaulted was only about six years old. u/s 10 of the Indian Penal Code, the word " woman " denotes a female human being of any age, so that for the purposes of Section 354 the girl Chandribai is a woman within that section. The Magistrate was apparently of opinion that the girl being only six years old was too young to have any sense of modesty developed, and upon that view he

neglected to apply Section 354. It seems to us that there are many answers to this view of the learned Magistrate's. One sufficient answer may be found in the proved fact of this particular case that the girl Chandribai screamed and ran away when the accused began his assault upon her. That action of hers is, we think, a clear indication that she felt her modesty to be outraged by the accused's conduct. Having regard to the conditions in which the poor classes of Bombay have to live in this city, we think that a deterrent sentence ought to be passed in a case where a man takes advantage of the absence of a girl's parents to commit an attack upon the defenceless girl. Therefore after having heard all that the accused can urge in his behalf we alter his conviction to a conviction u/s 354 of the Indian Penal Code, and we sentence him to rigorous imprisonment for one year. The sentence of fine imposed by the Magistrate is set aside, and the fine, if paid, should be refunded.