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**(1998) 08 P&H CK 0073**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Criminal Revision No. 164 of 1998**

Kanwar Pal Singh Gill

APPELLANT

Vs

State (Administration, U.T.Chandigarh)

RESPONDENT

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**Date of Decision :** 20-08-1998

**Acts Referred:**

**Citation :** (1998) 4 AICLR 584 : (1998) 4 RCR(Criminal) 664

**Hon'ble Judges :** R.L.Anand, J

**Advocate :** Pankaj Bhardwaj, Ajay Lamba, Alok Sen Gupta, Advocates for appearing Parties

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## Judgement

R.L. Anand, J.

1. This is a criminal revision and has been directed against the judgment dated 6th January, 1998 passed by the learned Sessions Judge, Chandigarh, who affirmed the conviction order passed by the Court of Chief Judicial Magistrate, Chandigarh, who convicted the petitioner under Sections 354 and 509 of the Indian Penal Code, but modified the order of sentence of the learned Chief Judicial Magistrate by giving the following directions as contained in para No. 32 of the impugned judgment :

"For the reasons recorded above, the appellant Sh. K.P.S. Gill is ordered to be released on probation on his entering into a bond in the sum of Rs. 20,000/ with two sureties of the like amount with the following undertakings :

1. That he be of good behaviour and appear before the Court for sentence when called on at any time during the period of three years;
2. That he do lead an honest and industrious life;
3. That he do abstain from taking intoxicants in a public place and parties;
4. That during the period of said three years he be under the supervision of the Chief Probation Officer, New Delhi;

5. For the purpose of securing such supervision that the probationer receive at his own home or visit the Chief Probation Officer at such intervals as the Chief Probation Officer, New Delhi, may think fit;

6. To deposit a sum of Rs. 2 lacs as compensation which shall be payable to Mrs. Bajaj;

7. To deposit a sum of Rs. 50,000/ as costs of proceedings. Out of the costs of proceedings imposed on the appellant, Rs. 25,000/ should be paid to the complainant Mr. Bajaj."

Learned Chief Judicial Magistrate vide order dated 6th August, 1996 sentenced Shri K.P.S. Gill to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs. 500/. In default of payment of fine the petitioner was directed to undergo rigorous imprisonment for a period of 15 days for the offence under Section 354, Indian Penal Code, and for the offence under Section 359 of the said Code the petitioner was to undergo simple imprisonment for a period of two months and to pay a fine of Rs. 200/. In default of payment of fine the petitioner was directed to undergo imprisonment for 7 days. Both the sentences were ordered to run concurrently by the Chief Judicial Magistrate.

2. The story of the prosecution can be described as follows :

Firstly a police case was registered on the basis of a complaint moved by Smt. Rupan Deol Bajaj, an I.A.S. Officer working as Special Secretary (Finance) to the Government of Punjab, Department of Finance. This complaint was moved to the Inspector General of Police, U.T. Chandigarh. It was alleged by the complainant in her complaint (Ex.PB) that on 18th July, 1988 she and her husband Shri B.R. Bajaj, who was also an I.A.S. Officer of Punjab Cadre, were invited by Shri S.L. Kapur, I.A.S., Financial Commissioner and Secretary to Govt. of Punjab, Department of Home, Legal Affairs and Justice and of Information and Public Relations, for dinner at 8.30 P.M. at his residence House No. 288, Sector 16, Chandigarh. The complainant and her husband reached at the residence of Mr. Kapur a few minutes after 9 P.M. Approximately 20/25 couples were already present there. Amongst those present were Shri V.N. Singh, I.P.S., Inspector General of Police, U.T. Chandigarh; Shri Paramjit Singh, I.A.S., Presiding Officer, Sales Tax and College Tribunals, Punjab, and his wife; Dr. P.N. Chutani, Retired Director of the P.G.I.; Shri Pathak, I.P.S., Joint Director Intelligence Bureau of India; Shri K.P. Bhandari, Advocate General of Punjab, and his wife; Shri Bijlani, Managing Director of Molins India, and his wife; Shri Mahajan, Managing Director of Punjab Tractors, and his wife Mrs. Shukla Mahajan; Shri Nehra, Senior Advocate of Punjab and Haryana High Court, and his wife and their daughter, who had just come from England. Besides the above, some press correspondents were also present, namely, Shri Gobind Thukral (Hindustan Times), Shri Vipin Modgil (India Today), Shri Sushil Bali (PTI), Shri Prem Kumar (Indian Express) and his wife. It is alleged by the complainant that Shri K.P.S. Gill, I.P.S., Director General of Police, Punjab (petitioner) was also present there. He was not

accompanied with his wife. The party was arranged in the lawn at the back of the house of Shri S.L. Kapur. As per the tradition in the Indian homes, the ladies were sitting segregated in a large semicircle and the gentlemen in another large semicircle. The two large semicircles were facing each other. No gentleman was present in the ladies' circle and no lady was sitting in the circle of the gentlemen. Round about 10 P.M. Dr. P.N. Chutani and Shri K.P.S. Gill walked across to the circle of the ladies and joined them occupying the only two vacant chairs available, almost on the opposite sides of the semicircle. Shri K.P.S. Gill took a vacant chair about 5 to 6 chairs to the left of where the complainant was sitting. Slowly, all the ladies sitting to the right and left of him, got up and started leaving and going into the house. The complainant was talking to Mrs. Bijlani and Mrs. K.P. Bhandari, sitting on her right, and did not notice or come to know that a few ladies had got up and they had vacated their chairs because earlier the petitioner had allegedly misbehaved with them.

3. The story of the prosecution goes further that Shri K.P.S. Gill petitioner then called out the prosecutrix where she was sitting and said, "Mrs. Bajaj come and sit here, I want to talk to you about something." The prosecutrix got up from her chair in order to approach the petitioner and in order to sit next to the petitioner. When the prosecutrix was about to sit down, the petitioner suddenly pulled the cane chair, on which she was going to sit, close to his chair and touching his chair. The prosecutrix felt a little bit embarrassed and surprised. She put the chair back at its original position and was about to sit down again when the petitioner repeated his action by pulling the chair close to his chair. The prosecutrix realised that something was wrong and she did not occupy the chair, rather she immediately left and returned to the same seat where she was sitting at the first instance between the other ladies. Mrs. Bijlani, Mrs. K.P. Bhandari, Mrs. Paramjit Singh and Mrs. Shukla Mahajan were occupying the seats on her right and Mrs. Nehra was sitting to the left of the prosecutrix.

4. After about 10 minutes Shri K.P.S. Gill got up from his seat and came and stood directly in front of the prosecutrix, standing straight but so close to her that his legs were about four inches from the knees of the prosecutrix. The petitioner allegedly made an action with the crook of his finger, asking her to stand and said, "You get up. You come along with me." The prosecutrix strongly objected to his behaviour and told him, "Mr. Gill, how dare you! You are behaving in an obnoxious manner, go away from here." Whereupon the petitioner repeated his words like a command and said, "You get up! Get up immediately and come along with me." The prosecutrix looked towards the other ladies and all the ladies were shocked and they became speechless and could not utter any word. Thereafter the prosecutrix felt apprehensive and she became frightened as the accused had blocked her way. Then the prosecutrix immediately drew her chair back about a foot and half and quickly got up and turned to get out of the circle through the space between her and Mrs. Bijlani's chair. Whereupon the petitioner allegedly slapped on the posterior of the prosecutrix. This was done in the full presence of the ladies and the guests.

5. The prosecutrix then ran to the paved platform built on the lawn outside the verandah about 1012" away where the host Shri S.L. Kapur, I.A.S., was standing and told him agitatedly, "Mr. Kapur, your DGP has misbehaved with me. He is not fit for decent company." Mr. Kapur asked the prosecutrix, "What happened ?" The prosecutrix told him, "He is obnoxious. He has even hit me please get him away from here." The prosecutrix uttered these words very quickly because she saw that Shri K.P.S. Gill was following her and he came up and stood facing her and Mr. Kapur, saying in an insulting tone, "What is she saying ?" The prosecutrix said that she had told Mr. Kapur that the petitioner was obnoxious, and not fit for the decent company and should not have been unleashed on unsuspecting guests. Then the prosecutrix told Mr. Kapur to get the petitioner away from there immediately. Upon this Mr. Kapur and some other gentlemen present in the party caught of the petitioner physically and led him away into the house.

6. Mr. Pathak, Joint Director Intelligence Bureau of India, was also standing nearby and had seen the prosecutrix coming and complaining and the petitioner following her. Mr. Pathak inquired from the prosecutrix as to what had earlier happened. Upon this the prosecutrix told Mr. Pathak the same thing which she had told Mr. Kapur. The prosecutrix requested that since it was the duty of Mr. Pathak to send intelligence reports to the Government of India, he must send the report on how the Director General of Police, Punjab, had misbehaved with a woman I.A.S. Officer. Mr. Pathak told to the prosecutrix that he had made a note of it. Thereafter the complainant went and almost collapsed into the nearest chair next to Mrs. Shukla Mahajan. Mrs. Shukla told Mrs. Bajaj, "Mrs. Bajaj I would have fainted if this had happened to me. I must congratulate you that you had the courage to complain against him and that also to the Home Secretary." Mrs. Bijlani and Mrs. Paramjit Singh also came where the prosecutrix was sitting in order to commend the action of Mrs. Bajaj. At this stage the prosecutrix saw that the wife of Mr. Kapur had also come and she informed the ladies that the dinner was on the table. But the other ladies said to Mrs. Kapur that Mr. Gill was there. Mrs. Kapur was not aware as to what had happened earlier, so she innocently inquired about the person about whom the ladies were talking. All the ladies with one voice then informed Mrs. Kapur that they were talking with regard to Mr. D.G.P. Mrs. Kapur replied laughingly, "Oh! Surely you are not to afraid, because he is the DGP ?" Whereupon Mrs. Bijlani told her, "You do not know what had happened. He has misbehaved atrociously and has even slapped Mrs. Bajaj on the posterior." Mrs. Kapur was shocked to be informed of this.

7. When the prosecutrix regained her composure, she called her husband, who was busy talking towards a circle of gentlemen. She narrated the occurrence to him. He got into a temper and he wanted to pursue Mr. Gill but Mrs. Bajaj stopped her husband and restrained him by suggesting not to create a scene as the Press was also present in full strength. Upon this Mr. Bajaj told his wife that they should leave the party and leave that place immediately. On the contrary Mrs. Bajaj told her husband, "No, we must try to leave quietly without it being noticed" as the dinner was almost over. While they were leaving they heard the

daughter of Mr. Nehra, Advocate, saying, "You know in England one is used to dealing with many situations but this sort of thing has never happened with me before; this man made me feel like vomiting." She was referring to the misbehaviour of Mr. Gill petitioner earlier in the evening with herself and to his misbehaviour with the prosecutrix. Later on Shri S.L. Kapur intervened, to whom a suggestion was given to take suitable action against the petitioner and to ensure that the matter does not go to the press.

8. On the next day, i.e., 19th July, 1988 the prosecutrix sought appointment of the Chief Secretary at about 8 P.M. in the evening as he was busy in the day. The prosecutrix recounted the entire incident to the Chief Secretary and requested that suitable action should be taken by the Government and the petitioner should be punished. Thereafter with the permission of the Chief Secretary on the same day, i.e., 19th July, 1988, the prosecutrix sought and was given an appointment by Shri J.F. Ribeiro, the then Adviser to the Governor, Punjab, at about 9 P.M. at his residence where the prosecutrix met both Mr. Ribeiro and his wife and gave a full and detailed account of the sordid happenings. Mr. Ribeiro asked the prosecutrix if she was willing to reduce the complaint to writing. Upon this the prosecutrix stated that she would do that but why it was not possible for the State Government to take notice of the happenings suo moto, since the incident had occurred in the house of the Financial Commissioner (Home) and was committed against the person of a senior I.A.S. woman Officer of the Secretary's ranks and that too by the Director General of the Police. The matter was in the knowledge of the Financial Commissioner Home, to whom a complaint had been lodged by her within a minute of the occurrence and had been brought to the notice of the Chief Secretary, Shri R.P. Ojha, and the Adviser to the Governor, Shri Ribeiro. Thereupon Shri Ribeiro assured the prosecutrix that he would write a note containing full account and bring it to the notice of the Governor on the next day, i.e., 20th July, 1988 itself. He had also promised to the prosecutrix that before doing so, he would show the note to her, so that she could correct any factual discrepancies, which may have crept in or any point which may inadvertently have been omitted. But Shri Ribeiro did not contact the prosecutrix on 20th July, 1988, as promised. Thereafter the prosecutrix rang up the Secretary to Governor, Punjab, Shri Y.S. Ratra, I.A.S., so that she could bring to his notice also as well as to seek an appointment with the Governor to apprise him of the facts. However, when she went to see the Secretary to the Governor, he informed her that Shri J.F. Ribeiro, Adviser, had already sent a detailed note on 20th July, 1988 morning and he (Shri Ratra) had already submitted the same to the Governor on the same day. The prosecutrix also repeated the entire incident to Mr. Y.S. Ratra, so that he may be able to brief the Governor. The prosecutrix again wrote a letter (Ex.PA) dated 27th July, 1988 to the Governor to take the action against the petitioner. She also brought the matter to the notice of the higher authorities of the State.

9. As the matter had not yet been percolated from the Governor, so the prosecutrix moved the complaint (Ex.PB) to the police for the registration of the

case, on the basis of which formal F.I.R. (Ex.PB/1) was registered and investigation was started by the Police. After the completion of the investigation, the Police filed an untraced report on the ground that the Police had not been able to collect sufficient evidence to corroborate the allegations of the prosecutrix Mrs. Bajaj.

10. Mr. B.R. Bajaj, husband of Smt. Rupan Deol Bajaj, filed a separate complaint in the Court on the same allegations regarding this incident. When the complaint case and the untraced report were pending for consideration before the concerned Judicial Magistrate, the petitioner filed a criminal petition under Section 482, Cr.P.C., for the quashment of the F.I.R. (Ex.PB/1) and for the quashment of the complaint filed by Shri B.R. Bajaj, husband of the prosecutrix. The High Court allowed the petition of Mr. K.P.S. Gill and quashed the F.I.R. as well as the complaint vide judgment dated 29th May, 1989. Aggrieved from the judgment of the High Court, Mrs. Bajaj and Mr. B.R. Bajaj filed a Special Leave to Appeal before the Hon''ble Supreme Court and the Hon''ble Apex Court vide judgment dated 12th October, 1995 allowed the appeal of Mrs. Bajaj and her husband Shri B.R. Bajaj and directed the Chief Judicial Magistrate to take cognizance upon the police report in respect of the offences under sections 354 and 509 of the Indian Penal Code and try the case himself in accordance with law. The Hon''ble Apex Court also observed that in view of the directions aforementioned and the provisions of Section 210(2) of the Code of Criminal Procedure, the complaint case instituted by Mr. Bajaj for the selfsame offences loses its independent existence and the complaint case filed by Mr. Bajaj be also tried simultaneously with the police report in accordance with the provisions of Section 210, Cr.P.C. Hon''ble Supreme Court judgment has been reported as Rupan Deol Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another, 1995 Supreme Court Cases (Cri) 1059. In Para No. 12 of the judgment Hon''ble Supreme Court divided the entire episode into 10 subparas, and the same are requoted as under :

(i) Around 10 P.M. Dr. Chutani and Shri Gill walked across to and sat in the ladies'' circle;

(ii) Mrs. Bajaj, who was then talking to Mrs. Bijlani and Mrs. Bhandari, was requested by Mr. Gill to come and sit near him as he wanted to talk to her about something;

(iii) 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;

(iv) Feeling a bit surprised, when she put that chair at its original place and was about to sit down, Mr. Gill again pulled his chair closer;

(v) Realising something was wrong she immediately left the place and went back to sit with the ladies;

(vi) After about 10 minutes Shri Gill came and stood in front of her so close that

his legs were about 4" from her knees;

(vii) He then by an action with the crook of his finger asked her to "get up immediately" and come along with him;

(viii) 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;

(ix) Being apprehensive and frightened she tried to leave the place but could not as he had blocked her way;

(x) 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.

The Hon"ble Supreme Court in Para No. 17 of the judgment held as follows :

"17. 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. Since, however, 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 F.I.R., 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. Even if we had presumed he had no such intention he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising of elite of the society as the names and designations of the people given in the FIR indicate. While on this point we may also mention that there is nothing in the FIR to indicate, even remotely, that the indecent act was committed by Mr. Gill, accidentally or by mistake or it was a slip. For the reasons aforesaid, it must also be said that apart from the offence under Section 354 IPC an offence under Section 509 IPC has been made out on the allegations contained in the FIR as the words used and gestures made by Mr. Gill were intended to insult the modesty of Mrs. Bajaj."

Finally in Para No. 29 of the judgment it was observed by the Hon"ble Supreme Court as under :

"29. Our such exercise persuades us to hold that the opinion of the Investigating Officer that the allegations contained in the FIR were not substantiated by the statements of witnesses recorded during investigation is not a proper one for we find that there are sufficient materials for taking cognizance of the offences under Sections 354 and 509 IPC. We, however, refrain from detailing or

discussing those statements and the nature and extent of their corroboration of the FIR lest they create any unconscious impression upon the trial court, which has to ultimately decide upon their truthfulness, falsity or reliability, after those statements are translated into evidence during trial. For the selfsame reasons we do not wish to refer to the arguments canvassed by Mr. Sanghi, in support of the opinion expressed in the police (final) report and our reasons in disagreement thereto."

11. As per the directions of the Hon"ble Supreme Court, learned Chief Judicial Magistrate, Chandigarh, framed charges against the petitioner under Sections 354 and 509 of the Indian Penal Code, on 6th January, 1996. The charges were read over and explained to the accused, to which the accused pleaded not guilty and claimed a trial.

12. In order to prove the charges the prosecution examined Smt. Rupan Deol Bajaj, who appeared as P.W.1; Shri A.S. Prashar, Special Correspondent of daily The Tribune (P.W.2); Shri B.R. Bajaj (P.W.3); Shri Sanjiv Gaur, Principal Correspondent of the Business Standard (P.W.4); Shri Shyam Khosla (P.W.5); Shri Y.S. Ratra, I.A.S., Financial Commissioner, Punjab (P.W.6); Shri J.F. Ribeiro (P.W.7); Shri S.L. Kapur (P.W.8); Shri Joginder Singh (P.W.9); Shri Raj Kumar Malhotra (P.W.10); and Shri S.S. Ray, the then Governor of Punjab (P.W.11).

13. On the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, and all the incriminating circumstances appearing in the prosecution evidence were put to him. The accused denied all the circumstances, and stated as follows :

"On that day when I attended the party, I had told Mr. Kapoor that I will come for a very short time when he had repeatedly telephoned me for attending the party. He had told me that it was a small intimate party of 56 peoples. On arrival to the party I saw fairly large crowd most of them were strangers to me. I went around meeting everybody. People were moving around both men and women. During the course of my short stay there, there was a degree of unpleasantness between Mr. Bajaj and myself due to the C.B.I. proceedings. After that I wanted to leave very quickly. I had my early dinner and left."

In defence the petitioner examined Shri Sushil Bali, who appeared as D.W.1; Shri Gurpreet Singh, S.P. Headquarter, Ropar, who appeared as D.W.2; Head Constable Dilbag Singh, Police Station Kharar, appeared as D.W.3; Dr. B.R. Verma, former Director, Central Forensic Science Laboratory, Chandigarh, who appeared as D.W.4; and Shri R.P. Ojha, D.W.5.

14. Learned Chief Judicial Magistrate, Chandigarh, vide a lengthy judgment came to the conclusion that the petitioner was guilty of the offences under Sections 354 and 509 of the Indian Penal Code, and convicted and sentenced the petitioner in the manner as stated in the earlier portion of this judgment. The judgment of the learned Chief Judicial Magistrate has been minutely perused by me so as to work out if there is any illegality or material irregularity so as to

warrant interference while sitting as a Court of revision. Aggrieved by the said judgment and order, the petitioner filed an appeal before the Court of Sessions Judge, Chandigarh, who vide the impugned judgment confirmed the conviction of the petitioner, both under Sections 354 and 509 of the Indian Penal Code, but modified the sentence awarded by the learned Chief Judicial Magistrate in the terms as stated above in the present judgment.

15. Still not satisfied with the orders of the Courts below, present revision has been filed by Shri K.P.S. Gill petitioner, which I am disposing of with the assistance rendered by Shri Alok Sen Gupta, Advocate, assisted by Shri Pankaj Bhardwaj, Advocate, appearing on behalf of the petitioner; Shri Ajay Lamba, Advocate, appearing on behalf of the U.T. Chandigarh Administration; and Shri Ajay Tewari, Advocate, appearing on behalf of the complainant; and with their assistance I have been able to go through the lengthy record of this case.

16. I am supposed to exercise my powers under Section 401 of the Code of Criminal Procedure. I am also supposed to look to the provisions of Section 397, Cr.P.C., which give concurrent powers to the High Court as well as to the Court of Sessions to examine the record of any proceeding of any subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court. In other words the object of the revisional jurisdiction is to confer upon the superior criminal Courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure and similar infirmities. It is a settled principle of law that jurisdiction under revision is normally to be exercised only in exceptional cases where there is glaring defect in the procedure or there is manifest error of the law and secondly there has been flagrant miscarriage of justice. When the revisional Court finds that there was no failure of justice, it will not interfere in revision even though there may be an irregularity or impropriety in the proceedings. Existence of evidence, if any, does not necessarily mean a failure of justice and, therefore, the High Court would be reluctant to use its powers under section 397 read with Section 401 of the Code of Criminal Procedure. In other words, if there is a proper appreciation of evidence by the trial Court and by the first appellate Court, the High Court would be slow in interfering in the conclusion of the Courts below until and unless it is convinced that there is a patent illegality or material irregularity, which has caused injustice to the petitioner. Hon"ble the Supreme Court in K. Chinnaswamy Reddy v. State of Andhra Pradesh and another, AIR 1962 Supreme Court 1788, had laid down that the jurisdiction of the High Court under Section 401, Cr.P.C., should be exercised only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.

17. Present is a case where the allegations of the prosecution are that Shri Gill had tried to assault or use criminal force towards a woman with an intent to

outrage her modesty. As per the provisions of Section 354, I.P.C., whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, such an act is punishable under the said section. Section 509, I.P.C., further lays down that whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, such action is punishable under the said section.

18. The point for appreciation is whether the evidence of Smt. Rupan Deol Bajaj has been rightly appreciated by the Courts below in view of the settled propositions of law as laid down by the Hon'ble Supreme Court from time to time. The offences under Sections 354 and 509 of the Indian Penal Code are gender offences committed qua a woman. In these circumstances the evidence of a woman is like the evidence of the prosecutrix. Her statement is to be treated as if she was an injured witness. She is not an accomplice. Indian woman is a symbol of modesty itself. Every part of her body symbolises that she is the specimen of modesty. The case of the prosecution is that Mr. Gill came so close to the prosecutrix that there was hardly a distance of 4" when the petitioner was standing in front of Mrs. Bajaj when she was occupying the chair amongst ladies. In *State of Punjab v. Gurmit Singh and others*, AIR 1996 Supreme Court 1393, Hon'ble the Supreme Court has given lot of importance with regard to the testimony of a prosecutrix and its evidentiary value. Hon'ble the Supreme Court was pleased to hold as follows :

"The testimony of victim in cases of sexual offences is vital and unless there are compelling reasons which necessitated looking for corroboration of her statement, the Courts should find no difficulty to act on the 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. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion ? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be selfinflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a

requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

The Hon"ble Supreme Court further held in Para No. 20 of this judgment as follows :

"Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victim of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault; it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecution inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

19. In *State of Andhra Pradesh v. Gangula Satya Maurthy*, AIR 1997 Supreme Court 1588, more guidelines were given by the Hon"ble Supreme Court to the Courts below while dealing with a case of sexual offence and in Para No. 27 of the judgment their Lordships of the Supreme Court by keeping in view the dictum of *Gurmit Singh's* case (*supra*), laid down as follows :

"27. Before parting with the case we would like to point out that the Courts are expected to show great responsibility while trying an accused on charges of rape.

They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection and we must emphasise that the Courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in the totality of the background of the entire case and not in isolation."

20. Now it is to be seen whether the allegations of the complainant (Mrs. Bajaj) have been proved; whether those have been correctly appreciated by the Courts below; whether the evidence was enough before the Courts below to act upon the story of the prosecution and whether any benefit can be given to the petitioner for the alleged lapses, as pointed out by Mr. Alok Sen Gupta, Advocate, appearing on behalf of the petitioner, during the course of his arguments, such as that material witnesses of the prosecution have been withheld, as a result of which an adverse inference should be drawn against the prosecution under Section 114G of the Indian Evidence Act and that the bald statement of the prosecutrix should not be acted upon when the prosecution at one stage of the trial had itself made an application that they wanted to examine some of the witnesses but finally the prosecution did not produce those witnesses. It was also urged before me by Mr. Gupta that there is an inordinate delay with regard to the lodging of the F.I.R. by Mrs. Bajaj and the earliest version of Mrs. Bajaj is not being corroborated by some of the D.Ws. as these D.Ws. had never stated before the Court that Mr. Gill ever gave a slap on the posterior portion of the body of Mrs. Bajaj. This Court cannot lose sight of the fact that Mrs. Bajaj and her husband had taken the courage to fight against the super cop of the State of Punjab. In other words, they had taken the courage to fight against the mountain. Irrespective of the fact that Mrs. Bajaj was an I.A.S. Officer and her husband was also an I.A.S. Officer, but this Court cannot lose sight of the fact that Mrs. Bajaj is a woman of the society and in our society still the woman is regarded as a symbol of modesty. There are certain qualities which are inherent in a woman. She cannot accept insult, specially in an elite gathering, otherwise a wrong signal can travel in the elite itself. The conduct of Mrs. Bajaj was very natural. Firstly she reported the incident to the neighbouring ladies, who must have seen the occurrence. Mrs. Bajaj narrates the occurrence to the host Mr. Kapur. She narrates the occurrence to her husband. Her conduct is selfexplanatory to the incident which had earlier occurred. Other ladies though they may have seen the occurrence, still feel shy in coming to the witnessbox, lest they may purchase the enmity. They had gone to the house of Mr. Kapur to enjoy the evening or to participate in a social gathering. It was none of the object of any of the persons, including Mrs. Nehra, Mrs. Bijlani and other ladies to invite the displeasure of the petitioner or anybody else. It is true that the

F.I.R. in this case was registered after a few days of the occurrence, but the conduct of Mrs. Bajaj was very natural when she had been approaching every highup of the administration for taking action against the petitioner. Law is equal to everybody. We are living in a country, which is governed by rule of law which affords protection to all of us equally. When the incident had been brought to the notice of Mr. Kapur, in the opinion of this Court, it became his duty to report the matter to the Police for investigation, but like a good host, he perhaps wanted to take the things casually or wanted to ensure that the incident may not flare up. But the complainant was insulted. She was humiliated in the presence of others and it was very difficult on her part to swallow it, lest there may be encouragement to the petitioner or lest a wrong signal may travel in the respectable society about her conduct. The approaching of the complainant firstly to Mr. Kapur, then to Mr. Ribeiro, then to the Chief Secretary, and finally to the Governor of Punjab, itself suggests that Mrs. Bajaj was aggrieved and she was aggrieved genuinely at the hands of the petitioner.

21. In her complaint (Ex.PB) in paras Nos. 3, 4 and 5 she gives the entire occurrence and she has categorically alleged therein that she was slapped on her posterior and this was done in full presence of the ladies and the guests. She has also alleged that Mr. Gill came so close to her that his legs were about 4" from her knees. This alleged gesture on the part of the petitioner, if proved, is squarely covered within the meaning of Sections 354 and 509 of the Indian Penal Code. On oath also Mrs. Bajaj had stated while appearing as P.W.1 :

"After about 10 minutes, Mr. K.P.S. Gill got up from his chair and he came over where I was sitting and stood in front of me directly in front of me. His legs were about four inches away from my knees. I was sitting in an armed cane chair. He made a gesture of his finger towards me to ask me to get up and come along with me. I objected very strongly and I told him, 'How dare you! You are behaving in an obnoxious manner. Go away from here.'" It made no difference to him and he repeated his words like command. He had very lewd expression on his face and he said, "You get up." He made same gesture again and asked me to get up and come along with him immediately. I looked at the other ladies. The other ladies were speechless. I did not know what to do and I felt frightened and felt apprehensive."

Further it has been stated by the complainant :

"Then I found that he was going to pull me up. In reflex action I pulled the chair back as far as I could about 11/2 ft. and 2 ft. and I quickly got up and tried to get up from the circle. At that stage he hit me on the posterior in front of everybody. He hit me on the posterior with his hand. I felt very intense and shame and humiliation for this immodest slap. He did it intentionally knowing well. According to me he knew fully well that in Indian society any selfrespecting woman will feel outraged at such an act which is against all canons of decent behaviour."

22. An effort was made by the learned counsel for the petitioner that the bald statement of P.W.1 should not be readily acknowledged and accepted when the prosecution has not been able to examine the important witnesses like Mrs. Nehra, Mrs. Bijlani, Mrs. Bhandari, Mrs. Paramjit Singh and Mrs. Shukla Mahajan. The counsel submitted that two applications were submitted by the counsel appearing on behalf of complainant Sh. Bajaj that the prosecution wanted to examine these witnesses in order to prove the allegations and efforts were even made by the complainant for getting the assistance of the Court for the service of these witnesses in spite of the opposition of the petitioner, but those witnesses have been withheld. Therefore, an adverse inference should be drawn against the prosecution to the extent that these witnesses were not ready to corroborate the ocular account which had been allegedly given by Mrs. Bajaj. The counsel submitted that Mrs. Bajaj had improved upon her statement to such an extent that reliance cannot be placed upon her statement alone so as to sustain the conviction and this aspect of the case has not been rightly appreciated by the Courts below, causing miscarriage of justice.

23. I am not inclined to accept the contention of the learned counsel for the petitioner. It is a settled principle of law that the Criminal Courts see the quality of the witnesses and not count the heads. Multiplicity or duplicity can always be avoided by the prosecution. Adverse inference can be drawn by the prosecution only if the statements of the witnesses are necessary for unfolding a particular fact. Moreover we know that in such like cases the witnesses will try to remain behind the curtain lest they may be exposed to the cross-examination or lest they should invite the wrath of a person who was in power at that time. The point which survives for determination is whether the evidence which has already been led and is on record, can become the basis of a conviction for the offences under Sections 354 and 509 of the Indian Penal Code. Corroboration is a rule of prudence, not a rule of law in such like cases. The statement of the prosecutrix is to be read like the statement of an injured witness. If there is an ample corroboration that only adds to an additional guarantee to the mind of the Court about the genuineness of the story. But if there is no duplication of evidence, still the Court has the power to rely upon the sole testimony of the prosecutrix provided it inspires confidence. In these circumstances, the natural anxiety of this Court would be why Mrs. Bajaj (P.W.1) has chosen to implicate the present petitioner when there was no previous history of enmity between the petitioner and the prosecutrix. Though an effort was made from the side of the petitioner to establish that the husband of the prosecutrix was in trouble and he wanted the assistance of the police and that of the petitioner in those cases, but this is too far fetched and no reliance can be made on the contention.

24. Learned counsel appearing on behalf of the petitioner made an endeavour to convince this Court that the observations of the Hon'ble Supreme Court in Gurmit Singh's case (supra) were in a different context. Those observations were made in a rape case. Here the occurrence has been allegedly witnessed by certain ladies and the matter was even reported to other persons either at the

spot or before the higher authorities, but nobody has stated that the petitioner gave a slap on the posterior of Mrs. Bajaj.

25. Everyone is not supposed to make his tongue dirty. Shri S.L. Kapur (P.W.8) has deposed like this :

"When I was returning after attending the telephone call and had reached at the pacca platform, Mrs. Bajaj had come to me and stated that `Sir, you have to check your DGP, who had misbehaved with her. He tried to make her sit next to him and when she was about to sit, he pulled the chair towards himself. She did not like it and she got up and went away. Thereafter Mr. Gill followed her and also hit her." She had stated that she was hit on the back. So I looked around and found Mr. Gill standing in one side of the lawn."

Is it not an enough corroboration ? If Mr. Gill has not given the complete details about the occurrence, definitely he has given the gist of the offence. The res gestae conduct of the prosecutrix coupled with the statement of Shri Kapur, in the opinion of this Court, was enough in itself to record a positive conviction with regard to Sections 354 and 509 of the Indian Penal Code.

26. Reliance was also placed on the statement of Mr. R.P. Ojha (D.W.5) and it was contended that the matter was also brought to the notice of this Officer by the complainant but this Officer has not corroborated the case of the complainant.

27. If the statement of Mr. Ojha is read between the lines, a safe conclusion can be drawn that Mrs. Bajaj was aggrieved. To quote the words of Mr. R.P. Ojha :

"Mrs. Bajaj had come to me late in the evening on that date and she stated that she had been humiliated and insulted by Mr. K.P.S. Gill, the DGP Punjab, on the previous evening during a dinner party at the house of Mr. S.L. Kapoor, Home Secretary, Punjab. She further told me that the gathering at Mr. Kapoor's residence was a mixed one consisting of ladies and gents which included high Govt. officers, some other respectables of the town and the few press representatives. She further told me that she was sitting amongst the ladies and talking to them, when Mr. K.P.S. Gill came to her and said, "Mrs. Bajaj I want to talk to you". She further stated that "I looked up at Mr. Gill and noticed that he was rather unsteady on his feet and he was holding the glass of his drink in his hand." She then stated that she got scared and she said, "I do not want to talk to you." She continued, "Mr. Gill raised his voice almost to a shout and said, "no, I want to talk to you." Mrs. Bajaj further stated that she felt humiliated and shocked at this behaviour of Mr. K.P.S. Gill in front of the ladies. She further told me, "that I immediately headed towards the house of Mr. S.L. Kapoor to report this matter to him."

If Mr. Ojha was not bold enough to renarrate the entire incident correctly in Court, the fault does not lie with the prosecutrix. But Ojha had to admit that the prosecutrix came to him and made a specific complaint about the conduct of the petitioner that she was humiliated and insulted. It does not stand to reason that

when Mrs. Bajaj had gone to Mr. Ojha and wanted to bring to his notice the entire episode, she would withhold some talk of the occurrence. The approaching of Mr. Ojha on the part of Mrs. Bajaj itself furnishes enough corroboration to her statement that she was the victim of assault of the petitioner, who wanted to outrage her modesty.

28. During the course of submissions and with the help of voluminous evidence an effort was made by the learned counsel for the petitioner to convince me that the bald statement of Smt. Bajaj may not be treated as credible, specially when the alleged offence of *res gestae* is being collected by the prosecution at a highly belated stage and especially when Mr. Ojha (D.W.5) has not corroborated the assertion of the prosecutrix to the effect that she was slapped by the petitioner on her posterior portion of the body. But I am not convinced with this argument as in the opinion of this Court the law does not make a distinction between a victim of indecent assault like the one covered under Section 354 of the Indian Penal Code, or a victim of rape as defined under Section 375 of the Indian Penal Code. The ratio decidendi of the Hon''ble Supreme Court in such like cases is that these are sexual offences committed by the genders qua women. In my estimation the offence of rape is the most exaggerated form of the offence of indecent assault. Nevertheless in both the cases the modesty of a woman is involved.

29. Now I would like to cite and discuss the case which has been referred to by the counsel for the parties. At the first instance reliance has been placed on *Md. Sharif v. State of Orissa*, 1995 Supreme Court Cases (Cri.) 1111, and it was argued by the learned counsel for the petitioner that the matter requires reconsideration as the Courts below did not take into consideration some portion of the evidence led by the defence. The short citation is not applicable to the facts in hand. Both the Courts below had taken note of all the relevant evidence which was required to ascertain whether Smt. Bajaj was the victim of assault for the purpose of the charges or not. There was positive finding based on evidence that the petitioner Shri K.P.S. Gill firstly came so close to the lady with the knowledge that his act was likely to embarrass her and when the prosecutrix wanted to withdraw herself from the ugly posture worked out by the petitioner and when she was taking a turn, the petitioner gave a slap on the posterior portion of her body. The action on the part of the petitioner was definitely with the knowledge to outrage her modesty. I need not discuss the meaning of the 'modesty' as this word has been interpreted by the Hon''ble Supreme Court in the judgment itself vide which the directions were given to the Court of Chief Judicial Magistrate for conducting the trial. This Court is not in a position to better the lines than the one which had already been written by the Hon''ble Supreme Court and adopted by the Courts below.

30. Reliance was also placed on *Krishnan and another v. Krishnaveni and another*, 1997 Supreme Court Cases (Cri.) 544. In the opinion of this Court the judgment only lays down and reminds this Court of its powers under Section 397

read with Section 401 of the Code of Criminal Procedure. In para No. 7 of the judgment the Hon''ble Supreme Court was pleased to hold that exercise of revisional power by the High Court under Section 397 read with Section 401, Cr.P.C., is to call for the records of any inferior criminal court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court and to pass appropriate orders. The Hon''ble Supreme Court held that these powers are to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court, and to dispose of the revision in the manner indicated under Section 401 of the Cr.P.C. It is settled principle of law that the power of revision should not be interfered in a question of fact. If this Court finds that both the Courts below have correctly appreciated the law with regard to the statement of a prosecutrix in gender offences, and have come to a reasonable conclusion in the conviction of the petitioner, the High Court should be slow in interference to this conviction even if the High Court may formulate a different opinion than the one already formulated by the Chief Judicial Magistrate or the Court of Session. In the present case the evidence of the prosecutrix, which has been read in extenso, totally inspires confidence to the mind of this Court that she was the victim of assault and the action on the part of the petitioner is squarely covered both under Sections 354 and 509 of the Indian Penal Code, and not only to this extent but also to that the statement of the prosecutrix is fully corroborated by her own conduct with the evidence *res gestae*, upon which the law Courts have given immense importance. The conduct of Smt. Bajaj inspires confidence that she reported the matter to the persons present in the party; to the host; to the Chief Secretary; to the Adviser to the Governor, and even she tried to approach the Governor itself in this regard. The confidential note which was written by Mr. Kapur to the Governor is indicative of the fact that the incident has happened at this residence as deposed by the prosecutrix. I am not impressed by the arguments of the learned counsel for the petitioner that the note of Mr. Kapur has been fabricated. There was no motive on the part of Mr. Kapur to depose against Mr. Gill, to whom he invited in the party as a guest and in order to extend him the honour of participating in the party itself.

31. Learned counsel for the petitioner has again relied upon D.V. Shanmugham and another v. State of A.P., 1997 Supreme Court Cases (Cri.) 691, and submitted that withholding of the independent witnesses available to the prosecution and confining to the statement of Mrs. Bajaj alone should be viewed very seriously and adverse inference should be drawn under Section 114G of the Indian Evidence Act. A part of this argument I have discussed in the earlier portion of this judgment and at the cost of repetition I am of the view that to the law victims of sexual assault whether under Section 354 or under Section 509 or under Section 376 or under Section 366 or under Section 363 of the Indian Penal Code, stand on equal pedestal. She is a victim whose testimony is to be considered like that of the injured witness. Her feelings and modesty have been

hurt in each of these offences and keeping in view the traditions of our country, specially in northern India, no respectable woman would come forward with false allegations nor she would like to tear her abdomen unless the things had happened in the real state. There can be very few cases where the victim comes forward in order to grind her axe. Present is a case in which it can be said with certainty by this Court that Mrs. Bajaj never wanted to settle any score with the petitioner either at own level or at the level of her husband, irrespective of the fact that some efforts had been made to show that the husband of the prosecutrix was in trouble in connection with some cases or that the husband of the prosecutrix had made an effort to secure the help of Shri K.P.S. Gill.

32. Reliance was also placed on State of U.P. v. Noorie (Smt.) alias Noor Jahan and others, 1996 Supreme Court Cases (Cri) 945, in which the Hon"ble Supreme Court was pleased to lay down as under :

"While assessing and evaluating the evidence of eyewitnesses the court must adhere to two principles, namely, whether in the circumstances of the case it was possible for the eyewitnesses to be present at the scene and whether there is anything inherently improbable or unreliable. Credibility of a witness has to be decided by referring to his evidence and finding out how he has fared in crossexamination and what impression is created by his evidence taken in other context of the case and not by entering into the realm of conjecture and speculation."

It is true that the statement of Smt. Bajaj has not been corroborated by substantive evidence of another eyewitnesses, who were very much present in the party Mrs. Nehra, Mrs. Bijlani, Mrs. Bhandari and others were definitely present close to the prosecutrix and they had every occasion to see the actual incident of slapping etc. But if those ladies did not think proper to come in the witnessbox, the story of the prosecution in its entirety cannot be knocked down nor it can be held that the statement of Smt. Bajaj, who withstood the lengthy crossexamination like a rock, should be discredited altogether. I cannot lose sight of the fact that Mrs. Bajaj was a serving woman. She knew the consequences of her action, which she had taken against the petitioner. She wanted to demolish a mountain. Her running from pillar to post itself suggests that she was injured in her modesty. She did not want to lie down. She wanted to take her insult to all conclusions and judicial proportions. When she felt that the administration was not coming to her help or that the things were being lingered on, she submitted application for the registration of the case. She had withstood the lengthy crossexamination. She fared very well and the general impression which I have been able to gather from her statement is that she is a truthful witness.

33. Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983(2) RCR(CrL.) 192 : 1983 Supreme Court Cases (Cri.) 728 , is another authority, which was relied upon by the learned counsel for the petitioner. I have the occasion to go through this authority and the ratio of the judgment is that the testimony of the prosecutrix, if reliable, gives handle to the law Courts to record a conviction for

sexual offences, including under Sections 376, 354 and 342 of the Indian Penal Code. No doubt medical evidence acts as a corroboration to the oral testimony of a prosecutrix, but in the absence of any corroboration from an independent source, it is not the rule of law that the conviction cannot be based. The rule of prudence is that the law courts may look towards corroboration for its convenience and propriety but if the Court after making a rational appraisal of the statement of the prosecutrix, comes to an independent conclusion that what has been stated by the prosecutrix must be reasonably true, such statement and deposition on the part of the prosecutrix should be accepted. As a Revisional Court, I will only interfere if I come to the conclusion that the finding of fact has been given by the Courts below in a perverse manner or by illegal appreciation of evidence. It is not a case of that type.

34. Yet reliance was made on *Narain and others v. State of Punjab*, A.I.R. 1959 Supreme Court 484 and it was vehemently submitted by the learned counsel for the petitioner that it was the duty of the prosecution to produce the witnesses upon whom at one point of time the complainant made an application. Even before the trial Court very flimsical reasons have been advanced by the prosecutrix in giving up those witnesses. The counsel even went to the extent by saying that the learned Public Prosecutor was not fair when he withheld two witnesses Mrs. Nehra and Mrs. Bijlani, who could be available to unfold the material facts. I have seen the proceedings of the trial Court and I am not in a position to return a finding that the role of the Public Prosecutor was irrational. Of course the prosecution wanted to see the success of the case. If the Public Prosecutor has formulated a rational opinion that his case could succeed on the strength of the statement of the prosecutrix alone, there was hardly any necessity on his part to examine or multiply the witnesses on the same facts. Had it been an ordinary case of a noninjured witness, this Court might have drawn some inference against the prosecution but the testimony of a prosecutrix has a better strength than an ordinary witness. Its value is more. Heads are not supposed to be counted in order to prove a fact. In the entire chain of the entire occurrence, it was the prosecutrix who was injured; whose feelings were hurt and whose modesty was outraged; who suffered the brunt and it was the prosecutrix who felt ashamed at the hands of the present petitioner, who was supposed to be the protector of law. In such circumstances if the prosecutrix has taken the courage to depose against the person like Mr. Gill, some weightage has to be attached to the statement of the prosecutrix. If the prosecution for good reasons could to (not ?) examine the other eyewitnesses, it did not debar the petitioner to examine those witnesses in defence. This Court is cognisant of the fact that in criminal cases the initial burden is always upon the prosecution to prove the charge by leading cogent, reliable and satisfactory evidence and further prosecution is to prove the charge beyond reasonable doubt. But it is always upon the prosecution to make a selection. The selection in this case on the part of the Public Prosecutor was fair and honest and not with a view to suppress any inconvenient witness. Counsel for the petitioner has not been able

to show from the statements of these witnesses under Section 161 or otherwise that Mrs. Nehra or Mrs. Bijlani were not present in the party. Moreover the prosecutrix was never satisfied with the investigation for the obvious reason that the Investigating Officer, for the reasons best known to him, wanted to act in a detrimental style, detrimental to the interests of the prosecutrix and the complainant. That was the reason that necessity arose for filing the complaint. In State of U.P. and Anr. v. Jaggu, AIR 1971 SC 1586, Hon''ble the Supreme Court has held that all the witnesses of the prosecution need not be called but witness whose evidence is essential to the unfolding of the narrative must be called, if his absence seriously affects the truth of the prosecution case. In the present case, the victim of the assault was Smt. Bajaj and the prosecution has not withheld her from the witnessbox. She was produced in the Court. She was subjected to all searching crossexamination by the counsel for the accused in the trial Court. She did not give in at any point of time, though she could not narrate positively some minor facts from here or there. The observations of the witness can become faulty littlebit and specially when this Court finds that the trial of the case started after a lapse of eight years. Even the most truthful witness can fumble and forget some minor facts here or there. Gravamen of the charge in this case was whether Shri Gill stood so close to the prosecutrix with knowledge or intention so as to that he wanted to outrage the modesty of the woman and whether he gave a slap on the posterior of the prosecutrix ?

35. Fairly it has been conceded at the Bar by the learned counsel for the petitioner that if it is established on the record that the posture of Mr. K.P.S. Gill and his alleged slap given at the back of the prosecutrix stand proved, the ingredients of the offences are made out. I have scrutinised the voluminous evidence of the prosecution and the defence both oral and documentary with care and caution and in depth and irresistible impression which was left upon the mind of the Court is that the occurrence had taken place in the manner as stated by the prosecution. If some ladies had supplemented the statement of the prosecutrix, that would have amounted to additional favour for the prosecution but the nonexamination of the eye witnesses in this case does not mean that the entire story of the prosecution should be disbelieved. Gurmej Singh & Ors. v. State Punjab, 1991(2) RCR(Crl.) 541 : 1991 Supreme Court Cases (Cri.) 992 , was also relied upon by the learned counsel for the petitioner. But in my opinion this judgment is also not helpful to the petitioner. State of Maharashtra v. C.K. Jain, 1990(1) RCR(Crl.) 410 : 1990 Supreme Court Cases (Cri.) 210 . As again relied upon by the learned counsel for the petitioner. In my opinion the ratio of this judgment goes against the petitioner. The Hon''ble Supreme Court was pleased to hold as follows :

"To insist on corroboration except in rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix

is available. Ordinarily an Indian woman would be most reluctant to level false accusation of rape involving her own reputation unless she has a very strong bias or reason to do so."

Mrs. Bajaj was not going to get an extraordinary promotion or benefit by making this type of allegation against the petitioner. So why her statement should not be given full credit and full weight ? Why she should not be put in the highest vigours on appreciation of evidence ? The accused has not given any tangible defence in his statement under Section 313, Cr.P.C. He made a very cryptic statement, which I noticed above though during the stage of crossexamination some suggestions were given to the prosecutrix and her husband about the alleged involvement of the petitioner in this case, but in my opinion those suggestions are too far fetched so as to be believed or any weightage is to be given. Broad human probabilities are supposed to be the good basis in order to appreciate a criminal case. Fanciful suggestions cannot dislodge the case of the prosecution. Hard realities are supposed to be accepted even by the law Courts. The status of the prosecutrix was also not small. She was a senior I.A.S. Officer. It has come even in the statement of Mr. Ojha and also in the note of Mr. S.L. Kapur besides other evidence that drinks were offered by Mr. Kapur to his guests. The party continued from 8 P.M. onwards. Present incident had taken place somewhere at about 10 or thereafter. Liquor had a role to play in this episode. Intoxication plus power in the opinion of this Court played two major roles, leading to this undesirable incident, which could have been avoided had some restraint been shown by the petitioner. Weak moments do come in the life of an individual and in the opinion of this Court, the petitioner also became the victim of those very moments. But unfortunately he should have realised that he was the custodian of law and he should have shown some restraint upon his own actions, by fully realising that others have also the honour and modesty and others have also to survive in this our great society. The alleged act was going to be committed qua a woman, who possibly could not digest the humiliation and the consequences of the act allegedly performed by the petitioner.

36. This takes me to discuss some of the case law which has been cited at the Bar by the counsel appearing on behalf of the Chandigarh Administration. An objection was raised by submitting that the present revision is barred under Section 11 of the Probation of Offenders Act. According to Mr. Ajay Lamba, the order of the learned Sessions Judge, Chandigarh, could have been appealed by virtue of the provisions of Section 11(2) of the said Act. Reliance was also placed on *Hukam Singh v. State through Delhi Admn.*, 1994(1) RCR 185 , a Division Bench judgment of the Delhi High Court, but I am of the opinion that in the present case revision was competent because the learned Sessions Judge, Chandigarh, was not trying the offences though the appeal before the learned Sessions Judge was in continuation of the criminal trial. Learned Sessions Judge maintained the conviction awarded by the trial Court both under Sections 354 and 509 of the Indian Penal Code, as is evident from the lines of his judgment. He simply diluted the sentence with the aid of Sections 4 and 6 of the Probation

of Offenders Act. In these circumstances, revision petition was maintainable.

37. The counsel appearing on behalf of the respondent reminded this Court of its powers under Sections 401 and 397 of the Code of Criminal Procedure by laying emphasis upon *Amar Chand Agarwala v. Shanti Bose and another*, AIR 1973 Supreme Court 799, and it was submitted that the discretion should be exercised only in exceptional cases when there is a glaring defect in the procedure or there is manifest error on point of law and consequently there had been a flagrant miscarriage of justice. I have already quoted with approval *K. Chinnaswamy Reddy v. State of Andhra Pradesh*, AIR 1962 Supreme Court 1788. Hon'ble Supreme Court reiterated the earlier law, which was propounded by their Lordships. Similarly, in *State of Orissa v. Nakula Sahu and others*, AIR 1979 Supreme Court 663 those very pronouncements have been reiterated. I have restricted myself while examining the evidence of the prosecution within the realm of the dictum laid down by Hon'ble the Supreme Court in *Amar Chand Agarwala's* case and *State of Orissa v. Nakula Sahu's* case, just quoted above.

38. The counsel appearing for the Chandigarh Administration also wanted to remind this Court that the offences under Sections 354 and 509 of the Indian Penal Code are gender offences and these offences violate the rights of equality and right to life and liberty. Reliance was placed on *Vishaka and others v. State of Rajasthan and others*, AIR 1997 Supreme Court 3011. This judgment is relevant to a limited extent. The sexual offences committed qua the women of our country are the offences virtually against the Society, of course, the victim is the first person to be affected. It leaves a stigma upon her career for all times to come. The allegations are discussed for years together. Such allegations are not washed away nor such allegations become silent and that was the reason the Hon'ble Supreme Court has given extra weightage to the statement of a victim of sex/victim of assault in sexual offences. The culture and civilisation of this country admit that the woman of this country, who is a symbol of modesty, should be protected at all costs. No one should be able to infringe upon the personal privacy of a woman. Our women have to be seen with highest dignity and in esteem by all and sundry, including her husband. The woman is not a chattel. She is not subordinate. She is not the personal property. She has to be heard. Her allegations have to be weighed in the most lightest scale. Heavy scales are not required to weigh the allegations of a prosecutrix. She would come forward only if there is a grain of truth. The statement of a prosecutrix must not be thrown in the dustbin. Compelling reasons must come on the surface before giving discredit to the statement of a person who is the victim of sexual assault. Otherwise the honour of the women would be in peril, specially of working women. Nobody has the right to take a woman for granted. She is supposed to be respected not only by his superiors or colleagues but by her husband also and by the society at large as well. We cannot forget that the woman has contributed for the creation of the universe.

39. The State counsel Shri Ajay Lamba relied upon the authorities reported as

Harpal v. State of Haryana and others, 1997(3) RCR 667 ; Ram Sanjiwan Singh and others v. State of Bihar, 1996 Supreme Court Cases (Cri) 701; Malkhan Singh and others v. State of U.P., 1995 Supreme Court Cases (Cri) 893; and Rai Saheb and others v. State of Haryana, 1994 Supreme Court Cases (Cri) 239. The case law is on a point that the presumption of Section 114G of the Indian Evidence Act is only permissible inference and not a necessary inference. There should be other circumstances also to facilitate the drawing of adverse inference and that the adverse inference should not be drawn as a mechanical process by advancing an argument that the prosecution has withheld a particular witness.

40. I am in full agreement with the learned counsel appearing on behalf of the prosecution that Section 114G of the Indian Evidence Act cannot be read in isolation. It has to be read along with Section 134 of the said Act and also in the light by holding that a victim of sexual assault is not an accomplice and that the prosecution is not obliged to bring out all the witnesses under the earth to prove a particular fact, if the Public Prosecutor has formulated a fair and rational judgment by examining a few witnesses, it is his judgment. Situations do come before a Prosecutor when the witnesses for any reason whatsoever are not prepared to expose themselves by appearing in the witness box. They do not want to bear the brunt of cross-examination. Appearance of a lady in the witnessbox itself causes embarrassment invariably because the law has given a right a very valuable and effective right to the accused to cross-examine the witnesses.

41. From the above I have been able to formulate the rational opinion that the judgments of the Courts below so far as the conviction aspect is concerned do not require any interference and those are hereby maintained.

42. Now I would like to examine the propriety of sentence awarded by the learned appellate Court. The object of the law, of course, is to punish an offender if the offence against him is proved beyond reasonable doubt. But equally is the object of law of penology that the sentence should be awarded keeping in view the various factors of the case and also seeing the conduct and the circumstances of a person to be convicted and sentenced. Awarding of sentence has always been left to the discretion of the Courts. Of course, this discretion has to be exercised judiciously. It is not the case of the prosecution that Mr. Gill had joined the party intentionally to outrage the modesty of the prosecutrix. He might have become the victim of liquor or he might have felt insulted when the prosecutrix Smt. Bajaj did not want to sit by his side and he might have felt offended. Liquor was being served in that party. We can well imagine the behaviour of a person who is under the effect of intoxicant or liquor. The point which survives for determination is whether the modified sentence awarded by the learned Sessions Judge should be maintained or there is a scope for interference in it further. The reading of para No. 32 of the judgment would show that the learned Sessions has imposed supervisory probation on the petitioner and has incorporated certain conditions, which in the opinion of this Court may

not become even executable. It may even become difficult for the State to formulate an opinion as to whether the petitioner is leading an honest and industrious life. The State may not be in a position to come to an exact conclusion as to when the petitioner has taken intoxicant in a public place and parties. Equally it is true that after the passing of the impugned judgment dated 6th January, 1998, the petitioner Shri K.P.S. Gill has not indulged in any such act which has the tendency to violate any of the conditions imposed by the learned Sessions Judge or had committed any offence, specially qua ladies. The petitioner himself was at one point of time an I.P.S. Officer. He was the Director General of Police of the Punjab State. He headed the contingent, which was duty bound to eliminate terrorism from this part of the country. He had never been convicted earlier. There were no adverse remarks against him earlier passed by a competent Court of jurisdiction that the Officer had the tendency to touch the honour of a woman. During the course of the submissions I also gave an occasion to complainant Mrs. Rupan Deol Bajaj to say a few words on the quantum of sentence. She tried to justify the order of the learned Sessions Judge. Rather in her opinion learned Sessions Judge was lenient qua the petitioner. She even went to the extent by saying that she spent a lot for the vindication of her right and for that reason, she could not file a counter appeal or revision for the enhancement of the sentence of the petitioner. She also brought to my notice substantive provisions of Sections 354 and 509 of the Indian Penal Code. But she has forgotten one fact that in both the substantive provisions the punishment of fine alone has also been provided. In the opinion of this Court and in the interests of justice, the supervisory probation imposed upon by the petitioner by the learned Sessions Judge, Chandigarh, requires to be made nonsupervisory. Therefore, by amending the conviction of the petitioner both under Sections 354 and 509 of the Indian Penal Code, I impose a nonsupervisory probation under Section 4(1) of the Probation of Offenders Act and direct that the petitioner shall remain under nonsupervisory probation for a period of one year starting from 6th January, 1998 and he shall enter into a bond in the sum of Rs. 20,000/ with two sureties in the like amount, undertaking to keep the peace and be of good behaviour and shall appear before the Chief Judicial Magistrate, Chandigarh, as and when required in case the petitioner violates the terms of the bond. The petitioner, however, shall pay a sum of Rs. 2,00,000/ by way of compensation, which amount shall go to Mrs. Rupan Deol Bajaj (prosecutrix). Further I order that the petitioner shall deposit a sum of Rs. 25,000/ as costs of proceedings, which shall go to the U.T. Chandigarh Administration. I am not in a position to endorse the view of the learned Sessions Judge when he ordered the petitioner to deposit a sum of Rs. 50,000/ towards costs of proceedings and out of this amount the learned Sessions Judge awarded a sum of Rs. 25,000/ to the husband of the prosecutrix Mr. B.R. Bajaj. Shri Bajaj did not deserve any compensation or costs of the proceedings. Of course, he filed a complaint as a covering complaint to the allegations of his wife Mrs. Rupan Deol Bajaj, with a view that the Police may not side with the petitioner. Nevertheless Shri Bajaj does not deserve any compensation and the order of the learned Sessions Judge

stands amended accordingly.

The summary of the above discussion is :

1. That this Court is inclined to place implicit reliance upon the statement of Smt. Bajaj whose statement has been corroborated by her own conduct, the statement of Mr. S.L. Kapur and so much so from the statement of Mr. R.P. Ojha, though this witness was not fairly bold to give the complete account of the statement made to him by the prosecutrix.
2. That the delay, if any, in lodging the complaint by the prosecutrix, is not fatal to the prosecution.
3. That the conviction of the petitioner under Section 354 and Section 509 of the Indian Penal Code is hereby maintained.
4. That the petitioner shall execute a fresh bond to maintain peace and be of good behaviour upto 5th January, 1999 in the sum of Rs. 20,000/ with two sureties in the like amount, within one month from today before the learned Chief Judicial Magistrate. If he violates any terms of the bond, he shall appear before the learned Chief Judicial Magistrate, Chandigarh, in order to receive the sentence.
5. That the petitioner shall deposit a sum of Rs. 2,00,000/ by way of compensation, which amount shall be paid to Smt. Rupan Deol Bajaj.
6. That further a sum of Rs. 25,000/ shall be deposited by the petitioner as costs of litigation/proceedings, which amount shall go to the U.T. Chandigarh Administration.
43. It has been informed to this Court that the petitioner has already deposited a sum of Rs. 2,00,000/. If this is so, Smt. Rupan Deol Bajaj will be able to withdraw that amount. Further it has been informed to this Court that the petitioner has also deposited a sum of Rs. 50,000/ as costs of proceedings, as awarded by the learned Sessions Judge, Chandigarh. If this is the factual position, the petitioner would have the right to withdraw Rs. 25,000/, as I have not awarded any compensation to Shri B.R. Bajaj.
44. The petitioner need not appear before the Chief Probation Officer, New Delhi.
45. With the above modification in the matter of sentence, this revision petition fails and is hereby dismissed with no costs in the present proceedings with no order as to costs.