

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 257 OF 2023

**RAJ KUMAR JAISWAL
-VS-
STATE OF WEST BENGAL AND ANR.**

For the Petitioner : Mr. Soham De Dhara
Ms. Deblina Ghosh

For the State : Mr. Sagar Saha
Ms. Nayana Mukhopadhyay

For the Opposite Party No. 2 : Mr. Satadru Lahiri
Mr. Syed Wasim Faruque

Reserved on : 25.09.2026

Pronounced on : 30.09.2026

UDAY KUMAR, J.: –

1. The present criminal revisional proceeding arises out of concurrent judicial affirmations of guilt under Section 509 of the Indian Penal Code, 1860 (IPC). The petitioner, Raj Kumar Jaiswal @ Bablu, stands convicted for acts and utterances intended to insult the modesty of a woman. Both the Trial Court (Learned Additional Chief Metropolitan Magistrate-II, Calcutta) by the impugned judgment dated December 01, 2021 and the First Appellate Court (Learned Additional Sessions Judge, 1st Fast Track Court, Calcutta) by the impugned judgment dated January 09, 2023, concurrently rejected the petitioner's defence,

finding him guilty of the offense. The matter now rests before this Court under its revisional jurisdiction, challenging the legality, propriety, and correctness of the concurrent judgments of conviction and sentence.

- 2.** The genesis of the dispute traces back to March 10, 2014, at approximately 21:30 hours. The de facto complainant, Snehil Gupta (PW-1), along with her husband, Krishna Gupta (PW-2), were returning home to their residence at 81F, Bechu Chatterjee Street, Kolkata, after visiting the Bhoothnath Temple. As they approached the main entrance of their building, the petitioner, who was a neighbour residing in the vicinity, reportedly in a drunken condition, confronted them without provocation. He hurled filthy abuses and direct threats toward the complainant's husband, warning them to go inside or face dire consequences. Believing the petitioner to be intoxicated, the couple chose to ignore the behaviour and entered their home.
- 3.** The hostility escalated the following day, March 11, 2014, when at around 13:30 hours, the complainant's husband (PW-2) discovered that the right handle of their parked scooty was broken and damaged. A few hours later, at approximately 16:30 hours, the said vehicle was found shifted far from its original parking spot. Concurrently, the petitioner made an abusive phone call to PW-2, using explicit and foul language. Later that evening, the petitioner went to the family's business establishment (Krishna Engineering Works) and intimidated the attending manager and staff member, B.K. Chandra (PW-3), threatening to close down the shop and damage its contents if shutters were not pulled down.

4. The primary incident forming the bedrock of the charge under Section 509 IPC occurred later that same evening, on March 11, 2014, at around 21:45 hours. When the complainant and her husband were returning from her mother's place and reached the entrance of their premises, the petitioner intercepted them again in an inebriated state. He launched into a vicious verbal tirade, mocking their childless marriage after two years and calling the husband impotent. When the couple protested, the petitioner deliberately opened the zip of his pants and made explicit, vulgar gestures accompanied by the offensive remark: "*Mere ko ek chance do, tumko pregnant kardenge*" ("Give me a chance, I will make you pregnant"). Stunned and deeply humiliated, the complainant immediately contacted her father and subsequently decided to take legal recourse.
5. Following consultations with her family and local residents, the de facto complainant submitted a written complaint on March 12, 2014. Based on this complaint, Amherst Street P.S. Case No. 55 dated March 13, 2014, was formally registered under Sections 506, 509, and 114 of the IPC. The Investigating Officer (PW-4) visited the place of occurrence, recorded witness statements, and arranged for the victim's confidential statement to be recorded before a Magistrate under Section 164 of the CrPC. Upon concluding the investigation, a charge sheet was submitted against the petitioner under Sections 509 and 506 IPC.
6. The Trial Court framed charges under Sections 506 and 509 IPC, to which the petitioner pleaded not guilty and claimed trial. During the trial, the prosecution examined four witnesses (PW-1 to PW-4), while

the defence examined none while taking a plea of total denial. On December 01, 2021, the Trial Court acquitted the petitioner of the charge under Section 506 IPC for the failure of the prosecution to establish sufficient ingredients to sustain the said charge, but found him guilty under Section 509 IPC, sentencing him to undergo simple imprisonment for six months with a fine of Rs. 5,000/- and a default sentence. Aggrieved thereby, the petitioner preferred Criminal Appeal No. 171 of 2021 before the Sessions Court. On January 09, 2023, the First Appellate Court dismissed the appeal and firmly upheld the conviction and sentence, leading the petitioner to approach this Court by way of the present revisional application.

7. Assailing the concurrent judgments and orders of conviction and sentence passed by both the courts, Mr. Soham De Dhara, the Learned counsel for the petitioner contended that learned Trial Court and the Learned First Appellate Court committed a grave error in law and fact by holding the petitioner guilty under Section 509 of the Indian Penal Code as the foundational premise of criminal jurisprudence is that the prosecution must prove its case beyond a shadow of reasonable doubt, bridging the distance between "may be true" and "must be true" through unimpeachable evidence. In the present case, learned counsel contended that the learned Trial Court and the First Appellate Court have glossed over critical gaps, relied heavily on conjectures, and erroneously shifted the burden of proof onto the defence, thereby resulting in a gross miscarriage of justice.

8. He further submitted that the testimonies of the de facto complainant (PW-1) and her husband (PW-2), the sole pillars of the prosecution case, suffer from irreconcilable contradictions that destroy the core substratum of the prosecution narrative. Regarding the alleged initial incident on March 10, 2014, PW-1 deposed during cross-examination that two or three other persons were present at the spot, whereas PW-2 swore under oath that *none*, except the three of them were present. Furthermore, regarding the alleged damage to their scooty, PW-1 claimed that a local shopkeeper named Sudhama informed them of the petitioner's involvement, while PW-2 categorically admitted under cross-examination that *no one* told him who committed the mischief. These material contradictions directly impeach the credibility and truthfulness of the primary witnesses.
9. He strongly contended that the prosecution deliberately withheld vital independent witnesses cited in the chargesheet, specifically Rahul Gupta (CSW-2), whose statement was recorded under Section 161 Cr.P.C. as an alleged independent eye-witness to the core incident, and Sudhama, the alleged informant of the scooty incident. Despite their availability, these independent witnesses were neither produced nor examined during trial. Under Section 114(g) of the Indian Evidence Act, 1872, an adverse inference ought to have been drawn against the prosecution. The failure to examine independent eye-witnesses when they were readily available leaves the entire prosecution story uncorroborated and heavily reliant on deeply interested parties.

- 10.** Mr. Dhara, submitted that the Investigating Officer (PW-4) conducted a perfunctory and slipshod investigation. The I.O. failed to draw up a proper site plan or sketch map of the place of occurrence, failed to exhibit any General Diary (G.D.) entries concerning his visit to the spot, and failed to conduct any verification of the threatening phone call allegedly made by the petitioner to the PW-2. The prosecution relied entirely on the primary witnesses' verbal claim of a phone call without producing Call Detail Records (CDRs) or checking tower locations, despite PW-2 initially admitting that the call came from an unknown number. The defence is fully entitled to exploit these glaring loopholes, and the courts below erred in brushing aside these structural defects in the investigation.
- 11.** Finally, Mr. Dhara, submitted that both PW-1 and PW-2 explicitly admitted under oath that there was no prior relation either cordial or hostile between the parties, leaving the prosecution entirely silent on any logical motive or provocation for the petitioner to commit such an offence. Coupled with an unexplained delay in registering the formal complaint, where a typed document containing complex legal terminology was introduced days later, the entire prosecution case stands on shaky ground. In the complete absence of a proven motive, reliable independent corroboration of the primary witness's statements, or trustworthy ocular testimony, the concurrent judgments of conviction of the petitioner is legally unsustainable and liable to be quashed and set aside.

- 12.** Conversely, Mr. Satadru Lahiri, learned counsel for the Opposite Party No.2/complainant contended that the core charge against the petitioner under Section 509 of the Indian Penal Code centers upon a direct assault on the modesty, dignity, and chastity of a woman. The testimony of the de facto complainant (PW-1) has remained consistent, unshaken, and unblemished throughout rigorous cross-examination. As established by a catena of landmark judgments by the Hon'ble Supreme Court such as *Alamgir v. State(NCT, Delhi)* [(2003) 1 SCC 21] and *Rupan Deol Bajaj (Mrs.) & Anr. v. Kanwar Pal Singh Gill & Anr.* [(1995) 6 SCC 194], the evidence of a victim of sexual harassment or outrage of modesty does not require mechanical or rigid corroboration, as her testimony stands on an even higher pedestal than that of an ordinary injured witness. It runs contrary to human psychology and social reality to assume that a respectable woman would stake her character, social standing, and personal reputation to fabricate a high-stakes, false criminal prosecution without any compelling background.
- 13.** Learned counsel further submitted that the ocular account of the victim (PW-1) received direct, immediate, and comprehensive corroboration from her husband, Krishna Gupta (PW-2), who was physically present alongside her at the exact time and place of the core incident on March 11, 2014, at 21:45 hours. Minor variations or discrepancies in human memory concerning peripheral details or collateral facts do not erode the core substratum of a truthful and natural eyewitness account. Both the learned Magistrate and the Learned Sessions Court meticulously

evaluated their testimonies and correctly concluded that their presence at the scene was natural and their testimonies unquestionable.

- 14.** Learned counsel contended that the criminal intent (*mens rea*) required to constitute an offence under Section 509 IPC is a state of mind that cannot always be proven by direct mechanical evidence, but must be inferred from the surrounding acts, conduct, and attending circumstances. The petitioner's overt, vulgar gesture of unzipping his pants in public, accompanied by the explicit and lewd verbal remark ("*Mere ko ek chance do, tumko pregnant kardenge*"), leaves zero ambiguity regarding his malicious intention to insult the femininity and modesty of the complainant. The lewd nature of the language used is self-explanatory and requires no complex interpretation in establishing the *mens rea*.
- 15.** It is well-settled in criminal jurisprudence that this Court, exercising revisional jurisdiction under Section 401 read with Section 482 of the Code of Criminal Procedure, does not sit as a second court of appeal to re-weigh or re-appreciate evidence unless the concurrent findings of fact recorded by the courts below are shown to be palpably perverse, based on no evidence, or suffering from a gross error of law. In the present case, both the Trial Court and the First Appellate Court have exhaustively analyzed the evidence, addressed all defense arguments regarding investigation lapses, and returned concurrent findings of guilt. No perversity or patent illegality in the said impugned judgments of conviction has been demonstrated by the petitioner to warrant any interference of this Court.

- 16.** Finally, the learned counsel submitted that the defence's contention regarding the absence of a proven motive holds no weight. When direct, credible, and unimpeachable ocular testimony clearly establishes the commission of an overt act directly witnessed by the victim and her husband, the strict requirement to prove a distinct prior motive loses its significance. Both parties admitted to having no prior communication or relations, and the petitioner failed to establish any ulterior motive or *mala fide* grudge on the part of the complainant to falsely implicate him. Therefore, he concludes that the concurrent judgments of conviction and sentence imposed upon the petitioner are legally sound and deserve to be affirmed in entirety.
- 17.** Based on the judgments and records of the Trial Court and the First Appellate Court provided in the case, the questions for determination in this case in a lawful and logical manner are structured as follows:
- i. Whether the petitioner (Raj Kumar Jaiswal @ Bablu) on March 11, 2014, at about 21:45 hours, uttered abusive language and displayed an obscene gesture (unzipping his pants) toward the de facto complainant (PW-1) with the deliberate intent to insult her modesty, thereby committing an offense punishable under Section 509 of the Indian Penal Code?
 - ii. Whether the testimonies of the victim (PW-1) and her husband (PW-2) as the primary ocular witnesses inspire sufficient confidence and remain trustworthy despite minor discrepancies or the absence of independent public witnesses?

- iii. Whether the omissions or technical loopholes in the investigation such as non-examination of cited independent witnesses (e.g., Rahul Gupta) or lack of CDR verification are fatal to the prosecution's case?
 - iv. Whether the absence of a proven prior motive or historical animosity renders the prosecution's case doubtful, or whether intent can be inferred from the conduct of the accused?
 - v. Whether the concurrent findings of guilt and conviction recorded by both the Trial Court and the First Appellate Court suffer from any patent illegality, perversity, or gross misreading of evidence so as to warrant revisional interference?
- 18.** The instant criminal revisional application challenges the concurrent findings of conviction and sentence recorded against the petitioner under Section 509 of the Indian Penal Code, 1860 (IPC). Both the Learned Trial Court and the Learned First Appellate Court found the petitioner guilty of uttering vulgar language and displaying an obscene gesture with the intent to insult the modesty of the de facto complainant (PW-1).
- 19.** To test the legal sustainability of these concurrent verdicts, I now proceed to determine the core questions framed for adjudication, evaluating the evidence on record, the documents exhibited, the rival submissions of the parties, and the settled position of law.
- 20.** Upon a meticulous examination of the records, the foundational incident is anchored by the unswerving testimony of PW-1, who categorically deposed that on the fateful night of March 11, 2014, while

returning home, the petitioner intercepted them, mocked their childless marriage, and deliberately unzipped his pants while uttering explicit sexual remarks. The Hon'ble Supreme Court in *Rupan Deol Bajaj (supra)* authoritatively held that if words uttered or gestures made are perceived as capable of shocking the sense of decency of a woman, they constitute an act of outraging her modesty. Similarly, in *State of Punjab v. Major Singh (AIR 1967 SC 63)*, it was established that any act done in the presence of a woman that is suggestive of sex according to common notions of mankind falls squarely within the mischief of the law. The language and physical manifestation exhibited by the petitioner require no complex psychological dissection to deduce intent. The attending circumstances and the explicit nature of the act conclusively establish that the essential ingredients of Section 509 IPC stand fully satisfied. This question is accordingly answered in the affirmative, against the petitioner.

- 21.** Turning to the second question, I acknowledge the defence's argument that the prosecution case rests entirely on "interested" witnesses (wife and husband) and is rife with minor discrepancies. It is a cardinal principle of criminal jurisprudence that the testimony of a victim of sexual harassment or incident of insult to modesty stands on a remarkably high pedestal. As repeatedly affirmed by our courts, a woman who is the victim of such an outrage does not normally stake her own social dignity, reputation, and peace of mind to fabricate a false, high-stakes criminal case against an innocent neighbor with whom she had no prior enmity.

- 22.** Furthermore, the ocular account of PW-1 is directly and seamlessly corroborated by her husband, PW-2, who was physically present at the scene of crime. Minor variations or discrepancies in human recollection regarding collateral details (such as whether other bystanders were present or exact phrasing) does not erode the core substratum of a truthful narrative. The learned Trial Court and the First Appellate Court had committed no error in accepting the trust-inspiring, consistent testimonies of PW-1 and PW-2. This question is answered in affirmative, in favor of the prosecution.
- 23.** Adverting to the third question for determination, it is true that the Investigating Officer (PW-4) committed certain procedural lapses, such as failing to draw up a formal site plan, omitting to exhibit General Diary entries, and failing to examine independent witnesses like Rahul Gupta (CSW-2) whose statements were recorded under Section 161 Cr.P.C.. However, it is an equally settled proposition of law that a criminal trial is not a game of errors played between the prosecution and the defence, and the systemic lacunae or faulty investigation conducted by the police cannot be permitted to form the sole basis for an outright acquittal if the ocular testimony of the victim is otherwise sterling, credible, and trustworthy.
- 24.** The primary evidence of the victim and her husband directly proves the substantive charge under Section 509 IPC. The absence of Call Detail Records or the non-examination of peripheral independent witnesses does not shatter the ocular trustworthiness of the core incident. The defense though is entitled to highlight investigation gaps, but those

gaps cannot outweigh direct, unblemished ocular evidence. This question is accordingly answered in the negative, by holding that the investigation lapses are not fatal to the prosecution's case.

25. Moving on to the fourth question for determination, the defence raised the contention that the prosecution failed to show any prior motive or deep-seated animosity for the petitioner to commit such an offence. Both parties admitted that they had no prior cordial or hostile relations. However, in crimes involving sudden outrages, verbal harassment, or affronts to modesty, proving a complex, premeditated motive is not a *sine qua non*. For such crimes, *mens rea* (criminal intent) must be inferred from the immediate acts, conduct, and surrounding circumstances of the given transaction.

26. As rightly observed by the Learned Magistrate and the Learned Sessions Court, when neither party alleges a motive for false implication (i.e., the defense does not plead that they were falsely framed out of malice or a pre-existing dispute), searching for an external motive is academic and imprudent. The offensive conduct itself manifests the *mala fide* intent. This question is accordingly answered in the negative, against the petitioner.

27. Continuing to determine the fifth and final question, the scope of revisional jurisdiction under Section 401 read with Section 482 Cr.P.C. is supervisory and narrow. This Court does not function as a second court of appeal to re-weigh evidence or substitute its own view for that of the Trial and Appellate Courts, unless the concurrent findings are shown to be perverse, arbitrary, or based on no evidence.

- 28.** Having exhaustively reviewed the records, the judgments of both the Trial Court and the First Appellate Court reflect a comprehensive, balanced, and judicious appreciation of the oral and documentary evidence. The conclusions drawn are logical, legally sound, and anchored firmly in established judicial precedents. No perversity, misreading of evidence, or gross miscarriage of justice has been established by the petitioner, warranting interference. Therefore, this question is also answered in negative, against the petitioner.
- 29.** In view of the foregoing logical determinations, all questions are decided against the petitioner and in favor of the prosecution. The concurrent findings of guilt, conviction under Section 509 of the Indian Penal Code and sentence require no interference from this Revisional Court.
- 30.** Accordingly, **C.R.R. 257 of 2023** stands **dismissed on merits**.
- 31.** The judgment and order of conviction and sentence dated January 09, 2023, passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Calcutta, in Criminal Appeal No. 171 of 2021 upholding the judgment dated December 01, 2021, passed by the Learned Additional Chief Metropolitan Magistrate-II, Calcutta, in G.R. Case No. 352 of 2014), is hereby **affirmed in entirety**.
- 32.** Connected pending application, if any, stands disposed of accordingly.
- 33.** Interim order, if any, also stands vacated.
- 34.** The petitioner is directed to surrender before the Trial Court within four (4) weeks from date to serve out the remainder of the sentence imposed upon him, failing which the Trial Court shall take immediate coercive steps in accordance with law to execute the sentence.

- 35.** There shall be no order as to costs.
- 36.** Let a copy of this judgment along with the Trial Court Records (T.C.R.) be transmitted down to the learned Trial Court forthwith for necessary compliance and execution.
- 37.** Case diary, be returned to the Learned Counsel for the State.
- 38.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)