

**IN THE COURT OF METROPOLITAN MAGISTRATE-07,
WEST, TIS HAZARI COURTS,
NEW DELHI**

Presided over by- Devanshu Sajlan, DJS

Cr. Case No. -: 63944/2016
Unique Case ID No. -: DLWT020019022014
FIR No. -: 672/2014
Police Station -: Paschim Vihar (East)
Section(s) -: 509 IPC



In the matter of –

STATE

VS.

ANKIT SHUKLA

.... Accused

1.	Name of Complainant	:	Ms. Laxmi Nayyar
2.	Name of Accused	:	Sh. Ankit Shukla
3.	Offence complained of or proved	:	509 IPC
4.	Plea of Accused	:	Not Guilty
5.	Date of commission of offence	:	03.09.2014
6.	Date of Filing of case	:	07.11.2014
7.	Date of Reserving Order	:	28.09.2022
8.	Date of Pronouncement	:	30.09.2022
9.	Final Order	:	Acquitted

Argued by -: Sh. Vijay Dagar, Ld. APP for the State.
 Sh. Aditya Kale, Ld. Counsel for the accused.

BRIEF STATEMENT OF REASONS FOR THE DECISION-:

A. FACTUAL MATRIX:

1. Briefly stated, the case of the prosecution is that on 03.09.2014 at about 07:30 pm, when the complainant Ms. Laxmi Nayyar reached her home, she found that the roof of her house was leaking. Thereafter, the complainant went to the first floor of her house, where the accused were residing as a tenant, and apprised the accused regarding the fact of leakage of water from AC installed by the accused. It has been alleged that instead of listening to the request of the complainant, the accused started abusing the complainant in a filthy language and started to quarrel with the complainant. As such, it is alleged that the accused committed the offence punishable under Section 509 of the Indian Penal Code, 1860 (hereinafter, “IPC”).

B. INVESTIGATION AND APPEARANCE OF ACCUSED:

2. After registration of the FIR, the Investigating Officer (hereinafter, “IO”) undertook investigation and on culmination of the same, the charge-sheet against the accused was filed. After taking cognizance of the offence, the accused was summoned to face trial vide order dated 13.10.2014.

3. On his appearance, a copy of charge-sheet was supplied to the accused in terms of Section 207 of the Code of Criminal Procedure, 1973 (hereinafter, “CrPC”). On finding a *prima facie* case against accused, notice under section 509 IPC was served upon the accused

in terms of section 251 CrPC. The accused pleaded not guilty and claimed trial.

C. PROSECUTION EVIDENCE:

4. During the trial, **prosecution** led the following **oral and documentary evidence** against the accused to prove its case beyond reasonable doubt:-

ORAL EVIDENCE		
PW-1	:	Ms. Laxmi Nayyar
PW-2	:	SI Rajender Singh
PW-3	:	Ct. Surender
PW-4	:	SI Baljeet Singh
DOCUMENTARY EVIDENCE		
Ex. PW1/A & B	:	Statement of complainant given to the police
Ex. PW1/C	:	Site Plan
Ex. PW1/D	:	Arrest memo of accused
Ex. PW2/A (OSR)	:	DD no. 45A dated 03.09.2014
Ex. PW2/B	:	Computer generated copy of FIR.
Ex. PW2/C	:	Endorsement on Rukka.
Ex. PW4/A	:	<i>Tehrir</i>

5. **PW1 Ms. Laxmi Nayyar** stated that on 03.09.2014 at about 07:30 pm, when she reached her home, she found that the roof of her house was leaking. Thereafter, she went to the first floor of her house, where the accused were residing as a tenant, and apprised the accused regarding the fact of leakage of water from AC installed by the accused. However, instead of listening to her request, the accused started abusing her in a filthy language and started to quarrel with her. Thereafter, she stated that she called on 100 number and gave her

statement to the police upon the arrival of police officials.

5.1. In **cross examination** by Ld. Counsel for the accused, the complainant admitted that previously, the accused had filed a complaint against the complainant and her husband and that the said case was pending before the court. She further stated in the cross-examination that 5-6 neighbours had gathered around the spot when the accused had abused her. She denied the suggestion that she made a false complaint against the accused in order to deter him from pursuing his legal remedy in the case that the accused had filed against her.

6. **PW4 SI Baljeet Singh** is the IO in the case, who stated that on 03.09.2014 at about 9:30 am, after receiving intimation vide DD no. 45A, he alongwith Ct. Surender went to the spot where the complainant Ms. Laxmi Nayyar met them. He had recorded her statement, prepared *tehrir*, got the FIR registered and prepared the site plan. He further deposed that on 05.09.2014, accused was arrested at the police station vide arrest memo Ex. PW1/D and was later released on bail.

6.1. In his **cross-examination**, **PW4 SI Baljeet Singh** deposed that it was night when the incident happened. He further deposed that no person residing in the said locality was issued any notice under section 160 CrPC. He further deposed voluntarily that during inquiry, he came to know that there was some property dispute between the parties because of which they used to quarrel a lot. He further admitted that he did not photograph the scene of incident. He negated the suggestion that there was no air-conditioner at the spot.

7. **PW3 Ct. Surender** stated that on 03.09.2014, at 9:30 am, information was received vide DD No. 45A, and after receiving that

information, he had joined the investigation with IO ASI Baljeet Singh. He further deposed that the IO had recorded the statement of the complainant and prepared *tehrir*, which was handed over to him for registration of FIR. Thereafter, after registration of FIR, he had gone back to the spot and handed over the copy of FIR and *tehrir* to the IO.

7.1. In his **cross-examination, PW3 Ct. Surender** deposed that it is correct that the place of incident is a residential and populated area.

8. **PW2 SI Ranjeet Singh** is a formal witness who had registered the FIR at the police station. He deposed that he had received the *Rukka* through Ct. Surender at about 12:20 am on the intervening night of 03/04.09.2014 and that he had prepared the FIR on the basis of the *Rukka*.

D. STATEMENT OF ACCUSED AND DEFENCE EVIDENCE:

9. Thereafter, before the start of defence evidence, in order to allow the accused to personally explain the incriminating circumstances appearing in evidence against him, the statement of accused was recorded without oath under **Section 281 read with Section 313 CrPC**. In reply, the accused denied all allegations and stated that he wishes to examine himself in his defense.

E. DEFENSE EVIDENCE:

10. The accused led the following **oral and documentary evidence** in his defense-:

ORAL EVIDENCE		
DW-1	:	Sh. Ankit Shukla (Accused)
DOCUMENTARY EVIDENCE		
Mark A	:	Copy of complaints given to the SHO PS Paschim Vihar by the accused
Mark B	:	Copy of complaint filed by Gulshan Kumar against his wife (complainant)
Mark C	:	Copy of complaint filed by the complaint against his husband Gulshan Kumar
Mark D	:	RTI Reply depicting that old record of PS Paschim Vihar has been destroyed.

11. I have heard the Ld. APP for the State and Ld. counsel for the accused at length. I have also given my thoughtful consideration to the material appearing on record.

F. INGREDIENTS OF THE OFFENCE:

12. The accused has been charged for the offence under Section 509 of the IPC, which is reproduced hereunder for reference:

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, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

13. The offence under the section 509 of IPC will be attracted if a person intending to insult the modesty of a 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. (see *M.M. Haries v. State of Kerala* (16.02.2005 - CrI. M.C. No.

9717 of 2002).

14. The legislative object behind section 509 of IPC is that a woman must be protected not only from physical aggressions made in the course of outraging her modesty, but she should also be shielded from various other acts which do not involve even a touch. In *M.M. Haries v. State of Kerala* (16.02.2005 - CrI. M.C. No. 9717 of 2002), it was held that:

Legislature was quite aware that a woman's modesty can be insulted or outraged in various ways. **A mere word, a wink, a touch or even a look would suffice to insult the modesty of a woman. Physical advances may not be necessary in all cases.** Everything depends on the intention of the mischief-maker and the manner in which he conveys his intentions. It is evident that legislature intended that any aggression into a woman's modesty whether by any word, deed, touch or look need be curbed and deterred.

15. Therefore, the gravamen of section 509 IPC is the intent to 'insult the modesty' of a woman. It is a settled position of law that there is distinction between an act of merely insulting a woman and an act of insulting the modesty of a woman. In order to attract section 509 IPC, merely insulting a woman is not sufficient and insult to the modesty of a woman is required to have been done. (see *Abhijeet J.K. v. State of Kerala*, 2020 SCC OnLine Ker 703).

16. However, the term 'modesty' is not defined in IPC. It has been held by Hon'ble Supreme Court of India that the essence of a woman's modesty is her sex, i.e., modesty is a virtue which attaches to a female owing to her sex (see *Raju Pandurang Mahale v. State of Maharashtra*: (2004) 4 SCC 371). To elaborate further, the following extract from *Raju Pandurang* has been reproduced hereinafter:

12. What constitutes an outrage to female modesty is nowhere defined. **The essence of a woman's modesty is her sex.** The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. **Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex.** The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word "modesty" is not defined in IPC. The *Shorter Oxford Dictionary* (3rd Edn.) defines the word "modesty" in relation to a woman as follows:

"Decorous in manner and conduct; not forward or lewd; Shamefast; Scrupulously chaste."...

15. ... From the above dictionary meaning of "modesty" and the interpretation given to that word by this Court in *Major Singh case* [AIR 1967 SC 63 : 1967 Cri LJ 1] **the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman.**

The above position was noted in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059].

17. Further, in *Rupan Deol Bajaj v. K.P.S. Gill*, (1995) 6 SCC 194, it was held that:

Since the word 'modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to *Shorter Oxford English Dictionary* (Third Edition) modesty is the quality of being modest and in relation to woman means 'womanly propriety of behavior, scrupulous chastity of thought, speech and conduct. The word 'modest' in relation to woman is defined in the above dictionary as 'decorous in manner and conduct; not forward or lewd; shame fast'. Webster's Third new International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency' a regard for propriety in dress, speech or conduct". In the *Oxford English Dictionary* (1993 Ed) the meaning of the word 'modesty' is given as **"womanly propriety of behavior, scrupulous chastity of thought, speech and conduct (in man or woman);** reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

18. Therefore, based on the aforesaid precedents, it is evident that the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman, keeping in mind that the essence of a woman's modesty is her sex.

19. Needless to mention, in criminal law, the burden of proof on the prosecution is that of beyond reasonable doubt. The presumption of innocence of the accused must be rebutted by the prosecution by adducing cogent evidence that points towards the guilt of the accused. The evidence in the present case is to be weighed keeping in view the above legal standards.

20. The sum and substance of the allegation made by the complainant in her examination in chief is that when she visited the accused to complain about leakage of water from AC, "the accused started abusing [her] in very filthy language and started quarrelling with [her]". Now, it has already been noted above that a mere insult is different from an insult to the modesty of a woman. Even if the version of the complainant is believed to be true, the offense under section 509 IPC is not made out. The prosecution has failed to prove or bring on record the nature of alleged abuses hurled at the complainant. The entire case rests on the mere phrase "abused me in very filthy language". I am of the opinion that in order to bring home the charge, the prosecution was required to prove the nature of abuses or filthy language which was allegedly used towards the complainant by the accused. In absence of the same, there is no means to ascertain whether the alleged abuses were mere insults or insults to the modesty of the complainant.

21. The term “verbal abuse” is defined in **Black’s Law Dictionary** (9th edn.) in the following manner:

Verbal abuse. Emotional abuse inflicted by one person on another by means of words, esp. spoken words, in a way that causes distress, fear, or similar emotions. Verbal abuse may include name-calling, **insults**, threatening gestures, excessive and unfounded criticism, humiliation, and denigration. - Also sometimes termed vulgar abuse.

22. Therefore, while the definition of abusive language/ verbal abuse does include ‘insults’ within its meaning, it cannot be equated with insult to modesty of a woman. The court cannot presume that the filthy/ abusive language used amounted to insulting the modesty of the complainant and the prosecution was required to prove the same. However, the prosecution has failed to prove/ show/ bring on record the nature/ wording of insults which were hurled towards the complainant. Apart from the allegation of usage of abusive/ filthy language, there is nothing specific on record which points towards the guilt of the accused. As noted above, the essence of a woman’s modesty is her sex. Even if the version of the prosecution is believed to be true, it appears that there was a quarrel between the parties related to leakage of water, which led to use of alleged abusive language by the accused. The alleged abusive language appears to have been made in the context of a quarrel/ fight and there is no evidence on record that the said language was used with any sexual overtones.

23. Further, it is pertinent to note that the complainant has deposed in her cross-examination that 5-6 people had gathered at the scene of the incident. However, none of the public witnesses have been

examined in the present case. This fact also creates adequate doubts regarding the version of the prosecution.

24. As such, none of the essential ingredients of the offence stands fulfilled in the present case.

G. CONCLUSION:

25. To recapitulate the above discussion, to bring home the guilt of the accused, the prosecution was required to prove the offence under Section 509 IPC beyond reasonable doubt, which the prosecution has failed to do.

26. Resultantly, the accused **Ankit Shukla** is hereby found not guilty. He is hereby **ACQUITTED** of the offence under Section 509 IPC.

Pronounced in open court on 30.09.2022 in presence of the accused.

This judgement contains 11 pages, and each page has been signed by the undersigned.

(DEVANSHU SAJLAN)
Metropolitan Magistrate - 07
West District, Tis Hazari Courts,
New Delhi/ 30.09.2022