MUHAMMAD SHARIF

Versus

THE STATE

P L D 1957 SC 201

JUDGMENT

MUHAMMAD MUNIR, C. J.------These two petitions are for special leave to appeal from a conviction by the High Court of West Pakistan on appeal by the State from an appellate order of acquittal by an Additional Sessions Judge. The petitioners are Muhammad Sharif, Manager of Bata Shoe Company; Muhammad Rafiq, Line Superintendent Electricity - Department; Muhammad Ahsan-ul-Haq, Sub Divisional Clerk, Electricity Branch and Ata Ullah, a cycle merchant, all of Sheikhupura, who have been sentenced for insulting the modesty of some college girls while they were holidaying in Hiran Minar near Sheikhupura.

On 5th June 1954, some thirty students of a Lahore Girls' College went for a picnic to Hiran Minar with the permission of the Principal of the College. They got down at railway station Sheikhupura from where some of them walked to their destination while the others went by tongas to the town to buy some eatables. While the girls were shopping, someone inquired from one of the tongawalas who the girls were and where they were going. The tongawala informed him that the girls had come from Lahore and would go to Hiran Minar.

At about 12-30 when both batches of girls reached Hiran Minar a group of young men including the petitioners came there by two cars, a motor cycle and push-bikes. The girls were in the Baradari and some of the men, including the four petitioners, went inside the Baradari and began to roam about, utter obscene words and make indecent gestures to the girls. The girls were then playing a gramophone. Muhammad Rafiq petitioner threw a chit among them containing a request for playing a particular record. One of the girls flung back the chit in anger and Muhammad Rafiq bit it with his teeth. He also requested one of the girls to sing the recorded song if she would not play the required gramophone record. One of the girls told the men to be ashamed of themselves on which Muhammad Rafiq remarked jis nain ki sharam uske phute karam (one who does'nt dare can have no luck). The young men were reminded that they were Muslims and that they should let the girls alone, but Muhammad Rafiq remarked kis kafir ne kaha hay keh ham mussalman hain (does a Kafir inquire if we are muslims?). In Urdu poetry the word Kafir is used for a beloved.

Some of the girls then left the Baradari intending to go to the minaret, but they were followed by the young men who attempted to ascend the minaret with the girls. These

men also attempted to take snapshots of the girls and one of them seized the handkerchief of one of them. One of the girls addressing the men said that they should not misbehave because the girls were their sisters, but Muhammad Rafiq inquired from her if it was not more appropriate to consider themselves as their sisters-in-law. This man also threw a melon at one girl.

This pestering of the girls continued from 12-3Wabout 3-30 or 4-0 p. m. when the girls got into the tongas in order to return. They were, however, followed by some of the men, including Muhammad Rafiq and Ahsan-ul Haq, in two cars and a motor cycle. When the tongas entered the fields after having left the road, Muhammad Rafiq left the car and boarded a motor cycle which was being driven by another man. When the girls protested against this misbehaviour they were told by these gallants that they would lie in front of the tongas to have the pleasure of being overrun by them. One of the girls told one of the pursuers that she would beat him with a shoe whereupon the man said that he would gladly accept that honour. One of the men even put his hand on that of a girl which was placed on the side-board of a tonga.

On return to Sheikhupura one of the girls reported the incident at the police station. After investigation the police put in a report against the four petitioners of the commission of offences under sections 354, 294 and 509 of P. P. C. The learned Additional District Magistrate acquitted Muhammad Sharif, but convicted the other three under sections 509 and sentenced them each to one year's rigorous imprisonment. Muhammad Rafiq was further convicted under section 354 and sentenced to two years' additional rigorous imprisonment.

The convicted persons appealed to the Additional Sessions Judge, Sheikhupura, who acquitted them, holding that no offence under the Pakistan Penal Code had been made out. He held that the incident took place in a public place where young men had as much right to be as the girls and that none of the acts attributed to any one of the petitioners amounted to an insult to modesty. He said, "°I would say the boys and girls have the same right to go to Baradari and sit there. It was a public place and every citizen has a right to go there and young men cannot be excluded from the Baradari on the ground that the girl students were there. If the girl students choose to go to such places without a purdah commonly observed in this country, it would naturally raise the inquisitiveness of the young men of Sheikhupura which cannot be said to be as forward as Lahore in such matters. The girl students had no right to object to the presence of the young men when they were there". Proceeding further with this theme the learned Judge went on to observe "In fact it was imprudence on the part of the college staff to send such a large number of girl students who did not go about in purdah to Sheikhupura independently and not under the supervision of any of the professors or tutors. I think the behavior of the girl students was also rowdy as it should have been in the circumstances".

Discussing the evidence the learned Judge came to the finding that the accused were innocent and that the police in order to shield some others had falsely implicated them.

Against this order of acquittal the Government appealed to the High Court where the matter was heard by a, Division Bench. The learned Judges found it impossible to sustain the conclusions of the learned Additional Sessions Judge which both on matters of fact and of law, appeared to them to be wholly untenable, set aside the order of acquittal and restored the order of the Additional District Magistrate with this modification that the conviction of Muhammad Rafiq petitioner under section 354 and the consequent sentence were set aside and he was convicted of an offence under section 352 and sentenced to three months' rigorous imprisonment under that section.

In the present petition for special leave to appeal from the judgment of the High Court Mr. Manzur Qadir has raised the following points:

(1) that the judgment of the High Court, being a judgment of reversal of acquittal, is bad inasmuch as it does not fully deal with the reasons which were given by the learned Additional Sessions Judge in acquitting the petitioners;

(2) that none of the acts imputed to any of the petitioners constituted an offence;

(3) that the petitioners to whom no specific words or conduct was attributed could not be held liable under section 34 for the acts of their companion or companions; and

(4) that the sentence of one year's rigorous imprisonment was excessive and that in any case the sentence of rigorous imprisonment on a conviction under section 509 was illegal.

We see no force in any of these contentions except that relating to the illegality of the sentence of rigorous imprisonment for the conviction under section 509. The learned Additional Session Judge had recorded a finding that the petitioners were innocent and had been falsely charged because, and it was the sole reason given by him for this finding, the car, the number of which had been given in the first information report, had not been traced by the Police and that the police, from dishonest motives, had let off the actual offenders and substituted the petitioners for them. In coming to this finding, however, the learned Judge never cared to address himself to the question why should the Police act in this manner and why should the girls and at least two independent witnesses give evidence against the petitioners? There was nothing to show on the record that the police had not been able to trace the car or that the car had been traced to someone not connected with anyone of the petitioners. He made no reference whatsoever to, nor gave any reasons for rejecting the evidence of Pir Muhammad, Fish Darogha and Muhammad Tufail, Chowkidar of the Fisheries at Hiran Minar, that the four petitioners made indecent gestures and used obscene words to the girls. Again there was no evidence on the record that the conduct of the girls, as found by the learned Additional Sessions Judge, was rowdy, and we are surprised that he should have not only recorded such a serious finding so light-heartedly, but gone on to observe that he could expect nothing better from the girls. Again the learned Additional Sessions Judge displayed a serious lack of judicial equilibrium in preaching a sermon to the management of the college that girls should not be permitted to go out unescorted and

without purdah and that the conduct attributed to the young men who followed and pestered them was perfectly natural. With his experience the learned Judge should have realised that his sole function, as an appellate Judge, was to consider whether the offence of which they had been convicted had been proved against the petitioners and that he was neither called upon nor A expected to pronounce his own opinion as to the manner in College authorities should permit their girl students to enjoy a holiday. In such matters there can always be room for some difference of opinion and a Judge should not assume the role) of an adviser or theologian. The measure in which girl students should be allowed freedom is essentially the responsi bility of those who manage an educational institution. It may be that in the present instance the College authorities considered that girls are as much entitled to fresh air as boys and that by permitting them to go unescorted and without purdah they are fostering in them a feeling of independence, confidence and self-reliance. The fact that a girl old enough to look after herself decides to walk in a public place without someone to look after her and without purdah can never be a ground for a miscreant to tease or annoy her for that reason. If the learned Judge thought that the appearance of educated girls in public places furnishes excusable provocation to the young men who come or happen to be in that place then he was propounding an extremely pernicious doctrine which in its essentials comes perilously near the argument that because a mother adorns her infant 180 daughter with costly ornaments and permits her to go to a neighbour's house, an evil minded person would have a justifiable excuse to rob her of her ornaments. This approach to the case was responsible for a basic error in the Additional Sessions Judge's judgment because he never addressed himself to the fundamental question in the case, namely, why did the several girls and at least two local men give evidence against the petitioners, which, if believed, would undoubtedly bring the case within the four corners of section 509.

In regard to the application of section 509 there can be no question that the acts attributed to the petitioners, particularly to Muhammad Rafiq, did amount to an insult to the modesty of the girls. If a party of young men follow a group of college girls who are holidaying in a public place, pass indecent remarks on and make obscene gestures to them, ask one of them to sing a love song and refer to one of them as kafir (beloved) they must, in the present state of society in Pakistan, g be held to intend to insult the modesty of the girls and unless the law is reduced to a farce the application of section 34 to other members of the party would be fully justified, where the girls are followed and pestered persistently and systematically for several hours. The High Court was, therefore, right in, holding that the matter had not been approached by the learned Additional Sessions Judge in a correct manner and that he was wrong in setting aside the trial Court's judgment of conviction.

As regards the sentence, Mr. Manzur Qadir's contention that the sentence for the conviction under section 509 could not have been of rigorous imprisonment is right, but that is not a ground for leave to appeal because such an obvious error can be corrected by the Provincial Government to whom a copy of this order will go. Mr. Manzur Qadir

also complained that it was not a case for infliction of the maximum sentence C under section 509. The learned trial Magistrate and the learned Judges of the High Court obviously considered it to be an extremely bad case of obscene and indecent conduct by hooligans towards educated girls, deserving the maximum sentence. There can, therefore, be no ground for our interference. The petitions are dismissed.

A.H.

Petitions dismissed