

AHMAD SAGHIR S. (J) AHMAD SAGHIR S. (J) KULDIP SINGH (J)

CITATION: 1996 AIR 922 1996 SCC (1) 490 JT 1995 (9) 509 1995 SCALE (7)228

ACT:

HEADNOTE:

S. SAGHIR AHMAD. J.

Subhra Chakraborty (alias - Kalpana) who was a student of the Baptist College, Kohima where the opposite party, Shri Bodhisattwa Gautam was a lecturer, filed a complaint in the Court of the Judicial Magistrate, 1st Class, Kohima, Nagaland, alleging, inter alia, as under :- "3. That, your complainant begs to state that in April 1989 the accused person entered into Baptist College, Kohima as a Lecturer thereof and the complainant was a student of the said College at that relevant period.

4. That, the accused person was in said Service in Kohima from April 1989 till he resigned the Service on 27th Jan, 1995 and was residing in a rented house in Kenezou Valley, Kohima owned by Dr. Zakiebatsu Angam.

5. That, on 6th Feb. 1995 the accused person left for silchar and presently residing in his uncle's (Shri Amiya Kanta Chakraborty) house in Premtala, Silchar-4, Dist. Cachar, in the State of Assam and assumed his service as Lecturer in Cachar College (Commerce Dept.) Silchar - 4 (Assam).

6. That, on the 10th June, 1989 for the 1st time the accused visited the complainant's residence in Kohima and thereafter often he used to visit complainant's residence, as a teacher he was respected by the complainant as well as all the members including her parents. In course of such visits once in the month of Nov. 1989 the accused voluntarily told your complainant that he was already in her love. Thus there developed a love affair between themselves since 1989.

7. That, the complainant most humbly states further that with malafide intention to practise deception on the complainant, the accused gave false assurance of marriage to the innocent complainant and thereby the accused dishonestly procured sexual intercourse with the complainant. The accused often use to induce the complainant to have biological contact with him, but whenever he was approached by the complainant to complete the marriage ceremony, the accused very tactfully used to defer the marriage sometimes saying that he was waiting for his parents formal consent and sometimes saying to cooperate him till he got a Govt. Service.

8. That, in course of continuation of the affairs between the complainant and the accused, the complainant got pregnant twice, once in the month of September, 1993 and secondly on in the month of April 1994 out of her co-habitation with the accused person.

9. That, the complainant being worried about her said pregnancy created pressure upon the accused to marry her immediately and to save her from being ruined, but the accused on the plea of his parents permission went on deferring the marriage, as a result there was a quarrel in between the complainant and the accused, where after the accused lastly opined for secret marriage to avoid social gathering as he was waiting for his parents permission. The complainant being pregnant was placed in a very awkward position, as such, agreed to said secret marriage, accordingly the accused on the 20th September, 1993, married the complainant in front of the God he Worships in his residence in Kenozou Valley, Kohima by putting Vermilion (sindur) on the complainant's forehead and accepted the complainant as his lawful wife and thus the complainant was consorted and consoled. But the complainant faced further corporal punishment, as the accused kept on insisting the complainant to be refrained from giving birth to the baby and was pressurizing her to undergo operation/abortion despite her refusal for the same. The accused with fraudulent intention to deceive the complainant proposed the said abortion on the plea that birth of the baby would be a barrier to convince his parents to accept the complainant as their daughter-in-law and such event would lead the complainant to a path of unhappiness. The complainant being an innocent lady failed to understand the accused's wicked and mischievous plan whereby the accused succeeded and dishonestly motivated the complainant to undergo operation in the Putonou Clinic, Kohima and aborted in October' 93.

10. That, the said Ceremony of giving Sindur (Vermilion) on the complainant's forehead by the accused in front of the God made the complainant to believe that she was lawfully married wife of the accused and with such believe she in good faith completely submitted herself to the accused as an ideal wife and never disbelieved the accused. The complainant even did not have any doubt as to why the accused insisted her to keep their marriage secret. The complainant was forced to undergo abortion even second time in the month of April' 94 in the CAREWELL NURSING HOME at Dimapur with the pretext that if the complainant gave birth to any child before the accused could convince his parents she would never be accepted by Bodhisatta's parents and relatives further their marriage being a secret one, the developed stage of the complainant would hamper the dignity of her own parents and other paternal relations irreparably and thus taking the privilege of complainant innocence the accused has exploited the complainant in a very pre-planned way.

The accused is so wicked that he even furnished a false name in the said Nursing Home and signed the consent Register/Paper as BIKASH GAUTAM concealing his real name BODHISATTA GAUTAM which fact was unknown to the innocent complainant until recently and came to know only in the 2nd week of February, 1995 when the complainant went to obtain a certified copy of the abortion consent paper of the accused.

A copy of said consent paper signed by the accused in annexed hereto and marked as Annexure-1.

11. That, believing her self to be the lawful wife of the accused, the complainant like a dumb shouldered up all those hardship since 1989. On hearing the message that the accused would go to Silchar, the complainant on 4th Feb.'95 went down to Dimapur and visited the accused to take the complainant permanently with the accused to Silchar as he was going to Silchar to join as a Lecturer in a Government College named CACHAR COLLEGE which both of them actually waited for. But the wicked accused forgetting the consequences of his all fraudulent activities in total disregards of their marriage and their relationship refused to accept the complainant as his wife and abandoned the complainant asking her to forget all her dream. Be it further submitted that the accused's friends namely (1) Shri Subrata Datta, (2) Shri Ranadhir Deb (3) Shri Prasanta Dey and (4) Shri Pradeep Paul of Dimapur tried a lot to convince the accused and not to abandon the complainant in such a cruel manner, as he had already married the complainant and cohabited years together, but all efforts ended in futility as the accused in reply said that the giving of vermilion on complainant's forehead was pretext of marriage to over come the past situations and not at all a complete marriage and the accused repeatedly said that he had no option, but to abandon the complainant as his parents are not agreeable to accept the complainant as their daughter-in-law.

12. That, the accused not only induced the complainant and cohabited with her, giving her a false assurance of marriage but also fraudulently gave through certain marriage ceremony with knowledge that was not a valid marriage and thereby dishonestly made the complainant to believe that she was a lawfully married wife of the accused. The accused even committed the offence of miscarriage by compelling the complainant to undergo abortion twice against her free will. The way the accused exploited the complainant and abandoned her is nothing but an act of grave cruelty as the same has caused serious injury and danger to the complainant's health both mentally and physically, as such, the accused above named has committed Criminal offences punishable U/S 312/420/493/496/498-A of Indian Penal Code." This complaint was registered as Criminal Case No. 1/95 under Sections 312/420/493/496/498-A, Indian Penal Code and Bodhisattwa Gautam was summoned but he, in the meantime, filed a petition in the Gauhati High Court under Section 482 of the Code of Criminal Procedure for quashing of the complaint and the proceedings initiated on its basis, on the ground that the allegations, taken at their face-value, do not make out any case against him. But the High Court by its judgment and order dated May 12, 1995, dismissed the petition compelling Bodhisattwa Gautam to approach this Court by way of Special Leave Petition. Special Leave Petition (Criminal) No. 2675/95 was filed and was dismissed by us by our order dated October 20, 1995, in which we stated as under :- "We see no ground to interfere with the impugned judgment of the High Court.

We dismiss the special leave petition.

Having done so, we further take suo motu notice to the facts of this case as narrated in the complainant which has been read before us. We issue notice to the petitioner as to why he should not be asked to pay reasonable maintenance per month to the respondent during the pendency of the prosecution proceedings against him. Mr. A. Bhattacharjee accepts notice.

List it on 1.12.1995.

Petitioner in person be present in Court on the next date of hearing.

Notice be also sent to the respondent along with the copy of this order." Pursuant to the above order, Shri Bodhisattwa Gautam put in appearance and filed an affidavit in reply in which he denied the allegation made against him in the complaint and stated that the complaint was filed only to harass and humiliate him and, therefore, there was no occasion to direct him to pay any amount as maintenance to the respondent. He also indicated that although he had taken up service in another College, namely, Cachar College, his services had since been terminated. Para 4 of his affidavit in which these facts have been stated is reproduced below :- "4. That I say that I am not in any employment now and I am an unemployed person after my services as a Lecturer in Cachar College, Silchar, has been terminated with effect from 16.7.1995 by a resolution of the Governing Body of the said College passed in a meeting held on 14.9.1995. A true copy of the proceedings of the said meeting of the Governing Body of Cachar College, Silchar held on 14.9.1995 is annexed hereto as Annexure - A1.

The relevant resolution No. 5(A) of the said meeting of the Governing Body reads as follows :- "Resolution No. 5(A):

The Principal placed the leave petitions of Shri B.Gautam, Lecturer, Deptt. of Commerce, adding that Shri Gautam resumed his duties in the College on the re-opening day of the College after summer vacation, i.e., on 15th of July, 1995 and at first he sought leave for twenty one days and the for three years at a stretch.

The Principal also stated that Shri B.

Gautam was appointed against a lien vacancy for one year vice Dr. A.

Mazumdar, the one-year lien having expired on 9.9.1995.

The matter was thoroughly discussed and it was unanimously resolved that since Shri B. Gautam's term of appointment against lien vacancy had expired on 9.9.1995 and his service was not confirmed, (he did not complete even one full year's service), he cannot be granted three years' leave at a stretch as prayed for by him.

Also resolved that as Shri B. Gautam has been absent from the College from 16th of July, 1995 and also the term of his appointment expired on 9.9.1995, Shri Gautam's service as lecturer in the Deptt. of Commerce in Cachar College, Silchar be treated as having been terminated w.e.f. 16th July, 1995.

The Principal be requested to forward the above resolution to the D.P.I.

Assam, for his kind approval of the termination of the services of Sri B.

Gautam w.e.f. 16.7.1995." This resolution along with other resolutions passed in the said meeting held on 14.9.1995 were placed before the meeting of the Governing Body held subsequently on 11.11.1995 for confirmation. A true copy of the notice of meeting to be held on 11.11.1995 containing the agenda of the meeting is annexed hereto as Annexure - A2.

Now I have been reliably informed that in the meeting of the Governing Body on 11.11.1995, the aforesaid resolution terminating my service has been confirmed. I further state that I have not received any payment towards my salary since July, 1995 and after the termination of my service with effect from 16.7.1995 no question of my receiving any salary arises.

In the circumstances I respectfully submit that no question of burdening me with the liability of paying maintenance to the respondent can arise." The facts set out in the complaint lodged against Bodhisattwa Gautam indicate that there was initially a period of romance during which Bodhisattwa Gautam used to visit the house of Subhra Chakraborty and on one occasion, he told her that he was in love with her and ultimately succeeded, on the basis of his assurances to marry her, in developing sexual relationship with her with the tragic result that Subhra Chakraborty became pregnant. While in that state, she persuaded Gautam to marry her, but he, deferred the proposal on the plea

that he had to take his parents' permission. He, however, agreed to marry her secretly. Consequently, on 20th September, 1993, Bodhisattwa Gautam took her before the God he worshiped and put Vermilion on her forehead and accepted her as his lawful wife. In spite of the secret marriage, he, through his insistence, succeeded in motivating her for an abortion which took place in a clinic at Kohima in October, 1993.

Subhra Chakraborty became pregnant second time and at the instance of Bodhisattwa Gautam she had to abort again in April, 1994 in the Carewell Nursing Home at Dimapur where Gautam signed the consent paper and deliberately mentioned himself as Bikash Gautam.

The Gauhati High Court, as already pointed out above, refused to quash the proceeding in Criminal Case No 1/95 pending in the Court of the Judicial Magistrate, Ist Class, Kohima and this Court has upheld the judgment of the Gauhati High Court. The question is whether any further order can be passed in the case and Gautam can be compelled to pay maintenance to Subhra Chakraborty during the pendency of the Criminal Case for which Show Cause Notice has been issued to him? This Court, as the highest Court of the country, has a variety of jurisdiction. Under Article 32 of the Constitution, it has the jurisdiction to enforce the Fundamental Rights guaranteed by the Constitution by issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari. Fundamental Rights can be enforced even against private bodies and individuals. Even the right to approach the Supreme Court for the enforcement of the Fundamental Rights under Article 32 itself is a Fundamental Right. The jurisdiction enjoyed by this Court under Article 32 is very wide as this Court, while considering a petition for the enforcement of any of the Fundamental Rights guaranteed in Part III of the Constitution, can declare an Act to be ultra vires or beyond the competence of the legislature and has also the power to award compensation for the violation of the Fundamental Rights. See : Rudul Sah vs. State of Bihar : AIR 1983 SC 1086; Peoples' Union for Democratic Rights (through its Secretary & Anr.) vs. Police Commissioner, Delhi Police HQs.

& Anr. : (1989) 4 SCC 730.

For the exercise of this jurisdiction, it is not necessary that the person who is the victim of violation of his fundamental right should personally approach the Court as the Court can itself take cognizance of the matter and proceed suo motu or on a petition of any public spirited individual. This Court through its various decisions, has already given new dimensions, meaning and purpose to many of the fundamental rights especially the Right to Freedom and Liberty and Right to Life. The Directive Principles of the State Policy, have also been raised by this Court from their static and unenforceable concept to a level as high as that of the fundamental rights.

This Court has, innumerable times, declared that "Right to Life" does not merely mean animal existence but means something more, namely, the right to live with human dignity. (See : Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & Ors., AIR 1981 SC 746; State of Maharashtra vs. Chandrabhan, AIR 1983 SC 803;

Olga Tellis & Ors. vs. Bombay Municipal Corporation & Ors., AIR 1986 SC 180; and Delhi Transport Corporation vs. D.T.C.

Mazdoor Congress & Ors., AIR 1991 SC 101). Right to Life would, therefore, include all those aspects of life which go to make a life meaningful, complete and worth-living.

Unfortunately, a woman, in our country, belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are Mother, Daughter, Sister and Wife and not play things for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by Nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.

Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in

derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.

To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects.

It is said that present days' law relating to rape have their origin in 1736 in Britain, when Sir Mathew Hale in his *Historia Placitorum Corone* or, in other words, "History of the pleas of the Crown" presented common-law rape doctrines which were immediately noticed to be hostile to the interests of women as one of the requirements was to inform the jury during trial that rape charges were easy to bring but difficult to defend. Consequently, in a tide of law reforms, this requirement was removed. The rule of corroboration which was much stricter in a trial for the offence of rape than for other offences was also largely removed from law.

In India also the rule of "Corroboration of the Prosecutrix" has undergone a change through statutory amendments as also through decisions of this Court.

In *State of Himachal Pradesh vs. Raghubir Singh*, 1993(2) SCC 622, this Court observed as under :- "There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record. The medical evidence provided sufficient corroboration." In *State of Karnataka vs. Mahabaleshwar Gourya Naik*, AIR 1992 SC 2043 = 1992 Suppl. (3) SCC 179, the Court went to the extent of laying down that even if the victim of rape is not available to give evidence on account of her having committed suicide, the prosecution case cannot be thrown away over board. In such a case, the non-availability of the victim will not be fatal and the Court can record a conviction on the basis of the available evidence brought on record by the prosecution.

In spite of the decision of this Court that (depending upon the circumstances of the case) corroboration of the prosecutrix was not necessary, the cases continued to end in acquittal on account of mishandling of the crime by the police and the invocation of the theory of "consent" by the Courts who tried the offence. To overcome this difficulty, the legislature intervened and introduced Section 114-A in the Evidence Act by Act No. 43 of 1983 reading as under:- 114-A. Presumption as to absence of consent in certain prosecutions for rape.- In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) or sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent." This Section enables a court to raise a presumption that the woman who was the victim of rape had not consented and that the offence was committed against her will. The situation, however, has hardly improved. Conviction rates for rape are still lower than any other major crime and the women continue to argue even today that in rape cases the victimized women, rather than the rapists, were put on trial. A large number of women still fail to report rapes to the police because they fear embarrassing and insensitive treatment by the doctors, the law enforcement personnel and/or the cross-examining defence attorneys. The fear has to be allayed from the minds of women so that if and when this crime is committed, the victim may promptly report the matter to the police and on a chargesheet being submitted, the trial may proceed speedily without causing any embarrassment to the prosecutrix who may come in the witness box without fear psychosis.

We may, at this stage, refer to a decision of this Court in *Delhi Domestic Working Women's Forum vs. Union of India*, 1995 (1) SCC 14, in which Court observed as under :- "It is rather unfortunate that in recent times, there has been an increase in violence against women causing serious concern. Rape does indeed pose a series of problems for the criminal justice system. There are cries for harshest penalties, but often times such crimes eclipse the real plight of the victim.

Rape is an experience which shakes the foundations of the lives of the victims.

For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behaviour values and generating and less fears. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings." This Court further observed as under :- "The defects in the present system are :

Firstly, complaints are handled roughly and are not even such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had had to suffer as a result of the rape itself.

In this background, it is necessary to indicate the broad parameters in assisting the victims of rape.

(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have some one who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victims must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too dramatized to continue in employment.

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of the child but if this occurred as a result of the rape.

In the present situation, the third respondent will have to evolve such scheme as to wipe out the fears of such unfortunate victims. Such a scheme shall be prepared within six months from the date of this judgment. Thereupon, the Union of India, will examine the same and shall take necessary steps for the implementation of the scheme at the earliest." This decision recognises the right of the victim for compensation by providing that it shall be awarded by the Court on conviction of the offender subject to the finalisation of Scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the Scheme. On the basis of principles set out in the aforesaid decision in Delhi Domestic Working Women's Forum, the jurisdiction to pay interim compensation shall be treated to be part of the over all jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and Life.

Apart from the above, this Court has the inherent jurisdiction to pass any order it consists fit and proper in the interest of justice or to do complete justice between the parties.

Having regard to the facts and circumstances of the present case in which there is a serious allegation that Bodhisattwa Gautam had married Subhra Chakraborty before the God he worshiped by putting Varmilion on her forehead and accepting her as his wife and also having impregnated her twice resulting in abortion on both the occasions, we, on being prima-facie satisfied, dispose of this matter by providing that Bodhisattwa Gautam shall pay to Subhra Chakraborty a sum of Rs. 1,000/- every month as interim compensation during the pendency of Criminal Case No. 1/95 in the court of Judicial Magistrate, 1st Class, Kohima, Nagaland. He shall also be liable to pay arrears of compensation at the same rate from the date on which the complaint was filed till this date. We may further observe that whatever has been said in this Judgment shall not, in any way, affect or prejudice the Magistrate from deciding the complaint on merits on the basis of the evidence as may be tendered before it and in accordance with law.

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