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CASE COMMENTARY ON SHRI BODHISATTWA GAUTAM V/S MISS SUBHRA CHAKRABORTY (1996 1 SCC 490)

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Sri Bodhisattwa Gautam V/S Miss Subhra Chakraborty

PETITIONER	SHRI BODHISATTWA GAUTUAM
RESPONDENT	MISS SUBHRA CHAKRABORTY
PETITION NO	SPECIAL LEAVE PETITION (Crl.) NO.2675 OF 1995
DATE OF JUDGEMENT	15-12-1995
BENCH	AHMAD SAGHIR S. (J), KULDIP SINGH (J)
Provisions Involved	• Article 32 in the constitution of India 1949 • The Indian Penal Code • Section 498A in the Indian Penal Code • Section 312 in the Indian Penal Code
Equivalent Citation	1996 AIR 922, 1996 SCC (1) 490

ABSTRACT

Marriage is Sacramental union not a contract. Marriage is union of two bodies but in this male dominant society Men always take women as their personal property which he can use according to their own needs. In the pre-historic era Women are always considered as weaker section of the society and Married women only have to serve their family, they always has a duty to confined household works like cooking, cleaning, beauty etc. and boys duty is associated with cars, engines, earning etc. Men always considered himself s superior and still have mind-set that Women and Men are not equal. One is Male & female are indeed different biologically but nature don't create any difference. No one is superior or inferior to others. What can be done by a man can also be done by a woman & vice versa. Every gender should be equal. A well-known quote stated by Swami Vivekananda that "Just as a bird cannot fly with one wing only, a nation cannot march forward if the women are left behind." There are so many crimes relating to women like Rape, Kidnapping, Acid attack etc. In the current scenario the nature and extent of violations against women are at an increasing rate. In this country majority of victims are women. Rape is the act of having sexual intercourse with a person without his/her content but the Marital Rape[111] has been overlooked for years. It is used

[111] https://dergipark.org.tr/tr/download/article-file/404649

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to describe the non-consensual sexual acts performed by the victims spouse or ex-spouse. Marital rape is one of the manifestations of domestic violence it causes more damage than a sexual assault performed by others, it is a recently adopted idea that sexual intercourse should be mutually desired by both parties and otherwise it should be considered as rape.

KEYWORDS: Article 14, Article 32, Article21, Rape, Marital Rape

(I) INTRODUCTION:-

This case is a Special Leave Petition (Crl.) No. 2675 of 1995

This case approached the High Court to quashing the legal proceeding u/s 482 Cr.P.C. against a rape accused and Supreme Court take suo motu notice of facts in complaint that the petitioner paying interim maintenance as compensation to the respondent.

(II) FACTS OF THE CASE:-

In this case the Complaint was registered by Subhra Chakraborty (Respondent herein) who was a student of the Baptist College, Kohima as Criminal case No.1/95 under sec 312/420/493/496/498-A of the Indian Penal Code,1860 against Bodhisattwa Gautam (Petitioner herein) who was Lecturer and the complainant was a student of the said college. On the 10-6-1989 for the first time the petitioner visited the respondent residence in Kohima and therefore used to visit respondent residence and voluntarily claiming that he feel in love with the respondent and henceforth, a love affair developed between the two of them. The petitioner give false assurances of marriage with the intent of procuring sexual intercourse with the respondent, dishonestly. However, the respondent brought up the issue of pendency of their marriage, the petitioner would somehow avoid the matter mainly citing the pendency of formal consent of the respondent by the parents of the petitioner & sometimes excusing himself by saying that he was waiting for Govt. service.

The respondent got pregnant twice, once in the month of Sept, 1993 and second in the month of April, 1994 out of her co-habitation with the petitioner. The led to an argument between the petitioner & respondent as the respondent was now firmly stressing on marriage. The petitioner kept by passing the subject using the plea of parental consent. The respondent being pregnant in Sept, 1993 he coerced her into a secret marriage ceremony where he put vermilion on the forehead of the respondent before the god he worshipped and accepted the respondent his lawful wife.

Yet the petitioner kept pressurising the respondent for an abortion with the plea that a child could have adverse results while convincing his parents to accept her as their daughter-in-law. The petitioner succeeded in making her undergo abortion in Putonou Clinic, Kohima in October 1993. The same plea of non-acceptance by his parents was used by the petitioner to make her undergo abortion, the second time she got pregnant, at CAREWELL NURSING HOME, Dimapur. The petitioner furnished a false name, Bikash Gautam, in the nursing home which the respondent came to know in the second week of February 1995 when she went to obtain a certified copy of the abortion consent papers signed by him.

On hearing that the petitioner was going to Silchar to join a Government College called Cachar College for which both of them had waited, she asked the petitioner to take her with him permanently. However, the petitioner refused to accept her as his wife saying that putting vermilion on forehead was not a valid marriage and that his parents will never accept her as their daughter-in-law. Even his friends could not convince him against abandoning the woman he had cohabited with for years.[112] The Respondent and refused to consider her as his lawfully wedded wife. The cruelty exercised by the Petitioner caused serious injury and danger to the complainant's health both mentally and physically which made her pursue the criminal

[112] http://probono-india.in/research-paper-detail

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complaint. Meanwhile, a petition was filed by the petitioner in the Guwahati High Court under Section482 of the Code of Criminal Procedure, 1973 for quashing of the complaint on the basis that the allegations made do not make out any case against him. The High Court by its order dated May 12, 1995 dismissed the said petition. He furthered approached the Supreme Court of India through a Special Leave Petition (Criminal) No. 2675/95 which was dismissed by order dated October 20, 1995 asking him to be present in person on next date of hearing listed on December 12, 1995. In pursuance of the order, Shri Bodhisattwa Gautam appeared before the court and filed an affidavit in reply denying the allegation made against him in contending that the complaint was filed only to harass and humiliate him.[113]

(A) ISSUES OF THE CASE:

1. Whether the court can exercise jurisdiction over the matters relate to direction of payment of interim compensation?
2. Whether there were grounds to quash all proceeding in the criminal case filed against the accused at the court of Judicial Magistrate?[114]
3. Whether the court in Article 32 has the jurisdiction of enforcing the Fundamental Rights guaranteed by the Constitution by issuing writ.

(III) ARGUMENTS ON THE SIDE OF THE PETITIONER:-

On being notice issued by the Supreme Court to why he should not be asked to pay reasonable maintenance per month to the respondent during the pendency of the prosecution proceedings against the petitioner. Meanwhile petitioner contended that the allegations made against him were falsely filed with the purpose of making him face harassment, humiliation and destroy my image in the society. Therefore, there were no grounds to compel him to pay any kind compensation to the respondents. He also submitted that he is unemployed person and has no other source of income as his services as a Lecturer in the Cachar College, Silchar, had been terminated by the resolution of the Governing Body of the said college.

(IV) ARGUMENTS ON THE SIDE OF RESPONDENT:-

The counsel on behalf of the respondent alleged that there was initially a period of romance and the petitioner used to visit the house of the respondent and on one occasion the petitioner told her that I started falling in love with you and deceived her to been married and exploited her and used her for fulfilling his own desires. And developing sexual relationship with the respondent that come with tragic result the petitioner make her pregnant twice and also trying that she suffer physically by coercing into abortion twicely and had also signed false name in the Carewell Nursing Home at Dimapur at the time of second abortion[115] . He had cooked up a false story of his parents not being agreeable to his relation with the victim which is why he was hiding it. So the petitioner agreed to marry the respondent secretly. Consequently, on 20th sept, 1993, the petitioner took the respondent before the God he worshipped and put vermilion on her forehead and accepted the respondent as his lawful wife. The respondent had clearly been taken advantage of due to her innocence. The petitioner's acts have caused grave physical and mental dangers to the respondent.

(V) LEGAL ASPECTS:-

The case primarily revolves around 3 legal aspects.

1. **SECTION 376, INDIAN PENAL CODE, 1860**
   The issue arise whether the Court has jurisdiction to award interim compensation to the victim during the pendency of the trial. Sec 376 deals with the crime of "sexual assault" and compensation for the same.

2. **ARTICLE 21, CONSTITUTION OF INDIA**

[113]https://lawtimesjournal.in/
[114]https://legalvidhiya.com/
[115] http://probono-india.in/research-paper-detail

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Article 21 of the Constitution of India guarantees the basic fundamental right of Right to life with personal liberty. Court emphasis that rape to be an offence against basic human rights in which marital rape is one of the manifestation of domestic violence. Art-21 give protection to the marital women.

3. ARTICLE 32, CONSTITUTION OF INDIA

In this SC take suo moto cognizance of violation of fundamental rights or through PIL the victim is absent to show any personal movement. So, the court has right to enforce fundamental rights against private bodies and individual under this the court also award compensation for violation of Fundamental Rights.

(i) Ratio decidendi

The Court recognised the relaxation of the rule of Corroboration of Evidence of the Prosecutrix before recording conviction[116] in an offence of rape and emphasised on the rule of evidence which enables the court to make the presumption that the woman who was the victim of rape had not consented and that the offence was committed against her will.

The Court opined that even with the non-availability of the victim, a conviction can be recorded on basis of available evidence brought on record by the prosecution. The court has suo-moto jurisdiction to take cognizance and enforce Fundamental Rights especially when it is related to the Right to Freedom and Liberty and Right to Life. The court trying an offence of rape has jurisdiction to award compensation at both final and interim stage[117]

(ii) Principles discussed:-

- The jurisdiction of the Court to take cognizance of a matter and proceed suo-moto and enforce Fundamental Rights against private bodies or individuals.
- The crime of rape is a human rights violation and also encroaches upon the fundamental right of Right to Life under Article 21 of the Constitution of India.

(iii) Enforcement of the Decision and Outcomes:-

As a result of the decision, rape victims have received interim compensation during the pendency of a criminal case involving violence or offences against woman. However, greater enforcement is necessary.

(iv) Significance of the Case:

The Supreme Court recognized that in addition to proceeding on a petition of a publicly spirited individual, the Court retains judicial authority to take cognizance of a matter and proceed suo moto. The Court also held fundamental rights can be enforced against private bodies and individuals[118].

The decision is a landmark judgment concerning violence against women with the Supreme Court recognizing that rape amounts to a violation of a fundamental right as protected under Article 21, and issued a set of guidelines mandating legal, psychological and medical services be provided to rape victims in accordance with international human rights law.

(v) Conclusion and suggestions

The Supreme Court agreed with the judgement of the High Court and further passed a landmark decision by taking suo moto cognizance of the matter under Article 32 of the Constitution and granted interim compensation to the rape victim. It held rape to be a violation of Fundamental Right to Life and thereby, compelled the petitioner to pay an interim compensation to the respondent during the pendency of criminal trial.

(vi) Suggestions

One of the main problems of Section 376 is that it completely disregards the torture, humiliation

[116] *State of Himachal Pradesh vs. Raghubir Singh, 1993(2) SCC 622*
[117] Delhi Domestic Working Women's Forum v Union of India,1995(1) SCC 14
[118] https://www.escr-net.org/caselaw/2013/shri-bodhisattwa-

and trauma faced who are victims of rape. It does not recognize the lack of jurisdiction to protect thousands of female victims of rape and designates only a man as being capable of committing the crime. The law should be more generalised when including victims of rape and should not exclude the possibility of the crime being committed by a non-male criminal as well.

(vii) REFERENCES:

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