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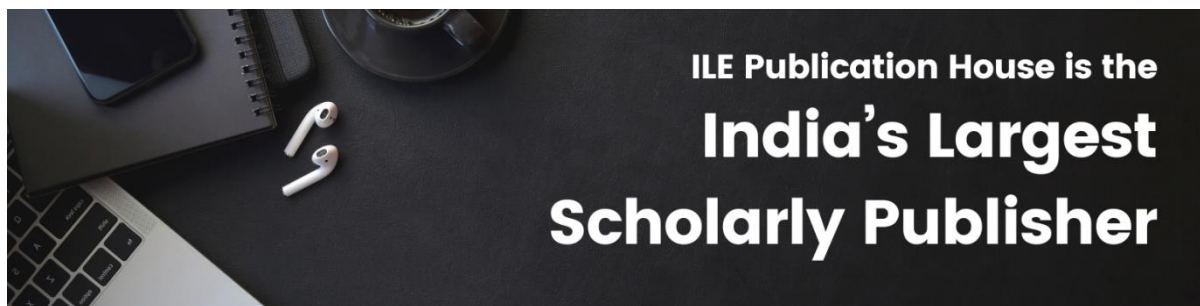
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CASE COMMENTARY ON SHRI. BODDHISATTWA GAUTAM VS. MS. SUBHRA CHAKRABORTY

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ABSTRACT

“Article 21 is the procedural Magna Carta protective of life and liberty.”

~ Justice Iyer

The scope of Article 21⁵⁸ of the Constitution is getting wider with judicial interpretation. Article 21 per se speaks about safeguarding life and personal liberty of any person. Article 21 has a wider clause protecting the life beyond mere animal existence. This includes right to live with dignity, to have a meaningful life, right to live in a pollution free society and every other aspect which leads towards a safe life.

Rape⁵⁹ is not a crime only against a woman but against the whole society. The crime affects the conscience of the society, physical and mental health of the woman and degrades the honor of the family. Women are treated as the holders of dignity and honor of a family, the stereotypical thought that whatever a female does affects the dignity of the family. ‘She’ always plays a role of a caretaker as mother, sister, wife, daughter or even domestic help and in a latent role, she bears all the responsibilities in the absence of her counterpart. In the present case, the complainant waits with all her faith, takes up all the responsibilities in the course of being a responsible wife while the accused has a malafide intention to leave the complainant, impregnated and also asked to terminate the same with a fake name.

The author in this paper, has tried to explain the case of Bodhisattawa Gautam v. Subhra Chakraborty⁶⁰ case which explains the scope of Article 21 and awards an interim compensation as maintenance for the complainant.

Keywords: Article 21, Rape, Pregnancy, Termination, Lawfully Wedded Wife

| | |
|-----------------------------------|---|
| Case Title | SHRI BODDHISATTWA GAUTAM V. MS. SUBHRA CHAKRABORTY |
| Case No. | SLP (Cri.) No. 2675 of 1995 |
| Citation | (1996) 1 SCC 490 : 1996 SCC (Cri) 133 |
| Date Of the Order | 15 December 1995 |
| Jurisdiction | Supreme Court of India |
| Quorum | Justice Kuldeep Singh Justice S. Saghir Ahamd |
| Author of the Judgement | Justice S. Saghir Ahamd |
| Appellant | Ms. Subhra Chakraborty |
| Respondent | Shri Bodhisattwa Gautam |
| Counsel for Appellant | Avijit Bhattacharjee |
| Acts and Sections Involved | I. Constitution of India, 1949 |

⁵⁸ The Constitution of India, 1949

⁵⁹ Indian Penal Code, 1860, Section 375, Act No. 45 of 1860 (India)

Bodhisattawa Gautam v. Subhra Chakraborty (1996) 1 SCC 490

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|--|-------------------------------------|
| | a. Article 21 |
| | b. Article 32 |
| | c. Article 136 |
| | d. Article 142 |
| | e. Article 226 |
| | II. Indian Penal Code, 1860 |
| | a. Section 312 |
| | b. Section 420 |
| | c. Section 493 |
| | d. Section 496 |
| | e. Section 498-A |
| | f. Section 376 |
| | III. Criminal Procedural Code, 1973 |
| | a. Section 482 |
| | IV. Indian Evidence Act, 1983 |
| | a. Section 114-A |

I. INTRODUCTION

Does a promise to marry a woman give all the right to a man to sexually exploit her and betray her? A well learned professor deceits his student saying that he loves her and promises to marry her with his parent’s permission but in the course of such love affair the girl is found to be pregnant twice and she has terminated the pregnancy instigated by the professor because of the reason that the pregnancy and the child birth will act as a barrier to accept the affair by his parents. When the complainant started forcing and arguing with the professor to marry her, he took her to the temple, in front of God applied vermilion and made her believe that she was his lawfully wedded wife. All this act of the professor was deceitful and fraudulent. The professor mercilessly spoiled the life of woman

who was innocent enough to listen and believe whatever the professor said throughout the relationship. This case throws light on the innocent belief of a woman in the name of love which ruins her life. The case makes us ponder upon the fact whether the important emotion of life⁶¹ – LOVE costs so much as to deserting our whole life and taking up responsibilities of someone who was just fraudulently using someone else to fulfill his needs. The case is all about a student who lost her life to a fraud professor, underwent two abortions and is now present in front of the court fighting her battle to get maintenance.

II. FACTS OF THE CASE

In the year 1989, Subhra Chakraborty the complainant was a student at Bapist College, Kohima where the accused person Mr. Bodhisattwa Gautam was a lecturer when the student was studying in the college. The accused frequently visited the complainant’s house, and because of his profession, the complainant’s family respected him a lot. During one such visit in November 1989, the accused confessed to the complainant his feelings towards her for which the complainant also reciprocated with her feelings.

During the course of their relationship, the accused with mala fide intention instigated sexual intercourse with the complainant with a promise that the accused will surely marry the complainant. With this promise the sexual relationship between both the parties continued. Whenever the complainant asked about the possibility of their marriage, the accused used to make excuses like he is waiting for his parent’s permission or saying he is waiting for getting a government job. With these excuses in hand, the complainant got conceived twice –September, 1993 and April 1994.

During the complainant’s pregnancy, she started pressurizing the accused to get married

⁶¹ Economic Times, Why Love is so important?; (<https://economictimes.indiatimes.com/blogs/et-vedanta/why-is-love-so-important/>) Dec, 12, 2014

to her. The accused kept on making excuses saying he required his parent's permission to get married. The marriage proposal from the complainant and deferment of the same with excuses started creating a rift between both the parties. As the last resort, the accused planned for a secret wedding at a temple by applying vermilion on her head and accepted her as his lawfully wedded wife on 20th November 1993. The complainant was thus satisfied and consoled with her worry of getting married. But another issue at hand was the child inside her womb. The accused strongly opposed to the complainant delivering the child by stating that the birth of the child will act as a hindrance to convince accused's parents for this secret marriage and to accept the complainant as their daughter-in-law. With this statement made by the accused, which convinced the complainant to terminate the pregnancy through operation at Putonou Clinic, Kohima in October, 1993.

Following this incident, the complainant believed that the sindoor applying ceremony before the God has made her his lawfully wedded wife and she gave her everything and started to support the accused during all the ups and downs. During April, 1994, the complainant underwent another abortion though she believed that she was married but the accused had the same excuse to instigate the complainant to terminate her pregnancy. This time the accused acted a step ahead and changed his name while filling the consent form as Bikash Gautam, all of this happening without the knowledge of the complainant.

In 1995, the accused decided to move to a different place for the sake of better job at a government college. The complainant hearing this thought that her dreams are going to be true, but the accused had other wicked plans to abandon her. The accused by doing the same came with a last excuse of why he cannot accept the complainant as his wife – it was because his parents won't accept the complainant as their daughter-in-law and

moreover mere applying of sindoor⁶² was to overcome the past pressure laid by the complainant and the accused had no intention to marry her. The complainant was left abandoned while she had the dreams to spend all her life with accused.

The complaint was charged under Sections 312⁶³, 420⁶⁴, 493⁶⁵, 496⁶⁶, and 498-A⁶⁷ of the Indian Penal Code, 1860⁶⁸.

III. CONTENTION BY THE COMPLAINANT

A. Through the facts it is very clear that the accused with mala fide intentions said that he is in love with the complainant, had a physical relationship with the complainant, and his excuses were unlimited whenever the complainant spoke about marriage. With this going on one side, the complainant got pregnant twice. The accused instigated to terminate the pregnancy of the complainant twice.

B. Whenever the complainant persuaded the accused to marry her, he made excuses. And for once, the accused accepted to marry the complainant by applying sindoor in a temple. This marriage was taken seriously by the complainant. Complainant made sure to share all the responsibilities with the accused but the accused left her and shifted to Silchar without letting her know about the same.

C. When the complainant asked, accused stated that mere application of sindoor doesn't make her the legally wedded wife of the accused and also, he cannot accept her as his wife because his parent won't accept for the same.

⁶² Sindoor, <https://en.wikipedia.org/wiki/Sindoor>, (last visited Apr 25, 2023) Sindooram is a traditional vermilion red or orange-red colored cosmetic powder from the Indian subcontinent, usually worn by married women along the part of their hairline. Also known as Vermilion.

⁶³ Indian Penal Code, 1860 Section 312, Act No. 45 of 1860 (India): Causing Miscarriage

⁶⁴ Indian Penal Code, 1860, Section 420, Act No. 45 of 1860 (India): Cheating and dishonestly inducing delivery of property

⁶⁵ Indian Penal Code, 1860, Section 493, Act No. 45 of 1860 (India): Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

⁶⁶ Indian Penal Code, 1860, Section 496 Act No. 45 of 1860 (India): Marriage ceremony fraudulently gone through without lawful marriage

⁶⁷ Indian Penal Code, 1860, Section 498-A Act No. 45 of 1860 (India): Husband or relative of husband of a woman subjecting her to cruelty

⁶⁸ Indian Penal Code, 1860 Act no. 45 of 1860, Act No. 45 of 1860 (India)

IV. CONTENTION BY THE ACCUSED

A. The accused wanted to marry the complainant with his parent's consent and every other act of his falls behind the same rationale. The marriage by applying the vermilion in front of God was because of the pressure created by the complainant. The accused was clear about the fact that he wants to get married with his parent's permission.

B. The requisition for paying the maintenance to the complainant wasn't possible for the accused because of the termination of his job. The accused moved to Silchar, joined Cahar College, continued a term of 1 year and later in 1995 his appointment got expired.

C. The contention raised by the accused is that he won't be able to pay the maintenance to the complainant as he himself has no source of income for himself as he lost his job. Supporting the contention made by the accused, Annexure A-2 containing the agenda of the meeting of the Governing Body of the college where the termination of the accused was also mentioned.

V. JUDGEMENT OF THE CASE

A. The judgement explained the scope of the various jurisdiction of the Hon'ble Supreme Court.⁶⁹ Article 32⁷⁰ deals with the issuance of various kinds of writs when the fundamental rights mentioned under Part III⁷¹ of the Constitution is violated. These fundamental rights are enforced against state, government and private entities as well as individuals. Whenever any act violates the fundamental rights can be declared as ultra vires by the court and pecuniary damage, award, compensation or injunction can be given by the Court under the Constitution. With this broad jurisdiction, whenever a person's fundamental right is violated, it is not mandatory that such person shall personally proceed to the court.

⁶⁹ Rudul Shah v. State of Bihar (1983) 4 SCC 141 : 1983 SCC (Cr) 798 : AIR 1983 SC 1086; People's Union for Democratic Rights v. Police Commr., Delhi Police HQs.

⁷⁰ Article 32 of Constitution of India, 1949

⁷¹ Constitution of India, Article 12- Article 35 Part III Fundamental Rights

Rather any other public-spirited individuals or organization can approach the court, and sometimes the court may suo moto⁷² can take up any case.

B. In this present case, the court has further explained the scope of "Right to Life⁷³" which doesn't restrain itself to mere animal existence but also includes right to live with dignity, to have a meaningful life and worthiness to live, as also viewed in other precedents⁷⁴.

C. The judgement is distressed with the situation of female in this country⁷⁵. The female situation is in a degrading position due to social barriers, tyranny by men and often subject to suppression. But the Constitution lays down the principle of equality, liberty, right to live with dignity, safety and security to live a peaceful life. Women before being someone's something, are individuals whose dignity and honor cannot be violated at any cost. She should not be the victim of suppression at any cost. Nevertheless, to say the crime towards women is increasing day by day. Rape falling under the same category, is not a crime only against the woman but is against the whole community. The aftermath of rape cannot be explained through words. The Supreme Court in various different cases has laid down the rule of "Corroboration of the Prosecutrix" which has been enumerated in this present judgment.⁷⁶ According to some psychiatrists, rape is an act of aggression by a male to establish an authority-degrading and humiliating such woman.

D. The Hon'ble Supreme Court observed that the accused married the complainant by applying

⁷² Collins Dictionary, <https://www.collinsdictionary.com/submission/8861/suo+motu> (last visited on Apr 23, 2023): A Latin legal maxim meaning "on its own motion"

⁷³ Constitution of India, Article 21 of the Indian Constitution: Protection of Life and Personal Liberty

⁷⁴ Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 608; State of Maharashtra v. Chandrabhan Tale (1983) 3 SCC 387; Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545; Delhi Transport Corporation v. DTC Mazdoor Congress 1991 Supp (1) SCC 600

⁷⁵ By referring to Delhi Domestic Working Women's Forum v. Union of India (1995) 1 SCC 14; 1995 SCC (Cr) 7

⁷⁶ State of H.P. v. Raghubir Singh (1993) 2 SCC 622 : 1993 SCC (Cr) 674; State of Karnataka v. Mahabaleshwar Gourya Naik 1992 Supp (3) SCC 179 : 1993 SCC (Cr) 180 : AIR 1992 SC 2043

the vermilion at a temple. The accused impregnated the complainant twice and it ended in terminating the pregnancy with a fake name. Thus, the court order to pay Rs. 1000 to the complainant every month along with the arrears at the same rate from the rate when the complaint was filed till the present date.

VI. CONCLUSION

The right to life under Article 21 has a wider scope than what it seems to be. Article 21 includes more than mere animal existence, it includes – dignity, livelihood and meaningful life. A woman is always looked as an honor to the family and the nation. Any crime towards a woman does not affect her but her family, the conscience of the society and the social justice of the nation. Rape – a grievous crime towards a woman by men to show dominance and autocracy. The offence amounts to physical, mental and physiological aftermath to the victim. Rape – the most grievous crime violates the fundamental as well as the human rights of the victim secured under Article 21. Thus, offence like rape violates the fundamental right, right to life enshrined under Article 21. These kinds of crimes are not only against such woman or her family but against the whole of the nation and judicial action shall be taken in accordance to reduce the same.

VII. RELATED CASE LAWS

1. Delhi Domestic Working Women's Forum v. Union of India (1995) 1 SCC 14
2. State of H.P. v. Raghbir Singh (1993) 2 SCC 622
3. State of Karnataka v. Mahabaleshwar Gourya Naik 1992 Supp (3) SCC 179
4. Delhi Transport Corporation v. DTC Mazdoor Congress 1991 Supp (1) SCC 600
5. People's Union for Democratic Rights v. Police Commissioner Delhi Police HQs (1989) 4 SCC 730
6. Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545
7. Rudul Shah v. State of Bihar (1983) 4 SCC 141

8. State of Maharashtra v. Chandrabhan Tale (1983) 3 SCC 387
9. Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 608

VIII. REFERENCE

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