

## **Case Analysis of Shri. Bodhisattwa Gautam versus Miss Subhra Chakraborty, (1996) 1 SCC 490**

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### **ABSTRACT**

This current case re-establishes the guidelines to aid and assist the victim of rape. The court in this case recognized the entitlement of compensation to the victim of marital rape, observing rape of all forms, as criminal offence against basic human rights and personal liberty

and life. Here the court opined that the court trying the case holds *Suo moto* jurisdiction to award compensation to victims of rape at both the final and interim stages.

**KEYWORDS:** Rape, Compensation, Jurisdiction, Right to Life, Rehabilitation.

<b>Case Title</b>	Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty
<b>Case No.</b>	SLP(CrI.) No. 2675 of 1995
<b>Date of Judgement</b>	15 <sup>th</sup> December 1995
<b>Court</b>	Judicial Magistrate 1 <sup>st</sup> class in Kohima & The Gauhati High Court.
<b>Quorum</b>	Honourable Justice Kuldip Singh & Justice S. Saghir Ahmad
<b>Author of Judgement</b>	Justice S. Saghir Ahmad.
<b>Acts and Sections involved</b>	<ul style="list-style-type: none"> <li>• Code of Criminal Procedure, 1973: Section 482</li> <li>• Constitution of India, 1950: Article 136</li> </ul>

### **I. INTRODUCTION:**

Miss Subhra Chakraborty was a student where she and her professor Gautam had an affair. Subsequently, Gautam deceived her into sexual intercourse and thereafter she was convinced to perform abortions when Miss Subhra Chakraborty became pregnant twice. When Gautam abandoned her, she filed a criminal complaint against Gautam in the Court of Judicial Magistrate, 1<sup>st</sup> Class in Kohima.

### **II. FACTS OF THE CASE:**

A. The complainant Subhra Chakraborty was a student of a Baptist College, Kohima and the respondent Shri. Bodhisattwa Gautam was a lecturer from April 1989.

B. From June 1989, the respondent frequently visited the complainant's residence. On one such visit in the month of November, Mr. Gautam professed his love for her.

C. Further, to develop sexual relationship, the respondent deceived the innocent complainant with a promise of marriage in future.

D. However, whenever the pendency of the marriage was brought up by the complainant, the respondent would tactfully avoid it by expressing the importance of parental acceptance for him before entering into such a holy act of marriage and sometimes requesting her to cooperate till he gets a government job.

E. As a consequence of the cohabitation, the complainant conceived a child in the month of September 1993 and again in the year 1994. Subsequently, they had an argument as the respondent kept deferring the marriage on the plea of his parents' consent. At last, the respondent agreed to a secret marriage avoiding social gathering and on 20-09-1993 the respondent put vermilion on the complainant's forehead and accepted as her lawful wife.

F. The respondent further insisted her to undergo abortion as the child could be a hindrance in the acceptance of her as their daughter-in-law.

G. In Putonou Clinic, Kohima, in October 1993 the respondent successfully convinced and compelled her for abortion/miscarriage.

H. Again, after her second pregnancy in 1995, for the same excuses, the complainant underwent abortion at Carewell Nursing Home, Dimapur. Here the respondent concealed his real name and fraudulently signed the consent register as Bikash Gautam which was not known to the complainant until the 2<sup>nd</sup> week of February 1995 when the certified copy of the abortion consent paper was obtained.

I. In 1995, when the respondent got a position as a lecturer in a Government College, Silchar called Cachar College, he stated the marriage is invalid and refused to accept her as his wife. Thereafter, the respondent deserted the complainant even after years of cohabitation.

J. Subhra Chakraborty then filed a complaint under section 312/420/493/496/498-

A of IPC against the respondent in the Court of Judicial Magistrate 1<sup>st</sup> class in Kohima.

K. Subsequently, Gautam filed a petition in the Gauhati High Court under section 482 (inherent powers of the high court) of The Code of Criminal Procedure for quashing of the complaint and the proceeding.

### III. ISSUES:

A. Whether the Supreme Court can direct the petitioner Bodhisattwa Gautam to pay the interim compensation to respondent Subhra Chakraborty during the pendency of the case against him?

B. Whether the Criminal case no. 1 of 1995 filed in the court of Judicial Magistrate, first class, Kohima against the petitioner can be quashed under section 482 of The Code of Criminal Procedure?

### IV. PETITIONER'S ARGUMENTS:

A. Firstly, the petitioner contended that the allegations made against him was false and was simply created for the purpose for humiliating and harassing the petitioner. Therefore, the question of payment of compensation to the respondent does not arise.

B. Secondly, he mentioned that he has no source of income as his service in the government college was terminated since he was not a permanent lecturer but was only appointed for just one year.

### V. RESPONDENT'S ARGUMENT:

A. As per the contention of the respondent/complainant, the petitioner deceived the complainant to have physical intercourse and thereby giving her false assurance of marriage.

B. In addition, the petitioner conducted a false marriage ceremony, being aware of the fact that it was not a valid marriage and thereby dishonestly made the complainant to believe that she was a lawfully married wife of the petitioner.

C. The petitioner compelled the complainant to undergo abortion twice against her will by proposing that the said abortion

would help him out in convincing his parents to accept the complainant as their daughter-in-law.

D. The petitioner, having mala fide intentions, refused to accept the complainant as his wife & abandoned the complainant, upon getting a position as Lecturer in a Government college called Cachar College. The petitioner further said, on being confronted by his friends, namely Shri Subrata Datta, Shri Ranadhir Deb, Shri Prasanta Dey and Shri Pradeep Paul of Dimapur, that the giving of vermilion on complainant's forehead was just a mere act, and hence not a complete marriage. The petitioner repeatedly said that he was compelled to abandon the complainant as his parents are not agreeable to accept the complainant as their daughter-in-law, thus constituting fraudulent actions.

E. The actions of the petitioner caused serious injury and damage to the mental and physical health of the complainant.

#### VI. JUDGEMENT:

A. The petition under Section 482 of The Code of Criminal Procedure for quashing the proceeding at the court of Judicial Magistrate 1<sup>st</sup> class Kohima, was dismissed by the High Court. Thereafter, he filed a Special Leave Petition under Article 136 of the Indian constitution. However the Supreme Court upheld the decision of the High Court.

B. The court held that Article 21 of the Indian Constitution guarantees fundamental right of Right to Life and right to live with human dignity. And rape is an offence against basic human rights violating Article 21. The court also observed that under Article 32, the Supreme Court can award compensation for violation of Fundamental rights

C. Through various amendments, the court observed changes in the rule of "Corroboration of the Prosecutrix" which had been prevailing since the judgment of the Madhusudan Naik vs State of Orissa<sup>150</sup> where the High Court held that

accused can be convicted for rape solely on the testimony of prosecutrix(victim) if corroborated by any medical evidence or other witnesses.

D. In the case State of Himachal Pradesh vs Raghbir Singh<sup>151</sup>, the court observed, that quality of the evidence is what matters and not the quantity. Therefore, conviction can be solely on the basis of the testimony of the prosecutrix provided it is reliable and trustworthy.

E. Again in State of Karnataka vs Mahabaleshwar Gourya Naik<sup>152</sup>, the court held that if the victim is dead and she herself cannot give evidence, the case cannot be thrown or set aside. The court can still convict the accused based on the other evidences produced.

F. The court further observes that albeit section 114-A of the Indian Evidence Act, 1872 enables the court to raise presumption that the victim of rape has not consented, the rate of convictions are lower than any other crime in India. Plus the victim, even now are put on trial and not the accused. Moreover, many rape cases are not reported apprehending the amount of humiliation and ignominy she would have to face.

G. The court has mainly referred to the decision in the *Delhi Domestic Working Women's Forum vs. Union of India*<sup>153</sup>, where the defects in the existing legal system had been pointed out, hence the Court laid down broad parameters by virtue of which victims of rape would be assisted. The parameters are briefly mentioned herein below:

1. The victims of sexual assault cases should be provided with legal representation and provide her assistance at the police station alongside arrange mind counselling and medical treatments

2. It should be the duty of the police to inform the victim of her right to representation before any questions and the police report

<sup>151</sup> 1993 SCR (1)1087

<sup>152</sup> AIR 1992 SC 2043

<sup>153</sup> 1995 SCC (1) 14

<sup>150</sup> 2021 SCC Ori 899

should contain that the information was so given.

3. The names of the advocates who are willing to act should be kept at the police station for victims who did not have a lawyer to help her with the case or whose own lawyer was unavailable

4. The advocate shall be appointed by the court at the earliest, upon application by the police who would be authorised to act at the police station before leave of the court was sought or obtained, for there is no delay

5. The anonymity of the rape victims should be followed in every trial.

6. Under Article 38(1) the Constitution of India, it is thereby necessary to set up a Criminal Injuries Compensation Board

7. Victims should be awarded compensation by the court on conviction of the offender by the Criminal Injuries Compensation Board even if conviction has not taken place.

H. The court was of the view that if the court has the jurisdiction to award compensation at the final stage, then, they should be awarded with interim compensation.

I. With regard to the present case, relying on precedent of the Delhi Domestic Working Women's Forum vs. Union of India, the court directed Bodhisattwa Gautam shall pay a monthly compensation of Rs.1000 to Subhra Chakraborty during the pendency of the Criminal case no. 1 of 1995 in the court of Judicial Magistrate, 1<sup>st</sup> class, Kohima. He shall also pay the arrears of compensation at the same rate from the date of filing of complaint to the present date.

## **VII. OVERVIEW OF THE JUDGEMENT:**

Through this decision, the Supreme Court attempted to throw light on the increasing number of rape cases which are left unreported and how the victims of these offences are targeted by endless humiliation and harassment throughout her life. The decision was made keeping in mind the conditions of the victims during the proceeding. The Court also referred to various cases which had brought

about necessary changes on the cases related to victims of rape. Some of these changes include conviction based on the sole testimony of rape victims and the quality of the evidence. Lastly, the applicability of the parameters set out in the decision of *Delhi Domestic Working Women's Forum vs. Union of India*, in the present case successfully determined the overall jurisdiction of the court to award interim maintenance

## **VIII. CONCLUSION:**

In the present day we see, many reforms have been made for the benefit of the victims of sexual offences. Nirbhaya fund was created under Criminal Law (amendment) Act of 2013 for providing compensation. Plus, the central government set up the Central Victim Compensation Fund Scheme<sup>154</sup> in the year 2015. The Supreme Court<sup>155</sup> directed the (NALSA) National Legal Services Authority to set up a committee which later decided and finalized Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018.

We also see, under section 357A of The Code of Criminal Procedure, the victim is entitled to be rehabilitated and compensated in situations of both conviction or acquittal as their life is left disturbed. The abasement that the victim experienced or will face in future, cannot be compensated but they at least deserve some monetary compensation which may help in rehabilitation.

## **IX. RELATED CASE LAWS:**

A. State of Himachal Pradesh vs Raghubir Singh 1993 SCR (1)1087, 1993 SCC SUPL. (3) 150 JT 1993 (4) 52, 1993 SCALE (1) 637

B. State of Karnataka vs Mahabaleshwar Gourya Naik AIR 1992 SC 2043, 1992 CriLJ 3786, 1992 (2) Crimes 653 SC, JT 1992(3) SC 319, 1992 (1) SCALE 1222, 1992 Supp (3) SCC 179, 1992 (2) UJ 583 SC

<sup>154</sup> Central Victim Compensation Fund Scheme Guidelines, ministry of home affairs, 2015

<sup>155</sup> Nipun Saxena vs Union of India, (2017) SCC online SC 1776



C. Delhi Domestic Working Women's Forum vs. Union of India 1995 SCC (1) 14, JT 1994 (7) 183

D. Nipun Saxena vs Union of India, (2017) SCC online SC 1776

E. Madhusudan Naik vs State of Orissa 2021 SCC Ori 899

**X. REFERENCES**

A. Section 357A of The Code of Criminal Procedure 1973

B. Central Victim Compensation Fund Scheme Guidelines, ministry of home affairs, 2015

C. Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018.