

Supreme Court of India

In Re vs Indian Woman Says Gang-Raped On ... on 28 March, 1947

Author:

Bench: P Sathasivam, S.A. Bobde, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

1 SUO MOTU WRIT PETITION (CRIMINAL) NO. 24 OF 2014

In Re: Indian Woman says gang-raped on orders of Village Court published in
Business & Financial News dated 23.01.2014

J U D G M E N T

P.Sathasivam, CJI.

1) This Court, based on the news item published in the Business and Financial News dated 23.01.2014 relating to the gang-rape of a 20 year old woman of Subalpur Village, P.S. Labpur, District Birbhum, State of West Bengal on the intervening night of 20/21.01.2014 on the orders of community panchayat as punishment for having relationship with a man from a different community, by order dated 24.01.2014, took suo motu action and directed the District Judge, Birbhum District, West Bengal to inspect the place of occurrence and submit a report to this Court within a period of one week from that date.

2) Pursuant to the direction dated 24.01.2014, the District Judge, Birbhum District, West Bengal along with the Chief Judicial Magistrate inspected the place in question and submitted a Report to this Court. However, this Court, on 31.01.2014, after noticing that there was no information in the Report as to the steps taken by the police against the persons concerned, directed the Chief Secretary, West Bengal to submit a detailed report in this regard within a period of two weeks. On the same day, Mr. Sidharth Luthra, learned Additional Solicitor General was requested to assist the Court as amicus in the matter.

3) Pursuant to the aforesaid direction, the Chief Secretary submitted a detailed report dated 10.02.2014 and the copies of the same were provided to the parties. On 14.02.2014, this Court directed the State to place on record the First Information Report (FIR), Case Diaries, Result of the investigation/Police Report under Section 173 of the Code of Criminal Procedure, 1973 (in short 'the

Code'), statements recorded under Section 161 of the Code, Forensic Opinion, Report of vaginal swab/other medical tests etc., conducted on the victim on the next date of hearing.

4) After having gathered all the requisite material, on 13.03.2014, we heard learned amicus as well as Mr. Anip Sachthey, learned counsel for the State of West Bengal extensively and reserved the matter.

Discussion:

5) Mr. Sidharth Luthra, learned amicus having perused and scrutinized all the materials on record in his submissions had highlighted three aspects viz. (i) issues concerning the investigation; (ii) prevention of recurring of such crimes; and (iii) Victim compensation; and invited this Court to consider the same.

Issues concerning the investigation:

6) Certain relevant issues pertaining to investigation were raised by learned amicus. Primarily, Mr. Luthra stated that although the FIR has been scribed by one Anirban Mondal, a resident of Labpur, Birbhum District, West Bengal, there is no basis as to how Anirban Mondal came to the Police Station and there is also no justification for his presence there. Further, he stressed on the point that Section 154 of the Code requires such FIR to be recorded by a woman police officer or a woman officer and, in addition, as per the latest amendment dated 03.02.2013, a woman officer should record the statements under Section 161 of the Code. While highlighting the relevant provisions, he also submitted that there was no occasion for Deputy Superintendent of Police to re-record the statements on 26.01.2014, 27.01.2014 and 29.01.2014 and that too in gist which would lead to possible contradictions being derived during cross-examinations. He also drew our attention to the statement of the victim under Section 164 of the Code. He pointed out that mobile details have not been obtained. He also brought to our notice that if the Salishi (meeting) is relatable to a village, then the presence of persons of neighbouring villages i.e., Bikramur and Rajarampur is not explained. Moreover, he submitted that there is variance in the version of the FIR and the Report of the Judicial Officer as to the holding of the meeting (Salishi) on the point whether it was held in the night of 20.01.2014 as per the FIR or the next morning as per the Judicial Officer's report, which is one of the pertinent issues to be looked into. He also submitted that the offence of extortion under Section 385 of the Indian Penal Code, 1860 (in short 'the IPC') and related offences have not been invoked. Similarly, offence of criminal intimidation under Section 506 IPC and grievous hurt under Section 325 IPC have not been invoked. Furthermore, Sections 354A and 354B ought to have been considered by the investigating agency. He further pointed out the discrepancy in the name of accused Ram Soren mentioned in the FIR and in the Report of the Judicial Officer which refers to Bhayek Soren which needs to be explained. He also submitted that the electronic documents (e-mail) need to be duly certified under Section 65A of the Indian Evidence Act, 1872. Finally, he pointed out that the aspect as to whether there was a larger conspiracy must also be seen.

7) Mr. Anip Sachthey, learned counsel for the State assured this Court that the deficiency, if any, in the investigation, as suggested by learned amicus, would be looked into and rectified. The above

statement is hereby recorded.

Prevention of recurring of such crimes:

8) Violence against women is a recurring crime across the globe and India is no exception in this regard. The case at hand is the epitome of aggression against a woman and it is shocking that even with rapid modernization such crime persists in our society. Keeping in view this dreadful increase in crime against women, the Code of Criminal Procedure has been specifically amended by recent amendment dated 03.02.2013 in order to advance the safeguards for women in such circumstances which are as under:-

“154. Information in cognizable cases.— (1) x x x Provided that if the information is given by the woman against whom an offence under Section 326A, Section 326B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, or Section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that:--

(a) in the event that the person against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, or Section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(2) x x x (3) x x x” “161.—Examination of witnesses by police:-

(1) x x x (2) x x x (3) x x x Provided further that the statement of a woman against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, or Section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.” “164.—Recording of confessions and statements.— 5A In cases punishable under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, sub-Section (1) or sub-Section (2) of Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, or Section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-Section (5), as soon as the commission of the offence is brought to the notice of the police:” “164 A. Medical examination of the victim of rape.- (1) Where, during the stage when an offence of

committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:--

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman; (v) general mental condition of the woman; and (vi) other material particulars in reasonable detail, (3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent, to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation--For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in section 53."

9) The courts and the police officials are required to be vigilant in upholding these rights of the victims of crime as the effective implementation of these provisions lies in their hands. In fact, the

recurrence of such crimes has been taken note of by this Court in few instances and seriously condemned in the ensuing manner.

10) In *Lata Singh vs. State of U.P. and Ors.*, (2006) 5 SCC 475, this Court, in paras 17 and 18, held as under:

“17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

18. We sometimes hear of “honour” killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-

minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism.”

11) In *Arumugam Servai vs. State of Tamilnadu*, (2011) 6 SCC 405, this Court, in paras 12 and 13, observed as under:-

“12. We have in recent years heard of “Khap Panchayats” (known as “Katta Panchayats” in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly

stamped out. As already stated in Lata Singh case, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal- minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

13. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.”

12) Likewise, the Law Commission of India, in its 242nd Report on Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition) had suggested that:

“11.1 In order to keep a check on the high-handed and unwarranted interference by the caste assemblies or panchayats with sagotra, inter- caste or inter-religious marriages, which are otherwise lawful, this legislation has been proposed so as to prevent the acts endangering the liberty of the couple married or intending to marry and their family members. It is considered necessary that there should be a threshold bar against the congregation or assembly for the purpose of disapproving such marriage / intended marriage and the conduct of the young couple. The members gathering for such purpose, i.e., for condemning the marriage with a view to take necessary consequential action, are to be treated as members of unlawful assembly for which a mandatory minimum punishment has been prescribed.

11.2 So also the acts of endangerment of liberty including social boycott, harassment, etc. of the couple or their family members are treated as offences punishable with mandatory minimum sentence. The acts of criminal intimidation by members of unlawful assembly or others acting at their instance or otherwise are also made punishable with mandatory minimum sentence.

11.3 A presumption that a person participating in an unlawful assembly shall be presumed to have also intended to commit or abet the commission of offences under the proposed Bill is provided for in Section 6.

11.4 Power to prohibit the unlawful assemblies and to take preventive measures are conferred on the Sub-Divisional / District Magistrate. Further, a SDM/DM is enjoined to receive a request or information from any person seeking protection from

the assembly of persons or members of any family who are likely to or who have been objecting to the lawful marriage.

11.5 The provisions of this proposed Bill are without prejudice to the provisions of Indian Penal Code. Care has been taken, as far as possible, to see that there is no overlapping with the provisions of the general penal law. In other words, the criminal acts other than those specifically falling under the proposed Bill are punishable under the general penal law.

11.6 The offence will be tried by a Court of Session in the district and the offences are cognizable, non-bailable and non-compoundable.

11.7 Accordingly, the Prohibition of Interference with the Freedom of Matrimonial Alliances Bill 20 has been prepared in order to effectively check the existing social malady.”

13) It is further pertinent to mention that the issue relating to the role of Khap Panchayats is pending before this Court in *Shakti Vahini vs. Union of India and Others* in W.P. (C) No. 231 of 2010.

14) Ultimately, the question which ought to consider and assess by this Court is whether the State Police Machinery could have possibly prevented the said occurrence. The response is certainly a ‘yes’. The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the States incapacity or inability to protect the Fundamental Rights of its citizens.

15) In a report by the Commission of Inquiry, headed by a former Judge of the Delhi High Court Justice Usha Mehra (Retd.), (at pg. 86), it was seen (although in the context of the NCR) that police officers seldom visit villages; it was suggested that a Police Officer must visit a village on every alternate days to “instill a sense of security and confidence amongst the citizens of the society and to check the depredations of criminal elements.”

16) As a long-term measure to curb such crimes, a larger societal change is required via education and awareness. Government will have to formulate and implement policies in order to uplift the socio-economic condition of women, sensitization of the Police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there is higher percentage of crimes against women.

Victim Compensation:

17) No compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim’s fundamental right, the State is duty bound to provide compensation, which may help in the victim’s rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

18) In 2009, a new Section 357A was introduced in the Code which casts a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government whereas, previously, Section 357 ruled the field which was not mandatory in nature and only the offender can be directed to pay compensation to the victim under this Section. Under the new Section 357A, the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case. However, no rigid formula can be evolved as to have a uniform amount, it should vary in facts and circumstances of each case. In the case of *State of Rajasthan vs. Sanyam, Lodha*, (2011) 13 SCC 262, this Court held that the failure to grant uniform ex-gratia relief is not arbitrary or unconstitutional. It was held that the quantum may depend on facts of each case.

19) Learned amicus also advocated for awarding interim compensation to the victim by relying upon judicial precedents. The concept of the payment of interim compensation has been recognized by this Court in *Bodhisattwa Gautam vs. Miss Subhra Chakraborty*, (1996) 1 SCC 490. It referred to *Delhi Domestic Working Women's Forum vs. Union of India* and others to reiterate the centrality of compensation as a remedial measure in case of rape victims. It was observed as under:-

“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.”

20) This Court, in *P. Rathinam vs. State of Gujarat*, (1994) SCC (Crl) 1163, which pertained to rape of a tribal woman in police custody awarded an interim compensation of Rs. 50,000/- to be paid by the State Government.

Likewise, this Court, in *Railway Board vs. Chandrima Das*, (2000) 2 SCC 465, upheld the High Court's direction to pay Rs. 10 lacs as compensation to the victim, who was a Bangladeshi National. Further, this Court in SLP (Crl.) No. 5019/2012 titled as *Satya Pal Anand vs. State of M.P.*, vide order dated 05.08.2013, enhanced the interim relief granted by the State Government from Rs. 2 lacs to 10 lacs each to two girl victims.

21) The Supreme Court of Bangladesh in *The State vs. Md. Moinul Haque and Ors.* (2001) 21 BLD 465 has interestingly observed that “victims of rape should be compensated by giving them half of the property of the rapist(s) as compensation in order to rehabilitate them in the society.” If not adopting this liberal reasoning, we should at least be in a position to provide substantial compensation to the victims.

22) Nevertheless, the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case. Mr. Anip Sachthey, learned counsel for the State submitted a report by Mr. Sanjay Mitra, Chief Secretary, dated 11.03.2014 on the rehabilitation measures rendered to the victim. The report is as follows:-

“GOVERNMENT OF WEST BENGAL HOME DEPARTMENT Report on the Rehabilitation Measures Reference: Suo Motu Writ Petition No. 24 of 2014 Subject: PS Labpur, District Birbhum, West Bengal Case No. 14/2014 dated 22.01.2014 under section 376D/341/506 IPC.

In compliance with the order passed by the Hon'ble Supreme Court during the hearing of the aforesaid case on 4th March, 2014, the undersigned has reviewed the progress of rehabilitation measures taken by the State Government agencies. The progress in the matter is placed hereunder for kind perusal.

1. A Government Order has been issued sanctioning an amount of Rs.50,000/- to the victim under the Victim Compensation Scheme of the State Government. It is assured that the amount will be drawn and disbursed to the victim within a week.
2. Adequate legal aid has been provided to the victim.
3. 'Patta' in respect of allotment of a plot of land under 'Nijo Griha Nijo Bhumi Scheme' of the State Government has been issued in favour of the mother of the victim.
4. Construction of residential house out of the fund under the scheme 'Amar Thikana' in favour of the mother of victim has been completed.
5. Widow pension for the months of January, February and March, 2014 has been disbursed to the mother of the victim.
6. Installation of a tube well near the residential house of the mother of the victim has been completed.
7. Construction of sanitary latrine under TSC Fund has been completed.
8. The victim has been enrolled under the Social Security Scheme for Construction Worker.
9. Antyodaya Anna Yojna Card has been issued in favour of the victim and her mother.
10. Relief and Government relief articles have been provided to the victim and her family.

The State Government has taken all possible administrative action to provide necessary assistance to the victim which would help her in rehabilitation and reintegration.

(Sanjay Mitra) Chief Secretary”

23) The report of the Chief Secretary indicates the steps taken by the State Government including the compensation awarded. Nevertheless, considering the facts and circumstances of this case, we are of the view that the victim should be given a compensation of at least Rs. 5 lakhs for rehabilitation by the State. We, accordingly, direct the Respondent No. 1 (State of West Bengal through Chief Secretary) to make a payment of Rs. 5 lakhs, in addition to the already sanctioned amount of Rs. 50,000, within one month from today. Besides, we also have some reservation regarding the benefits being given in the name of mother of the victim, when the victim herself is a major (i.e. aged about 20 years). Thus, in our considered view, it would be appropriate and beneficial to the victim if the compensation and other benefits are directly given to her and accordingly we order so.

24) Further, we also wish to clarify that according to Section 357B, the compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC.

25) Also, no details have been given as to the measures taken for security and safety of the victim and her family. Merely providing interim measure for their stay may protect them for the time being but long term rehabilitation is needed as they are all material witnesses and likely to be socially ostracized. Consequently, we direct the Circle Officer of the area to inspect the victim's place on day-to-day basis.

Conclusion:

26) The crimes, as noted above, are not only in contravention of domestic laws, but are also a direct breach of the obligations under the International law. India has ratified various international conventions and treaties, which oblige the protection of women from any kind of discrimination. However, women of all classes are still suffering from discrimination even in this contemporary society. It will be wrong to blame only on the attitude of the people. Such crimes can certainly be prevented if the state police machinery work in a more organized and dedicated manner. Thus, we implore upon the State machinery to work in harmony with each other to safeguard the rights of women in our country. As per the law enunciated in *Lalita Kumari vs. Govt. of U.P & Ors* 2013 (13) SCALE 559, registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and the Police officers are duty bound to register the same.

27) Likewise, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, are statutorily obligated under Section 357C to provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the IPC.

28) We appreciate the able assistance rendered by Mr. Sidharth Luthra, learned ASG, who is appointed as amicus curiae to represent the cause of the victim in the present case.

29) With the above directions, we dispose of the suo motu petition.

.....CJI.

(P. SATHASIVAM)J.

(SHARAD ARVIND BOBDE)J.

(N.V. RAMANA) NEW DELHI;

MARCH 28, 2014.
