

Rajeev Kumar Upadhyay

v.

Srikant Upadhyay & Ors.

(Criminal Appeal No. 4831 of 2024)

19 December 2024

[C.T. Ravikumar and Sanjay Karol,* JJ.]

Issue for Consideration

The victim was subjected to grave accusations and was also disrobed and assaulted in public. The Court take this as an opportunity to refer and reaffirm the commitment to the ideals of equality and justice for all.

Headnotes[†]

Penal Code, 1860 – ss.341, 323, 354, 354B, 379, 504, 506, 149 – Witch (Daain) Act – ss.3 and 4 – Victim was accused of witchcraft – She abused physically & verbally and thereafter disrobed – FIR was registered against 13 accused persons – Trial Court took cognizance – Accused persons sought quashing of FIR u/s.482 CrPC – The High Court stayed the proceedings during pendency of the said petition – Complainant aggrieved by the said order approached the Supreme Court:

Held: During the hearing, it was informed that petition seeking quashing of the cognizance was withdrawn – This case does not fall under 'ordinary circumstances', the FIR, shows that the victim, whose name is redacted for the purposes of maintaining the privacy of the said individual, was subjected to grave accusations and also disrobed and assaulted in public, which undoubtedly is an affront to her dignity – Acts committed have shaken the conscience of the Court – Even though the Criminal Miscellaneous petition now stands withdrawn, this Court is aghast as to how the High Court, in its wisdom, saw it fit to grant a stay against proceedings qua the accused persons – A Court granting a stay of proceedings is not to grant a stay in a mechanical manner – The sum total of circumstances both for and against need to be examined to check as to whether a *prima facie* case for stay is made out or not, or in other words, whether the non-grant of stay is to somehow prejudice

*Author

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.

the party, etc. – Authorities showed insensitivity – The FIR, records that the authorities did not heed the complainant's request for the registration of an FIR and that recourse had to be taken to Section 156(3) of CrPC – A further peculiar situation came to be when out of the 13 accused persons, only one person, whose name incidentally did not feature directly as having acted against the victims physically or verbally, was sent up for trial – The chargesheet did not disclose any reason as to why the investigating authorities adopted such a course of action – However, ACJM found it fit to send all accused persons to trial, taking the opposite view as put forth in the chargesheet – The State also did not chose to assail the non-speaking order of the High Court granting stay in favour of the accused – There is a need to hold ideals of equality and justice for all – Dignity is an invaluable aspect of Indian Constitutional jurisprudence, and there exists a duty upon the State to take all action to protect the same – Thus, it is directed that the matter to be placed on the file of the concerned District Court to proceed in accordance with the law – The Trial against the accused persons shall proceed on a day-to-day basis. [Paras 8, 9, 10, 14, 15, 17, 27]

Constitution of India – Art.21 – Dignity:

Held: Dignity goes to the very core of the existence of an individual in society – Any action which undermines dignity either by an act of another person or that of the State is potentially going against the spirit of the Constitution of India, which guarantees the security of all persons by ensuring that justice, liberty and equality are avouched for each and every person – By extension, if the dignity of a person is compromised, their human rights, available to them by virtue of them being humans and guaranteed by various enactments, both national and international, are imperilled – Dignity is an invaluable aspect of Indian Constitutional jurisprudence, and there exists a duty upon the State to take all action to protect the same. [Paras 1 and 17]

Constitution of India – Art.51A – discussed. [Paras 18-19]

Case Law Cited

K.S. Puttaswamy (Privacy-9J.) v. Union of India [\[2017\] 10 SCR 569](#) : (2017) 10 SCC 1 – followed.

Supreme Court Reports

Vikram Deo Singh Tomar v. State of Bihar [1988] Supp. 1 SCR 755 : 1988 Supp SCC 734; *Pawan Kumar v. State of H.P.* [2017] 3 SCR 458 : (2017) 7 SCC 780; *Bodhisattwa Gautam v. Subhra Chakraborty* [1995] Supp. 6 SCR 731 : (1996) 1 SCC 490 – relied on.

Nipun Saxena v. Union of India [2018] 14 SCR 755 : (2019) 2 SCC 703; *Kesavananda Bharati v. State of Kerala* [1973] Supp. 1 SCR 1 : (1973) 4 SCC 225; *X2 v. State (NCT of Delhi)* [2022] 7 SCR 686 : (2023) 9 SCC 433; *Francis Coralie Mullin v. State (UT of Delhi)* [1981] 2 SCR 516 : (1981) 1 SCC 608 – referred to.

Books and Periodicals Cited

Alam and Raj, (2021) The Academic Journey of Witchcraft Studies in India, Man in India Vol.97 Issue 21

List of Websites

2019: https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1653730573_CII%202019%20Volume%201.pdf

2020: <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/post/16959885631653645869CII2020Volume1.pdf>

2021: <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1696831798CII2021Volume1.pdf>

2022: <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

Resolution of the Human Rights Council dated 12th July 2021 passed in its 47th session.

<https://documents.un.org/doc/undoc/gen/g23/007/84/pdf/g2300784.pdf>

List of Acts

International Covenant on Civil and Protection Rights (See Article 6,7,10,17), Convention on Elimination of Discrimination Against Women (See Preamble, Article 2,5) and Universal Declaration of Human Rights (See Article 1,3,5,7,12).

List of Keywords

Witchcraft; Disrobing; Assault; Physical abuse; Verbal abuse; Dignity; Human Rights; Right to live with human dignity;

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.

Fundamental duties; Superstitions; Unfounded beliefs; Protection of women; Exploitation.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4831 of 2024

From the Judgment and Order dated 04.07.2024 of the High Court of Judicature at Patna in CRLM No. 30562 of 2023

Appearances for Parties

Bhanwar Pal Singh Jadon, Susheel Tomar, Sanjeev Malhotra, Advs. for the Appellant.

Santosh Kumar, Rajiv R. Mishra, Ms. Suruchi Yadav, Ashutosh Yadav, Manish Kumar, Divyansh Mishra, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Sanjay Karol, J.

Leave granted

“The legal subordination of one sex to another — is wrong in itself, and now one of the chief hindrances to human improvement; and that it ought to be replaced by a system of perfect equality, admitting no power and privilege on the one side, nor disability on the other.”

[John Stuart Mill, *On Subjection of Women*, Chapter 1 (1869).]

1. Dignity goes to the very core of the existence of an individual in society. Any action which undermines dignity either by an act of another person or that of the State is potentially going against the spirit of the Constitution of India,¹ which guarantees the security of all persons by ensuring that justice, liberty and equality are avouched for each and every person. By extension, if the dignity of a person

¹ Hereafter ‘Constitution’

Supreme Court Reports

is compromised, their human rights, available to them by virtue of them being humans and guaranteed by various enactments, both national and international, are imperilled.

2. We may benefit from the observations in [*K.S. Puttaswamy \(Privacy-9J.\) v. Union of India*](#)²:

“108. Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well-being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).”

3. When such rights of a woman are threatened, the danger is comparatively greater, for despite advancement by great leaps and bounds, when it comes to equality, much remains to be achieved, especially when it comes to women in rural areas.
4. This case is premised on certain disturbing facts. The First Information Report³ lodged on 04th March 2020 bearing details, FIR No.79/2020 under Sections 341, 323, 354, 354B, 379, 504, 506, 149 of Indian Penal Code, 1860⁴ and Section 3&4 of the Witch (Daain) Act against 13 persons namely, Ashutosh Kumar, Paritosh Kumar, Rishu Kumar, Jisu Kumar, Soni Devi, Nirmala Devi, Lakhpati Devi, Sachidanand

2 [\[2017\] 10 SCR 569](#) : (2017) 10 SCC 1

3 Hereafter 'FIR'

4 Hereafter 'IPC'

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.

Upadhyay, Ravikant Upadhyay, Shrikant Upadhyay, Asim Priyanshu, Shrina Upadhyay and Shashikant Upadhyay. The relevant extracts describing the alleged commission of the offence are as under:

- "1. The present complaint reveals that the grandmother of the complainant, going in the village. As soon as she reached in front of the house of opposite party Shashikant Upadhyay, the opposite party Shashikant Upadhyay surrounded and began to say that you have made my son sick by doing witchcraft. He is not getting rid of the illness. Today you will have to cure my son by taking back your witchcraft. On this said that you should mind your language. I am not a witch. On this, the opposite party Shrikant Upadhyay called his family members that a witch had come. Her witchcraft has to be ended.
2. In continuation of the same, the opposite party Ashutosh Kumar started pulling the hair (Jhonta) of the complainant's grandmother and began to say to bring the stool (dirt) as the witchcraft of the witch has to be freed. On this, the opposite party Paritosh Kumar brought stool in a container (Phophi) and opposite party Rishu Kumar caught the hands of the complainant's grandmother and Tajbadasti Paritosh Kumar put the stool in the mouth of the complainant's grandmother due to which Jagmasti Kunwar started vomiting and she fell on the ground. On hearing the noise, when the applicant and the witnesses went to rescue her, Shashikant Upadhyay caught the applicant and the brother-in-law of the opposite party started kicking and slapping him, giving the filthy abuses. When went to save the applicant during the fight, she too was given filthy abuses by all the opposite parties and Paritosh Kumar and Jishu Kumar made semi-naked to by tearing her Saree and Blouse and Soni Devi snatched the gold Sikdi of the complainant.
3. That the opposite party Reena Devi started saying that the witch has to be paraded in the village by

Supreme Court Reports

making her naked. On this, Ravikant Upadhyay and Asim Priyanshu made the applicant's grandmother semi-naked by tearing her Saree and when began to pull her away, the witness present there saved her. Thereafter, all the opposite party fled away.

4. That all the opposite party having common intention beat and abused the applicant, applicant's grandmother and and all the aforementioned caused the incident.
5. That after the incident, the applicant who was badly injured, got himself treated at Areraj Govt. Hospital.
6. That the applicant informed the local police station about the incident but the SHO did not take the applicant's report. Therefore, the applicant is filing this case before the Hon'ble Court.
7. That it is necessary in the interest of justice to send the complaint to the local police station Govindganj for registering an FIR.

Hence, it is prayed that an order be passed to register an FIR by sending the application under Section 156(3) Cr.P.C. of the applicant to the local police station so that the applicant may get justice for which the applicant will be grateful to the Hon'ble Court.

Sd/-

Rajeev Kumar Upadhyay, Applicant.

13. Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at item: 2

(1) Registered the case and took up the investigation:
Subodh Kumar SI(Sub-Inspector), Govindganj Or

(2) Directed (Name of I.O.):, Rank: SI (Sub-Inspector)

No. to take up the investigation:"

The FIR as extracted above contained the names of two victims, however, considering the nature of the accusations and in keeping

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.

with the directions issued in [Nipun Saxena v. Union of India](#),⁵ their names stand redacted.

5. The Police, upon investigation, filed a chargesheet bearing no.129/2020 before the Chief Judicial Magistrate, Motihari (East Champaran) on 08th August 2020 under Sections 341, 329 and 504 IPC, against only one person, namely, Lakhpati Devi and observed that none of the others were to be sent up for trial.
6. The record reveals that Additional Chief Judicial Magistrate⁶- First, Motihari, took cognizance of the aforesaid incident. The said order dated 21st February 2021, is not on record. Such taking of cognizance was challenged before the Sessions Judge, East Champaran, Motihari. The order dated 16th July 2022 reveals that the learned ACJM, upon perusal of the case records, took cognizance against not only Lakhpati Devi but also all other persons named in the FIR. The Sessions Judge declined to interfere with the order of cognizance.
7. It is in the aforesaid backdrop that the accused persons preferred Criminal Miscellaneous No.30562 of 2023 before the High Court of Judicature at Patna under Section 482, Code of Criminal Procedure, 1973,⁷ seeking quashing thereof. The order of the High Court dated 04th July 2024 is reproduced as under:

“Heard learned counsel for the petitioners; learned APP for the State and learned counsel for the informant.

2. Heard.

3. Admit.

4. During pendency of this application, the operation of the order dated 16.07.2022 passed by the learned Sessions Judge, East Champaran at Motihar in Criminal Revision No. 94 of 2022, shall remain stayed with respect to the petitioners only. ”

8. The complainant, aggrieved by the stay granted by the High Court, has approached this Court. During the hearing on 26th November 2024, learned counsel informed us that the petition seeking quashing of the cognizance order stood withdrawn as on 22nd November 2024.

5 [\[2018\] 14 SCR 755](#) : (2019) 2 SCC 703

6 Hereafter ‘ACJM’

7 Hereafter ‘CrPC’

Supreme Court Reports

9. In ordinary circumstances, the petition could have been disposed of by requesting the Trial Court to proceed expeditiously with the trial of the accused persons, keeping in view that the offence was committed in the early part of 2020, and now we stand right at the door of 2025 however this case does not fall under 'ordinary circumstances'. The FIR, as extracted above, shows that the victim, whose name is redacted for the purposes of maintaining the privacy of the said individual, was subjected to grave accusations and also disrobed and assaulted in public, which undoubtedly is an affront to her dignity. Certain other acts were also committed against her, which we refrain from mentioning again, for the full extent of which already stands extracted *supra* and because the reality that such acts are still a part of 21st century life is a fact that has shaken the conscience of this Court. Not only was the victim accused of witchcraft, but she was abused physically and verbally as well. Another person who was present amidst all this disturbance was also disrobed, and her jewellery was snatched.
10. Before proceeding further, we may observe that even though the Criminal Miscellaneous petition now stands withdrawn, this Court is aghast as to how the High Court, in its wisdom, saw it fit to grant a stay against proceedings *qua* the accused persons. It cannot be doubted that each and every person subjected to the criminal law of the country is taken to be innocent till proven otherwise, and this presumption extends till the very last moment. Nonetheless, the machinery cannot be ground to a halt in such a callous and unreasoned manner. A Court granting a stay of proceedings is not to grant a stay in a mechanical manner. The sum total of circumstances both for and against need to be examined to check as to whether a *prima facie* case for stay is made out or not, or in other words, whether the non-grant of stay is to somehow prejudice the party, etc.
11. When it comes to offences that infringe upon the dignity of a person, the responsibility cast on both the investigating and the adjudicatory authorities, in our considered view, is greater than usual or what is generally cast upon them in other circumstances. Both these authorities must show sensitivity to the issues involved, awareness of the social situations, a sensitivity to emotions evoked by the circumstances at play and a consciousness for time being the essence of action and lastly, but arguably the most importantly

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.

the letter of the law and the balance of the scales of justice for the accused and the victim.

12. We are constrained to observe that this case demonstrates the exact opposite of what appears to us to be only natural and expected. The FIR, as extracted *supra*, records that the authorities did not heed the complainant's request for the registration of an FIR and that recourse had to be taken to Section 156(3) of CrPC. A further peculiar situation came to be when out of the 13 accused persons, only one person, whose name incidentally did not feature directly as having acted against the victims physically or verbally, was sent up for trial i.e. Lakhpati Devi and those against whom direct allegations have been made in the complaint/FIR were let go scot-free. The chargesheet did not disclose any reason as to why the investigating authorities adopted such a course of action. It is a matter of record that on the basis of the very same material collected during the investigation, the learned ACJM found it fit to send all accused persons to trial, taking the opposite view as put forth in the chargesheet. This leads us to question how can one set of materials elicit such diametrically opposite courses of action.
13. It is a well-acknowledged fact that the States and the Union Government are the biggest litigators before the High Courts and this Court. Numerous cases are filed by State parties everyday. There may be various reasons as to why the States choose to litigate various issues and topics before the Court, but the overarching purpose of any action of the State should be the welfare of the people. In this regard reference may be made to [Vikram Deo Singh Tomar v. State of Bihar](#),⁸

“2. India is a welfare State governed by a Constitution which holds the pride of place in the hearts of its citizens. It lays special emphasis on the protection and well being of the weaker sections of society and seeks to improve their economic and social status on the basis of constitutional guarantees spelled out in its provisions. It shows a particular regard for woman and children, and notwithstanding the pervasive ethos of the doctrine of equality it contemplates special provision being made for them by law. This is

Supreme Court Reports

only to be expected when an enlightened constitutional system takes charge of the political and socio-economic governance of a society, which has for centuries witnessed the relegation of women to a place far below their due. We live in an age when this Court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen. And, so, in the discharge of its responsibilities to the people, the State recognises the need for maintaining establishments for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order and for whom, therefore, of necessity provision must be made for their protection and welfare. Both common humanity and considerations of law and order require the State to do so. ...”

14. Given the vulgarity of what the two women had to endure, we may say nothing more but express our surprise as to why the State chose not to assail the non-speaking order of the High Court granting stay in favour of the accused before this Court. The State’s decision to litigate an issue should not depend on the benefit that may be derived either to the State exchequer or elsewhere but also should be reflected of its responsibility to protect, within its people the respect for the rule of law and justice for all.
15. Incidents such as the one before us, as also many others that come across our desks, keep us alive to the on-ground reality that however much has been done by way of legislative, executive and judicial action to protect vulnerable sections of the society, in this context women, from exploitation, its effect has not permeated to the grassroot level. We take this opportunity to refer to and reaffirm our commitment to the ideals of equality and justice for all.
16. Unquestionably, Article 21 of the Constitution is at the forefront of violations having taken place in this inhumane incident. In the celebrated case *Kesavananda Bharati v. State of Kerala*,⁹ it was held that the right to dignity forms part of the basic structure of the

9 [1973] Supp. 1 SCR 1 : (1973) 4 SCC 225

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.

Constitution. Recently, a bench of 3-judges in [*X2 v. State \(NCT of Delhi\)*](#)¹⁰ observed that the concept of dignity forms the very foundation of the Constitution and the rights enshrined in it. In [*Francis Coralie Mullin v. State \(UT of Delhi\)*](#),¹¹ this Court recognized that the right to life includes the right to live with human dignity. In [*Pawan Kumar v. State of H.P.*](#),¹² :

“47. ...A woman has her own space as a man has. She enjoys as much equality under Article 14 of the Constitution as a man does. The right to live with dignity as guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution. That apart it creates an incurable dent in the right of a woman which she has under Article 15 of the Constitution. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with dignity and freedom. It has to be kept in mind that she has a right to life and entitled to love according to her choice. She has an individual choice which has been legally recognised. It has to be socially respected. No one can compel a woman to love. She has the absolute right to reject.

...

48. In a civilised society male chauvinism has no room. The Constitution of India confers the affirmative rights on women and the said rights are perceptible from Article 15 of the Constitution. When the right is conferred under the Constitution, it has to be understood that there is no condescension. A man should not put his ego or, for that matter, masculinity on a pedestal and abandon the concept of civility. Egoism must succumb to law. Equality has to be regarded as the summum bonum of the constitutional principle in this context. ...”

10 [\[2022\] 7 SCR 686](#) : (2023) 9 SCC 433

11 [\[1981\] 2 SCR 516](#) : (1981) 1 SCC 608

12 [\[2017\] 3 SCR 458](#) : (2017) 7 SCC 780

Supreme Court Reports

17. What can be gathered from reference to the above judgments is that dignity is an invaluable aspect of Indian Constitutional jurisprudence, and there exists a duty upon the State to take all action to protect the same.
18. There is undoubtedly a right to live with dignity, as discussed above. But concomitantly, there is a duty cast upon every citizen to promote harmony and a spirit of common brotherhood amongst all, keeping aside the differences that are only natural in a country which is as vast and varied as India. Reference can be made to Article 51A of the Constitution. It is to be emphasized that 51A(e) extracted herein below postulates a duty to renounce practices which are derogatory to women. It reads:

“51-A. Fundamental duties.—It shall be the duty of every citizen of India—

...

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

...

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;”
19. At this stage, we may also take note of Article 51(c) of the Constitution which enjoins upon the State the responsibility to foster respect for International Law and treaty obligations. The protection of dignity for all human beings as also the protection of women against discrimination form important parts of obligations under International Law in so far as India is concerned. India is the signatory to International Covenant on Civil and Protection Rights (See Article 6,7,10,17), Convention on Elimination of Discrimination Against Women¹³ (See Preamble, Article 2,5) and Universal Declaration of Human Rights (See Article 1,3,5,7,12). It would be apposite to reproduce below certain provisions of the CEDAW:

¹³ In short ‘CEDAW’

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.**“Preamble**

...

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity, ...

Article 2 States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations,

Supreme Court Reports

customs and practices which constitute discrimination against women;

...

Article 5 States Parties shall take all appropriate measures:
(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;...”

- 20. Having noticed the obligations under international law to protect women as above, we now turn to the main basis on which the two female victims were harassed and grievously assaulted.
- 21. Witchcraft, of which one of the victims stands accused, is certainly one such practice which should be shunned. Such allegations have a long past often with tragic consequences for those subjected to them. Witchcraft is deeply intertwined with superstition, patriarchy and social control, leaving it to no manner of surprise that such allegations were most often directed against women who were either widows or elderly. A variety of reasons are accepted to be the reasons for casting such aspersions- caste-based discrimination, retaliation for defying social norms, etc. The effect thereof is overwhelmingly negative, leading to barbaric treatment, public humiliation and sometimes even death.¹⁴

| Yearly report as per NCRB ¹⁵ | Witchcraft | 354-B IPC |
|---|------------|-----------|
| 2019 | 102 | 11238 |
| 2020 | 88 | 10580 |
| 2021 | 68 | 11102 |
| 2022 | 85 | 9101 |

14 See generally, Alam and Raj, (2021) The Academic Journey of Witchcraft Studies in India, Man in India Vol.97 Issue 21

15 **2019-**https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1653730573_CII%202019%20Volume%201.pdf
2020- <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/post/16959885631653645869CII2020Volume1.pdf>
2021-<https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1696831798CII2021Volume1.pdf>
2022- <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.

22. Although the numbers referred to above may seem insignificant, however, even 102 or 85, whatever the number may be, of reported inhumane, degrading incidents, each of them is a blot on the constitutional spirit. Those many persons were targeted and possibly exploited and abused on the basis of superstitions, conjecture and entirely unfounded beliefs which go against the scientific temper that each and every citizen of India called upon to foster within oneself and also within their own communities. The other number presented, i.e. the number of incidents reported under Section 354-B IPC, is deeply anguishing. In *Bodhisattwa Gautam v. Subhra Chakraborty*¹⁶ the Court made the following observations in the context of the offence under Section 375 IPC:

“10. 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 pushes her into deep emotional crisis. 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.”

23. We may say that the offence of disrobing would also qualify as having a similar effect on the psychology of the woman subjected to such deep humiliation.
24. Turning our attention back to witchcraft, the seriousness and drastic ill effects of such accusations and what follows thereafter have been noticed at the World stage. Of relatively recent vintage is the Resolution of the Human Rights Council dated 12th July 2021 passed in its 47th session, the relevant extract of which read as under:

16 [1995] Supp. 6 SCR 731 : (1996) 1 SCC 490

Supreme Court Reports

“1. Urges States to condemn harmful practices related to accusations of witchcraft and ritual attacks that result in human rights violations;

2. Also urges States to take all measures necessary to ensure the elimination of harmful practices amounting to human rights violations related to accusations of witchcraft and ritual attacks, and to ensure accountability and the effective protection of all persons, particularly persons in vulnerable situations;

...

4. Invites States, in collaboration with relevant regional and international organizations, to promote bilateral, regional and international initiatives to support the protection of all persons vulnerable to harmful practices amounting to human rights violations related to accusations of witchcraft and ritual attacks, while noting that, in providing protection, attention to local context is critical;

....

6. Emphasizes that States should carefully distinguish between harmful practices amounting to human rights violations related to accusations of witchcraft and ritual attacks and the lawful and legitimate exercise of different kinds of religion or beliefs, in order to preserve the right to freely manifest a religion or a belief, individually or in a community with others, including for persons belonging to religious minorities;

7. Encourages human rights mechanisms, including relevant special procedures of the Human Rights Council and treaty bodies, to compile and share information on harmful practices related to accusations of witchcraft and ritual attacks and their impact on the enjoyment of human rights;

...”

(Emphasis Supplied)

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.

25. Subsequent to this resolution, a report of the Office of UN High Commissioner for Human Rights was submitted to the Council in its 52nd session titled ‘Study on the situation of the violations and abuses of human rights rooted in harmful practices related to accusations of witchcraft and ritual attacks, as well as stigmatization.’¹⁷ The section on ‘Women and Girls’ deserves extraction given the context with which this Court is concerned:

“17. The Committee on the Elimination of Discrimination against Women has noted that in some countries persistent patriarchal norms confine women to their reproductive role and legitimize harmful practices, including the accusation of witchcraft and the social exclusion of women and girls accused of practising witchcraft. Reportedly, women who do not fulfil gender stereotypes, such as widows, childless or unmarried women, are at increased risk of accusations of witchcraft and systemic discrimination. Other marginalized groups include older women, women with disabilities, mothers of children with albinism, Indigenous women, women belonging to minorities and lower castes, women of African descent and women of diverse sexual orientations, gender identities, gender expressions and sex characteristics.

18. Research indicates that women are more often subjected to accusations of witchcraft than men. Women accused of witchcraft have been subjected to various forms of violence, including being beaten, burnt, stripped naked, raped, mutilated, buried alive and killed. Owing to the grave consequences of such accusations in some countries, it has been suggested that emergency procedures be put in place to rescue and resettle women who are at risk of suffering witchcraft-related violence in their communities. In some countries, women have also been detained on grounds of witchcraft or charlatanism, often on the pretext of protecting them from mob justice. There are also instances of women, in some countries, who have been sent to “witch camps” through a system

17 The report can be accessed at <https://documents.un.org/doc/undoc/gen/g23/007/84/pdf/g2300784.pdf>

Supreme Court Reports

that lacks minimal due legal process and from which the possibility of returning to society is uncertain.

19. Several of the root causes of accusations of witchcraft targeting women were outlined during the expert consultation, including patriarchy, cultural beliefs and structural challenges of conflicts and poverty. Participants also discussed other factors related to accusations of witchcraft and ritual attacks. For example, inheritance practices mean that widows and wives in polygamous marriages without children, or without sons, are vulnerable because in many cases the land, house and other properties will pass on to the husband's sons from other wives or the nearest male relative. Competition over financial resources, for attention, looks or children may trigger accusations of witchcraft and lead to acts of violence as a result of jealousy. Illness and death in the family or local community, as well as other misfortunes, are key factors in triggering accusations of witchcraft against and ritual attacks on women. The arrival of strangers/newcomers in a local community may be another factor. Women's agency and assertion of rights may also trigger accusations of witchcraft against independent and empowered women.

20. Older women accused of witchcraft have been reported to be subject to imprisonment, forced starvation, damaging "exorcism" ceremonies, such as forcing them to ingest hazardous substances, such as cement, and having nails driven into their heads with the objective of extracting confessions of witchcraft and forcing the evil spirit out. In some countries, such women are abandoned by their own children, family and community members and often the State does not provide alternative care facilities. Due to extreme fear of witchhunting or reprisal attacks, those labelled as "witches" are exiled to the margins of their communities and forced to remain confined in "safe" spaces, living in deplorable conditions.

21. The Committee on the Elimination of Discrimination against Women has stressed that States should combat all forms of discrimination and violence against older

Rajeev Kumar Upadhyay v. Srikant Upadhyay & Ors.

women accused of witchcraft, including intimidation, isolation, abuse and killings, as well as expulsions from their homes and families, and ensure that the perpetrators are prosecuted and adequately punished.

...

23. The Committee on the Elimination of Discrimination against Women has emphasized the need to take immediate and effective measures to investigate incidents of violence against and murder of women and girls based on accusations of witchcraft, and prevent their reoccurrence in the future; arrest, prosecute and adequately punish the perpetrators of such acts; strengthen the enforcement of relevant legislation; and criminalize accusations of witchcraft, while repealing provisions criminalizing witchcraft per se.

24. The Committee has also stressed the importance of undertaking public education programmes highlighting the negative impact of accusations of witchcraft, targeting both men and women, as well as community and villages chiefs and religious leaders, and raising awareness, particularly in rural areas, of the criminal nature of such attacks. It has also noted the need for special programmes that address the psychological trauma, physical harm, social exclusion and impoverishment of women accused of witchcraft, and allocate adequate resources to victim support structures.”

26. In the preceding paragraphs, we have discussed the variety of legislations, judicial pronouncements and other relevant literature pertaining to, in particular, the allegations of witchcraft and, in general, the protection of women against discrimination and exploitation. It is not lost on us that the judgment impugned before us has been rendered null by subsequent withdrawal; however, given the peculiarity of the situation and the vulgarity of the actions alleged, we adopted the course as above.
27. Keeping in view the aforesaid, we issue the following order:
- (1) The matter is placed on the file of the concerned District Court to proceed in accordance with the law.

Supreme Court Reports

- (2) The Trial against the accused persons shall proceed on a day-to-day basis.
- (3) The accused persons are directed to appear before the Trial Court on 15th January 2025.
- (4) It stands clarified that comments made hereinabove reflect only the heinousness of the crimes committed and do not in any way cast a shadow of guilt over the accused persons.
- (5) The Trial shall proceed keeping in view the aforesaid principles but uninfluenced by any observations made in this judgment.

Pending application(s), if any, stand disposed of.

Result of the case: Appeal disposed of.

[†]Headnotes prepared by: Ankit Gyan