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CASE COMMENTARY ON BODHISATTWA GAUTAM V. SUBHRA CHAKRABORTY

~ Tushar Shahi

Citation- (1996) 1 SCC 490.

Court- The Supreme Court of India.

Bench- KULDIP SINGH and S. SAGHIR AHMAD, JJ.

Date Of Pronouncement- December 15, 1996

ABSTRACT

The following is a case commentary on Bodhisattwa Gautam v. Subhra Chakraborty. This is a landmark judgement as in this case the Hon'ble Supreme Court stated that 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. Furthermore, in this case the ambit of right to life to and held that rape is a violation of personal liberty.

FACTS:

- There was an initial period of romance between the respondent, Subhra Chakraborty, and the appellant, Bodhisattwa Gautam, during which he used to visit her house.
- On one occasion he told her that he was in love with her and succeeded, on the assurance of marriage, in developing sexual relationship with her, which ended up with her being pregnant.
- The respondent persuaded the appellant to marry her, but he deferred the proposal on the plea that he had to ask his parents for the permission.
- He, however, agreed to marry her secretly. Consequently, he took her before the God he worshipped and put vermilion on her forehead and accepted her as his lawful wife.
- In spite of the secret marriage, he through his insistence, succeeded in motivating her for an abortion which took place in a clinic.

- The respondent became pregnant a second time and at the instance of the appellant underwent another abortion in a nursing home where the appellant deliberately signed the consent paper mentioning a false name.
- Ultimately, he deserted her. The respondent lodged a complaint against him which was registered under section 312/420/492/496/498-A of IPC.
- The appellant filed a petition under Section 482 CrPC for quashing the complaint which was dismissed.
- The appellant by way of SLP approached the Supreme Court. The petition was quashed.
- The Supreme Court took suo motu cognizance and asked the appellant why he should not be asked to pay a reasonable maintenance to the respondent during the period of pendency of his trial.

ISSUE BEFORE THE COURT:

- Whether an order can be passed compelling the appellant to pay maintenance to the respondent during the pendency of the criminal case for which the show-cause notice had been issued to him?
- Does the court trying a criminal offence have inherent power to award interim maintenance?

PETITIONER'S ARGUMENT:

- Mr. Abhijeet Bhattacharjee, the advocate for the petitioner, stated that in the facts of the case an initial period of romance between the two has been stated during which the petitioner used to visit her house.
- He denied the allegations made against the petitioner in the complaint and stated that the complaint was filed only to harass and humiliate him, and, therefore, there was no occasion to direct him to pay any amount of maintenance to the respondent.
- He further stated that although he had taken up service in another college, namely, Cachar College, his services had since been terminated.

RESPONDENT'S ARGUMENT:

- It was stated that Bodhisattwa Gautam gave false assurance of marriage to the innocent Subhra Chakraborty and thereby he dishonestly procured sexual intercourse with her.
- Whenever he was pursued by her to complete the marriage he very tactfully used to avoid it by saying that he needed to ask his parents.

- In the continuation of the affair Subhra got pregnant twice. Once in September 1993 and the next time in April 1994.
- Subhra faced corporal punishment as he told her that if she gave birth to the baby, it would act as a barrier to convince his parents to accept her as their daughter-in-law.
- It was submitted that, Mr. Gautam married her in secret before the GOD he worshipped and due to this Subhra completely submitted herself to him as an ideal wife and never disbelieved him.
- The complainant was forced to undergo a second abortion in the month of April 1994 in the Carewell Nursing Home at Dimapur with the pretext that if she gave birth to any child before marriage, she would never be accepted by Bodhisattwa's parents and relatives.
- Mr. Gautam is so wicked that he furnished a false name in the said Nursing Home and signed concealing his real name.
- On hearing that the accused was going to Silchar, Subhra went to Dimapur to ask him to take her with him. He, however, abandoned her and told her to forget all her dreams.
- The accused not only induced the complainant and cohabited with her but also fraudulently went through certain marriage ceremony knowing very well that it is not a valid marriage.
- He even committed to the offence of miscarriage by compelling Subhra to undergo abortion twice against her free will.

JUDGMENT:

- The Court pronounced the judgment that Bodhisattwa Gautam shall pay to Subhra Chakraborty a sum of Rs 1000 every month as interim compensation during the pendency of Criminal Case No. 1 of 1995 in the Court of Judicial Magistrate, First Class, Kohima, Nagaland.
- Further it was adjudged that he shall also be liable to pay arrears of compensation at the same rate from the date on which the complaint was filed till date.
- Lastly, it was stated that whatever had been said in the judgement shall not, in any way, affect or prejudice the Magistrate from deciding the complaint on merits on the basis of the evidence as may be tendered and in accordance with law.

RATIO DECIDENDI:

- The Court recognised the right of victim to compensation by providing that it shall be awarded by the Court on conviction of the offender subject to finalization of the Scheme by the Central Government.
- The court said that 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.
- On the basis of the principles set out in *Delhi Domestic Working Women's Forum*,¹ the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the courts trying the offences of rape.

OBITER DICTA:

- The court observed, “Unfortunately, a woman, in our country, belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated.”
- Further observations were, “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.”

CRITICAL ANALYSIS:

Although the judgement was very revolutionary and it recognised right of victim to compensation and also established that the right to life extends to the victims of rape but, in awarding the compensation to Subhra Chakraborty the Supreme Court bypassed a fundamental of the Indian Jurisprudence. There are certain rights of suspects and accused which are basic human rights. Article 11 of the Universal Declaration² deals with the right to be presumed innocent until proven guilty. Although the Declaration is not binding but it still is moral and persuasive in nature. Our criminal law and criminal jurisprudence are based on the premise that the guilt of the person charged in a court has to be proved beyond reasonable doubt.

¹ *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 S.C.C. 14 (India).

² Universal Declaration of Human Rights art. 11, G.A. Res. 217 (III) A, U.N. Doc. A/810, at 71 (Dec. 10, 1948).

The court by awarding interim compensation while the trial was still ongoing before the Court of Judicial Magistrate, First Class, Kohima, Nagaland, bypassed the core principle of presumption of innocence.

Although the judgment mentions that whatever had been said in the judgement shall not, in any way, affect or prejudice the Magistrate from deciding the complaint on merits on the basis of the evidence as may be tendered and in accordance with law, it becomes difficult to believe that a judgement of the Supreme Court would not indirectly sway a pending judgement of a lower court in the conformity of its own judgement.

CONCLUSION

This judgement is of great significance as it expanded the ambit of Article 21 to the rape victims. Furthermore, the court referred to many prior judgements before delivering this monumental one and also reaffirmed the 8 broad parameters to assist the rape victims in pursuing justice laid down in the case of *Delhi Domestic Working Women's Forum*. This judgement is a landmark judgment with regard to women's right and dignity. This judgment laid down the foundation upon which further developments were done in respect of offences involving rape. The recognition of the right of victim to compensation and the inclusion of rape victims in the horizon of Article 21 is what makes this judgment truly revolutionary. However, the court also took some questionable liberties such as bypassing the presumption of innocence. Overall, this judgement was a much-needed diversion from the trends that existed at time to revolutionise the laws and enable them to deliver justice more efficiently.

REFERENCES

- Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 S.C.C. 490 (India).
- *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 S.C.C. 14 (India).
- Universal Declaration of Human Rights art. 11, G.A. Res. 217 (III) A, U.N. Doc. A/810, at 71 (Dec. 10, 1948).