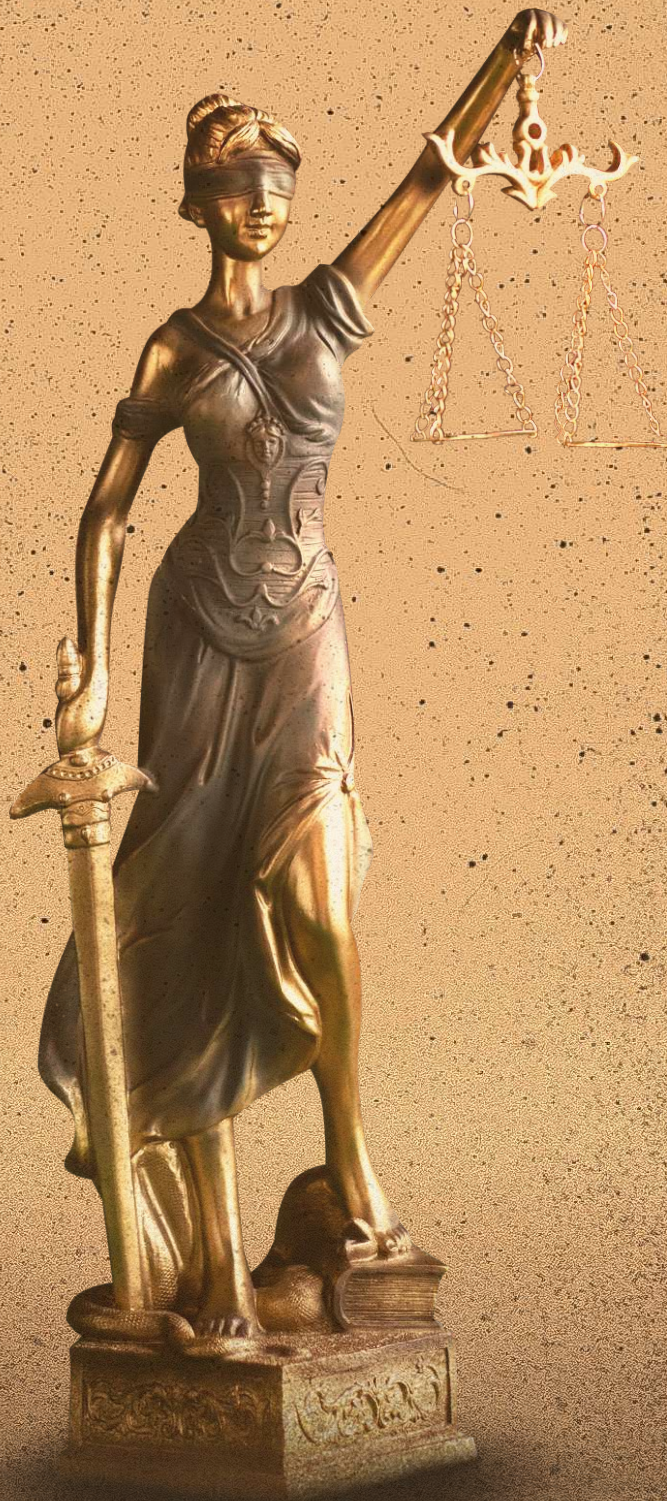


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No. 08, Arul Nagar, Seera Thoppu,

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Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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CASE COMMENTARY ON SHRI BODHISATTWA GAUTAM vs. MISS SUBHA CHAKRABORTY (1996 AIR 922)

AUTHOR - SANDHYA LAKSHMAN & YAZHINI M.V, STUDENTS AT SATHYABAMA INSTITUTE OF SCIENCE AND TECHNOLOGY

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ABSTRACT

The following is a brief case commentary on the case, Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty [1996] 1 SCC 490]. This case is a landmark ruling given by the Hon'ble Supreme Court under Article 32 of the Indian Constitution to award compensation for the violation of the fundamental rights of an individual, especially interim relief to the victims of the offence of rape. The most significant characteristic aspect of this judgement is its holding of rape as a violation of the victim's fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India. This judgement focuses on the plight and struggles of rape victims in India and the necessity for urgent reforms in the current system.

KEYWORDS: Article 32, Article 21, Right to Life, Life, Consent, Marriage, Rape, Interim Compensation.

INTRODUCTION AND BACKGROUND OF THE JUDGEMENT:

The case is a landmark judgement establishing the offence of rape as a violation of the right to life under Article 21 of the Indian Constitution. This case also decides regarding the quashing of legal proceedings against an accused of rape and the Supreme Court taking suo moto cognizance and compelling the petitioner to pay interim compensation to the respondent.

This judgement emphasises the jurisdiction of courts in providing interim compensation to victims of the offence of rape and the schemes they should be included in, based on the rationale that if the court has the jurisdiction to grant compensation after convicting the

offender, then granting interim compensation to the victim would also fall within its overall jurisdiction.

FACTS OF THE CASE:

- A. The case is a Special Leave Petition (SPL) arising out of an initially registered complaint by Subha Chakraborty (respondent herein), who was a student at the Baptist College, Kohima, against Bodhisattwa Gautam (petitioner herein), a lecturer in the same college.
- B. The case filed by the respondent was registered in the Court of the Judicial Magistrate, 1st Class, Kohima, Nagaland, under Sections 312/420/493/496/498-A of the Indian Penal Code, 1860, against the petitioner.
- C. The petitioner, being a lecturer at the college the respondent was studying at, visited the respondent's house for the first time on June 10, 1989, and thereafter began visiting often, developing a love affair between them when the petitioner voluntarily told her that he loved her.
- D. Throughout the relationship, the petitioner deceived the respondent with false hopes and promises of marrying the respondent, and as a result of the respondent's naiveté, she fell into the trap of the petitioner's false promises and had sexual intercourse with the petitioner.
- E. Whenever the topic of marriage came up with the respondent, the petitioner slyly avoided the matter by using excuses such as needing formal consent

from his parents or that he was still awaiting his government job.

- F. Meanwhile, the sexual relationship between the respondent and the petitioner continued, resulting in the petitioner getting pregnant twice: once in September 1993 and again in April 1994.
- G. The necessity to marry was strong for the respondent because of this, and she began pressuring the petitioner to marry her. The petitioner agreed to a secret marriage as a middle ground between them and proceeded with the same. The secret marriage was performed by him putting vermilion on the forehead of the respondent before the God he worshipped.
- H. Despite the secret marriage, the petitioner continued pressuring the respondent to have an abortion, with the plea that having a child would have adverse effects on convincing his parents to accept their love affair.
- I. The petitioner succeeded in his pleas for abortion by making her undergo an abortion at Putonou Clinic, Kohima, in October 1993. The same plea of non-acceptance by his parents was again used to make her undergo an abortion the second time she got pregnant at Carewell Nursing Home, Dimapur.
- J. When signing the consent register papers, the petitioner signed them under a false name, Bikash Gautam, in the nursing home, which the respondent found out in the second week of February 1995 when she went to obtain a certified copy of the abortion consent paper signed by the petitioner.
- K. The respondent, believing that she is the petitioner's lawful wife, went down to Dimapur and demanded that the petitioner take her with him permanently to Silchar when she came to know that the petitioner was going to Silchar to join Cachar Government College.

- L. However, the petitioner refused to accept the respondent as his legal wife, arguing that putting vermilion on her forehead is not a valid marriage and that his parents would never accept the respondent as their daughter-in-law.
- M. The petitioner had induced the respondent to cohabit with her by giving her a false assurance of marriage and by performing the fraudulent marriage ceremony with the knowledge that it was not a valid marriage.
- N. The petitioner exploited the respondent to undergo abortion twice against her free will and has committed criminal offences punishable U/S 312/420/493/496/498-A of the Indian Penal Code, 1860, upon which the respondent registered a criminal case against the petitioner.

ISSUES OF THE CASE:

- A. Whether there are grounds to quash all proceedings against the accused in Criminal Case No. 1 of 1995 at the Court of Judicial Magistrate, First Class, Kohima?
- B. Whether any further order can be passed by the Supreme Court in the case, and by such order, can the petitioner, Bodhisattwa Gautam, be directed to pay interim compensation to Subhra Chakraborty during the pendency of the criminal case against him?

ARGUMENTS OF BOTH PARTIES:

ARGUMENTS OF THE PETITIONER:

The counsel of the petitioner put forward the contention that the petitioner cannot be compelled to pay interim compensation to the victim as the allegations against him were false and the complaint registered was filed to harass and humiliate the petitioner when questioned by the Supreme Court about why the petitioner should not be liable to pay the interim compensation. The counsel of the petitioner submitted that there were no grounds

to compel the petitioner to pay any kind of compensation to the respondents. The counsel also contended that the petitioner would not be able to pay any kind of compensation since he had no current source of income since his services at Cachar College had been terminated.

ARGUMENTS OF THE RESPONDENT:

The counsel on behalf of the respondent contended that the petitioner had deceived the respondent in the guise of marrying her and exploited the respondent for the selfish intent of fulfilling his desires. The petitioner made the respondent suffer physically and mentally by coercing her to undergo an abortion twice. The counsel also brought up the fact that the petitioner had signed his name falsely in the consent form of the nursing home. They further contended that the petitioner had created a false narrative that his parents were the obstacle to his marriage with the respondent and created an excuse to hide his marriage with the petitioner. This was done to take advantage of the respondent's innocence. The counsel finally concluded that the respondent had evidently been taken advantage of and had been mentally and physically affected due to the malicious actions of the petitioner.

JUDGEMENT:

The Supreme Court dismissed the special leave petition filed by the petitioner. The petitioner was further directed to pay an interim compensation of Rs. 1,000 monthly from the date of *lis pendens* of the criminal matter. The Court held that the crime of rape committed by the petitioner, Gautam, violated the respondent's fundamental right to life and personal liberty, which she is guaranteed under Article 21. The right to life enshrined under Article 21 of the Indian Constitution means the right to life with human dignity and includes all the elements that make one's life complete and worth living for.

The Hon'ble Supreme Court observed that women in India are in a turbulent position due

to the social barriers and restrictions they face daily. Therefore, treating them with respect is of the utmost importance and necessity. The court held that the crime of rape is not just against an individual but is a violation in rem and a violation of the victim's basic human rights.

CONCLUSION:

The Hon'ble Supreme Court agreed with the judgement of the High Court and passed a landmark decision by taking suo moto cognizance of the matter under Article 32 of the Constitution and granting interim compensation to the rape victim in the instant case. The Court held the offence of rape to be a violation of the fundamental right to life and thereby compelled the petitioner to pay interim compensation to the respondent.

The decision of the Supreme Court recognises the aspect of the victim being entitled to compensation by the court on conviction of the accused, subject to the finalisation of the scheme by the Central Government. The Court also recognised rape as an offence against basic human rights and against the Fundamental Rights of Personal Liberty and Life and held that the jurisdiction of the court to pay interim compensation shall be part of the overall jurisdiction of the courts trying rape cases.

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1. <https://indiankanoon.org/doc/642436/>

RELATED CASE LAWS:

1. Delhi Domestic Working Women's Forum vs. Union of India, 1995 (1) SCC 14
2. Rafiq vs. State of Uttar Pradesh [1981(1) SCR 402]
3. Tukaram and Another v. State of Maharashtra [1979 SCR (1) 810]
4. Tukaram and Anr. vs. The State of Maharashtra, AIR 1979 SC 185
5. Rameshwar vs. The State of Rajasthan, 1952 AIR 54
6. Abbas Ahmed Choudhary vs. Assam [2010 (12) SCC 115]