

Heinous offences such as Rape shall not be subject to compromise

Throughout the world India is regarded as the epicenter of culture and spirituality. Here, women are called "*Lakshmi*" and hold high status in society. India, in particular has personal laws that are still in conflict with other codified laws, but have changed with the Westernization and intuition of citizens. Out of all offences, Rape is an offence which is considered to be the most abusive and violative of someone's physical as well as mental well-being. Rape is defined as intentional and unlawful sexual intercourse with a woman without her consent and there are various elements which would constitute an act as rape which are defined under **Section-375** of the *Indian Penal Code, 1860* (hereinafter referred to as "IPC").

More often than not, the victim chooses not to report a rape because of social taboo and to prevent loss of reputation as per our society. According to a report released by the National Crime Records Bureau (NCRB), in 2019 over 4 lakh cases of rape were reported in the country though the actual number could be much higher. This data translates to 88 cases of rapes per day which is alarming. The effect of sexual abuse/rape can be entirely devastating, and they would not be just limited to physical trauma, but also emotional distress. It is such that the emotional distress by the assault leaves the victim in shackles, makes her feel nervous, frightened, shamed and even tormented by flashbacks, vexing memories and nightmares.. Justice Arijit Pasayat has said that "*While the murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female*¹."

In India, especially in rural areas the mindset of compromise still persists even in criminal cases such as rape or sexual harassment. In many instances, it is found out that victims of these kinds of offences often face many hardships at the registration stage i.e. filing of an FIR and are often suggested by the police to settle the matter outside. In a recent case of Madhya Pradesh High Court², the court was hearing a bail application in a sexual assault case in which an absurd condition was put up by Justice Rohit Arya which stated that, "*the accused shall visit the house of the complainant on August 3rd which was Rakhi with a box of sweets and request the complainant to tie a rakhi with a promise that he will protect her in all times to the best of his abilities.*" This condition in granting of a bail is not only an absurd one but is also enabling the

¹ Tulshidas Kanolkar vs The State Of Goa Appeal (crl.) 298 of 2003

² Vikram v State of Maharashtra MCRC 23350/2020

physical contact between the complainant and the accused which would further aggravate the trauma for the complainant.

It is a well settled judicial precedent that the concept of compromise would not apply to heinous crimes such as rape or an attempt to rape. Justice Dipak Misra in this regard has stated that, “*We say with emphasis that the courts are to remain absolutely away from this subterfuge (compromise) to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error...such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility*”³.

Approach of courts in rape cases

“*Will you marry her?*” this recent remark by the Hon’ble Chief Justice of India Sharad Arvind Bobde has made the headlines. CJI was hearing a bail matter in a rape case wherein this remark was made by him. The accused was a government servant and the complainant was 16 years old at the time of incident and was distant relative of the accused. The accused was charged with **Sections 376, 417 and 506** of the IPC along with **Sections 4 and 12** of the ***The Protection of Children from Sexual Offences Act, 2012*** (hereinafter referred to as “POCSO Act”). The accused was granted anticipatory bail by the Session’s Court and subsequently the complainant approached the High Court of Bombay seeking rejection of his anticipatory bail which was further rejected⁴. Thereafter, the accused moved the Hon’ble Supreme Court wherein the above-mentioned remark was made. In the instant case, the girl has alleged that the accused was a distant relative who started stalking her in 2014-15 when she was 16 years old. He was a frequent visitor at the girl’s house where he allegedly committed rape on her. When the girl tried to lodge a police complaint, the accused threatened her of the consequences if the incident was disclosed. The girl has further alleged that the accused even got a writing executed on a stamp paper by the girl’s mother that they had sexual intercourse with the girl’s consent and there was an affair between the two. It was also promised that he would marry the girl when she attains majority. The accused did not marry her and the case of rape was filed. The CJI made this

³ State Of M.P vs Madanlal CRIMINAL APPEAL NO. 231 OF 2015

⁴ Application for cancellation of bail No 32 of 2020

remark in this context that if you (the Accused) are ready to marry the girl (as he promised) we can help you but if you don't then you will be going to jail. It is also pertinent to note that the accused was granted protection from arrest for a period of 4 weeks after the rejection of his anticipatory bail application and asking him to seek regular bail. The remark of the CJI has been misinterpreted here as an attempt to compromise the matter. If the accused had married the girl then there would not have been any case filed against him. The CJI here asked that question in order to get clarity on the fact that whether the accused is ready to marry the girl as he promised few years back and it was in no way, shape or form, a compromise.

Conclusion

The concept of a compromise between the parties in a heinous crime such as rape would be an atrocious thought as it would defeat the entire purpose of criminal jurisprudence. In that regard the SC while going against an interim order of a Madras HC judge in 2015 stated, *“In a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are offences which suffocate the breath of life and sully the reputation. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct⁵”*.

The idea behind harsh punishments for crimes such as rape or murder is that the society gets the idea that these kind of horrific acts are not going to be tolerated and the offenders will be punished in accordance with the laws. Justified convictions raise confidence in the minds of the general public towards the judiciary and the idea of compromise degrades the same. Fair trial and conviction of a rape accused also to an extent reduces the mental trauma or grief in the mind of the victim and generates confidence to live further with dignity. We have seen through various instances such as the Nirbhaya gang-rape and murder case that how our society perceives these kinds of offences. These kinds of incidents not only cause great damage to the victim but to the public as a whole and therefore should not be seen with a view to compromise but should be conducted with the aim of convicting the offenders through fair and unbiased trial. Statutes such as the POCSO Act was enacted with the aim to address the issue of sexual abuse of children and

⁵ *Supra* No 4 (Page 2)

if the concept of compromise is applied to sexual abuse or harassment cases, laws like this can become redundant as many of the accused would be acquitted.