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Mohit Subhash Chavan v. State of Maharashtra: Protection or Prosecution?

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ABSTRACT

India has seen an increasing number of atrocities against women. The country has also seen a substantial rise in the reporting of crimes committed against women and children. The main question here leans more towards adjudicating previously existing laws within the Indian Penal Code and other statutes. With the introduction of the POCSO Act in 2012, not only was sexual violence declared as an offense with a gender-neutral victim group, but the focus on sexual crimes against minors was given importance and well-deserved recognition. On 1st March 2021, the media reported that when hearing the case of Mohit Chavan v/s State of MH, His Lordship the CJI said the following controversial line – “Will you marry her?”, which seemed like a suggestion of compromise for the 16-year-old victim girl at the prima-facie level. However, it was unfortunate that the Supreme Court was misquoted, and the matter was blown out of proportion without knowing the context in which the line was said. The line suggests an amicable solution for a situation that demands punishment under the statute itself. The sad part is that without a complete understanding of the situation, the judicial minds were blamed for making such a controversial statement. Neither the media nor the people who commented on the issue thought that the marriage of the Victim and the Accused was ever possible because the Accused had already married someone else. Furthermore, we must not forget that the judicial minds that have worked on the matter belong to the highest court of law, and when they speak something, there must be some context and substance to it.

In the matter of Mohit Subhash Chavan v State of Maharashtra, the judgment passed by the Supreme Court of our country has not only shocked the legal fraternity but has also invited extreme criticism for itself. It has reopened a can of worms on Criminal Law issues, especially the Rape Laws of our country. It seems that the Indian Legal system has failed to update itself to the 21st Century and is still living in the times where women were considered to be inferior to men. It was claimed that the Law discriminates and partially supports the crime of Marital Rape. A judgment like the one mentioned above is proof enough of the same. Although the

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incident is an unfortunate one where the Supreme Court was misquoted, the brighter side is that the common person is now aware that such statements are unacceptable.

In order to understand the courtroom dynamics, it is essential to delve deeper into the facts of this case. On 1st March 2021, the Supreme Court asked a 23-year-old man accused of raping a minor girl when she was about 16 years old if he would marry her. A Special Leave Petition filed by the Accused, a government employee in Maharashtra, against an order of the Bombay High Court (Aurangabad Bench) that cancelled his anticipatory bail, was being heard by a bench that the Chief Justice of India was leading. Wherein, the Hon'ble CJI, Shri SA Bobde, asked the petitioner's counsel, "Will you marry her?"³

"I will take orders," said petitioner's counsel, Advocate Anand Dilip Langde, who requested a stay of proceedings. The lawyer said that his client was a government employee who would be fired if he was convicted in the case. Mohit Subhash Chavan, the complainant, is currently 23 years old and was accused of raping a 16-year-old girl in 2014-15. "Before seducing and raping the young lady, you should have given it some thought. You are aware that you are a government employee, ", answered the CJI. "We would not compel you to marry. Please let us know if you are willing to participate. Otherwise, you will say that we are pressuring you to marry", the CJI added.⁴

When the case was reopened after other issues, the prosecutor told the petitioner that marriage was impossible because he had married someone else. The lawyer went on to say that the petitioner wanted to marry her at first, but she declined. The bench then rejected the appeal, allowing him to request regular bail. The petitioner was also given four weeks of immunity from the court's arrest, which included Justices AS Bopanna and V Ramasubramanian. The victim filed an FIR against the petitioner in 2019 under Indian Penal Code Sections 376, 417, and 506, as well as Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act")⁵. The girl said that the Accused stalked her in 2014-2015 when she was about 16 years old and studying in the ninth grade. The Accused used to come to the victim's house because he was a distant relative. She also said that the Accused used to sneak into the house through a back door and used to rape her during that time.

Further, he threatened her with repercussions if the incident was revealed. She went on to say that he continued to harass her and taunt her after that. He used to come to her house regularly

³ Livelaw News Network, Will You Marry Her?' Supreme Court Asks Man Accused Of Raping Minor; Grants Him Protection From Arrest, LiveLaw.in (March. 01, 2021, 03:27 PM), <https://www.livelaw.in/top-stories/will-you-marry-her-supreme-court-asks-man-Accused-of-raping-minor-170530>.

⁴ *Id. At I.*

⁵ The Protection Of Children From Sexual Offences Act, 2012 Act No. 32 Of 2012.

and have sexual intercourse with her, she said. She also claimed that he used to use contraception on occasion. It was also said that when she attempted to file a police report with the assistance of a social worker, the Accused's mother discouraged her from doing so, claiming that she cannot welcome her as a daughter-in-law; this further implied that the Accused had promised to marry the Victim and hence she remained silent. She also said that the petitioner once made her illiterate mother sign a piece of stamp paper alleging that the two had an affair and that they had both engaged in sex with her consent. The convict, on the other hand, broke his vow and married someone else.⁶

The victim then approached the Bombay High Court to nullify the order after the Sessions Court granted the Accused anticipatory bail. In the order cancelling his anticipatory bail, the Bombay High Court observed that the Accused had sexually exploited the girl for a sufficiently long period,

"One can easily conclude that going by the allegations respondent No.2(the Accused) has sexually exploited the applicant for a sufficiently long period, since she was around 16 years of age. The papers of investigation would further corroborate the applicant's version about execution of a writing on a stamp paper of Rs.500/-. Respondent No.2 and his family seem to be so influential that they could get executed this writing from the applicant and her widowed mother. The very fact that they could get such writing executed is indicative and is sufficient to infer that respondent No.2 had indulged in sex with the applicant even when she was merely 16 years of age. Pertinently, this writing also bears his signature and signature of his mother".⁷

The High Court also went so far as to call the Sessions Court's decision to issue bail "atrocious". Even though the girl was a minor, the Sessions Court found her to be of "sufficient maturity" since she "has stated with meticulous details regarding the use of contraceptive" by the Accused." The High Court's Justice Mangesh S Patil took serious exception to the Sessions Court's "lack of consideration," observing:

"The approach of the learned Judge from such reasoning clearly shows his utter lack of sensitivity in such serious matters. In spite of having noted that the applicant was still a minor when respondent No.2 had sexually exploited her and in spite of observing that her consent would be immaterial, he has concluded that it was a consensual relation. Astonishingly, merely because she has mentioned in the FIR about use of contraceptive by respondent No.2, the learned Judge has jumped to the conclusion that she was having sufficient maturity. The height

⁶ Id. at 2.

⁷ The State of Maharashtra v Mohit Subhash Chavan, Application For Cancellation Of Bail No.32 OF 2020.

*is committed by the learned Additional Sessions Judge even to record an observation that there is a possibility of false implication of respondent No.2. Such an approach is a clear indication that the learned Judge utterly lacks competence. It is indeed a matter which deserves a serious consideration"*⁸

The matter then travelled to the Supreme Court, and the media and the legal fraternity highly criticized the statement of the CJI in the said case; they called it absolutely disappointing. Especially when such statements came from the highest court of law, the guardian of our rights, such level of insensitivity was unacceptable. However, the over-exaggeration of a court-room dialogue without knowing the context of the dialogue led to unwanted media trial of such dialogue. If made in light of the context as understood by the media, these statements would have been highly patriarchal in their nature and derogate the individual identity and agency of a woman. However, the Supreme Court cleared the air around the speculations and clarified that 'The court did not ask the Accused to marry the Victim'. Before such clarity was provided, this statement was looked down upon as it suggests an amicable solution to a situation that demands punishment under the statute. Therefore as per the media reports and comments by members of the fraternity, the so-called relief granted or the solution sought by the court rather places the victim in a more vulnerable spot. Marriage of the Accused and the Victim, could then expose her to Domestic Abuse and Violence and the heinous yet unrecognized crime of Marital Rape.

The idea of marriage being a way to save the remaining 'honour' of the woman and the underlying notion that a woman is entirely dependent on a man and marriage would ensure the same is absolutely archaic and baseless. Furthermore, the fact that matrimonial consent is more like a contract that makes the women the 'chattel' or 'property' of her husband is highly problematic and concerning. Marital Rape gives right to the husband to force cohabitation against the will of the wife, because under matrimonial consent, consent to all types of matrimonial obligations is implied, including sexual relations. Therefore, such decisions are not only abhorrent, but they also make one question, are we implying and sending out a message that by circumventing the law on rape, we can legalize it?

India is among the countries that have not yet completely criminalized Marital Rape. In the United Kingdom up until recently, there prevailed a general rule, "a man could not have been held to be guilty as a principal of rape upon his wife, for the wife is in general unable to retract the consent to sexual intercourse, which is a part of the contract of marriage." The same was

⁸ *Id. at .*

abolished and criminalized after the case of 'R v R'. Furthermore, in the United States of America, Marital Rape was declared a crime in all fifty states in the year 1993. However, in India, Marital Rape exists de facto and not de jure.⁹ The Supreme Court of India in the case of Bodhisattwa Gautam v. Subhra Chakraborty, said that "rape is a crime against basic human rights and a violation of the victim's most cherished of fundamental rights",¹⁰ namely, the right to life enshrined in Article 21 of the Constitution.¹¹ It seems that Rape doesn't come under violation of the right to life with dignity and hence, the oblivious behaviour of the Lawmakers and the Judiciary. The POCSO Act¹², under which the Accused was charged, was enacted to ensure complete justice for child sexual abuse victims and strict action against the culprits. However, our learned Supreme Court gave preference to the marriage of the victim with her culprit over reprimanding him. Such marriages not only jeopardize the victim's life but also creates a greater conflict of laws on Minor Rape, Sexual Abuse, Child Marriages, etc. These decisions also are in conflict with the Age of Consent set at 18 years after the Nirbhaya Case and the enactment of POCSO Act, 2012.¹³

Thus, in cases like these, the conflict is then between the need of Protection over Prosecution of the Constitutional and Human Rights of Women and Girl alike, as pointed out by Adv. Vrinda Grover.¹⁴ The case further begets the questions like, whether or not women have rights over their body? Will the exception of Marital Rape be a medium to carve a legitimate path to compromise Rape trials?

Unfortunately, this blew out of proportion and neither the media nor the people who commented on the issue thought that marriage of the Victim and the Accused was ever possible because during the pendency of the suit, the Accused had already married someone else. Furthermore, we must not forget that the judicial minds that have worked on the matter belong to the highest court of law and when they speak something, there must be some context and substance to it. Media trial may be pleasing, but they are not full proof. The same court was responsible for the decriminalization of adultery in *Joseph Shine v Union Of India*,¹⁵ which questioned the individual identity of women and deprived a woman of her agency as adultery

⁹ Diganth Raj Sehgal, All you need to know about marital rape, Ipleaders, (August, 09, 2020), <https://blog.ipleaders.in/need-know-marital-rape/>.

¹⁰ Bodhisattwa Gautam v. Subhra Chakraborty, (1996) AIR 922, S.C.C (1) 490 (India).

¹¹ India Const. art. 21

¹² Supra note 3.

¹³ *Id.* at 8.

¹⁴ Vrinda Grover, CJI Bobde's 'marry the victim' remark to rape Accused trivialises sexual violence, denudes survivor of rights and personhood, Firstpost.in (March. 02, 2021, 12:06 PM), <https://www.firstpost.com/india/cji-bobde-marry-the-victim-remark-to-rape-Accused-vrinda-grover-response-9364651.html>

¹⁵ *Joseph Shine v. Union of India*, 2018 SCC OnLine SC 1676.

under Indian Penal Code implied that the woman was the property of her husband. Furthermore, cases like *Laxmi v Union of India*¹⁶, *Vishakha & Ors. v State of Rajasthan & Ors.*¹⁷ and many more, are cases where time and again the court has supported the interests of women and has actively worked in furtherance of their protection. Crime against women in general are extremely heinous in nature and we must know that in no way the guardians of the law would support it.

¹⁶ *Laxmi v Union of India & Ors.*, (2014) 4 SCC 427

¹⁷ *Vishakha & Ors. V State of Rajasthan & Ors.* (1997) 6 SCC 241