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## Case Comment: *Aparna Bhat v State of Madhya Pradesh*

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### INTRODUCTION

There is a deeply rooted paternalistic and sexist attitude in the judgements and orders passed by the courts in sexual violence cases. A minor rape case was referred to mediation in 2014 by a Madras High Court ruling. The complainant's "casual relationships," "promiscuous attitude," and "voyeuristic thinking" were all called out in a ruling from the Haryana High Court in 2017. But on Thursday, March 18, 2021, Ravindra Bhat J., writing for a division bench, addressed "entrenched paternalistic and misogynistic attitudes" in gendered sexual violence judgements and orders. This was the case of *Aparna Bhat v State of Madhya Pradesh*<sup>1</sup> heard in the Supreme Court of India in which the bench was comprised of **Justice AM Khanwilkar and Justice S. Ravindra Bhat**.

### FACTS

- On 20.04.2020, the accused, who is the complainant Sarda Bai's neighbour, entered her home and attempted to sexually harass her, prompting the police to file a FIR under

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<sup>1</sup> *Aparna Bhat v State of Madhya Pradesh* (2021) Criminal Appeal No. 329/2021

sections 452, 354A, 323, and 506 of the Indian Penal Code. A charge sheet was issued after the inquiry was completed.

- The defendant applied for anticipatory bail under Section 438 of the Code of Criminal Procedure (hereafter referred to as Cr. P.C.).
- The defendant was granted bail on the condition that he and his wife pay a visit to Sarda Bai's home on August 3, 2020, during the Raksha Bandhan festival, bringing a box of sweets and promising to protect her to the best of his ability in the future. The petitioner has objected to the need that the accused to send over Rs. 11,000 as a sign of a gift given by brothers to their sisters as part of traditional Raksha Bandhan customs.
- Aparna Bhat and eight other attorneys filed an appeal against the Madhya Pradesh High Court's July 30 verdict, which ordered the accused of sexual assault to visit the victim's home on Raksha Bandhan with Rakhi and be tied by her as a condition of parole.

## ISSUES

- Can a compromise be struck between the accused and the victim in such instances?
- Is it acceptable for courts to issue such orders, and if so, what effect will such judgments have on society?
- Do such directions constitute to conduct of the trial in an unfair manner?
- Can the accused be permitted to meet the survivor or any of the members of her family?
- What, most importantly, should be the guidelines that courts should follow when granting bail and anticipatory bail?

## ARGUMENTS

### **Appellant/Victim**

The appellant cited Sections 437 (3)(c) and 438(2)(iv) of the Criminal Procedure Code, both of which allow the court to impose any condition they deem suitable in the interest of the public; however, the restrictions must be consistent with the other provisions. The Appellant cited the

case of *State of M.P v Madanlal*<sup>2</sup> and argued that in circumstances of sexual offences, the idea of compromise, particularly marriage between the accused and the victim, is odious and should not be deemed a judicial remedy since it would be antagonistic to the woman's honour and dignity.

In *Ramphal v State of Haryana*<sup>3</sup>, the court determined that compromise is irrelevant when judging rape and sexual assault cases.

The Appellant further sought that no such judgement or order be issued by the court that would jeopardise women's dignity or the fair and impartial conduct of trials.

### **Respondent/Accused**

- The Respondent contended that the court has imposed authority under sections 437(2) and 438. A number of court rulings have mentioned specific criteria for granting bail. Conditions can be utilised in a variety of ways.

### **JUDGEMENT**

The Supreme Court of India reversed the decision of the Madhya Pradesh High Court of granting bail to the Respondent/Accused on the condition that he and his wife pay a visit to Sarda Bai's home on August 3, 2020, during the Raksha Bandhan festival, bringing a box of sweets and promising to protect her to the best of his ability in the future and also send Rs. 11,000 as a sign of a gift given by brothers to their sisters as part of traditional Raksha Bandhan customs. The Hon'ble judges also cautioned the courts against taking a lenient stance that could lead them into an error refuge.

Bhat J highlighted that the survivor relies on the courts for '*impartiality and neutrality, at every stage in a criminal proceeding*'. In addition, while judgements are meant to resolve a particular legal dispute that pertains to the case at hand, they also serve as a means of communication to the larger legal community as well as the general public. When the courts adopt a compromise

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<sup>2</sup> *State of MP v Madanlal* (2015) 7 SCC 681

<sup>3</sup> *Ramphal v State of Haryana* 2019 SCC OnLine SC 1993

approach they are “*diluting and eroding the offence of sexual harassment*”. Sexual violence is a crime and not a “*minor transgression that can be remedied by way of an apology, rendering community service, tying a rakhi or presenting a gift to the survivor, or even promising to marry her...*” Bhat J added.<sup>4</sup>

**The court issued numerous guidelines and directives, including the following:**

- Under no circumstances should contact between the accused and the complainant be permitted as a condition for bail, and if bail is granted, the complainant must be informed immediately and provided with a copy of the bail order within two days.
- Bail conditions must carefully adhere to the norms of the Criminal Procedure Code, and orders should not reflect patriarchal attitudes toward women.
- Any recommendation for a compromise between the defendant and the victim, such as getting married or mandating mediation, is outside the court's jurisdiction and should not be entertained.
- In addition to the aforementioned directives, the Court issued rules emphasising the significance of gender sanitization at all levels of the judiciary, as argued by the Attorney General in his brief.
- The court has ordered a module as part of every judge's basic training to assure the judges' sensitivity when considering sexual offence cases and to eradicate entrenched social bias and misogyny.
- Also, the National Judicial Academy has been tasked with including gender sanitization in the training of young judges as soon as possible. Similarly, the instruction was given to the Bar Council of India to incorporate gender sanitization into the curriculum of the LL.B. program and to include it as a required topic in the curriculum of the All-India Bar Examination.

## ANALYSIS

The case is important due to the social impact and the legal precedence it carries with itself. As Justice S. Ravindra Bhat rightly pointed out the fact of judgements being a little soft in cases of

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<sup>4</sup> Aparna Bhat (n1)

sexual violence. These were based on Judicial Stereotyping which means when judges attach specific characteristics to individuals based on their gender, religion, caste, or race. The court emphasised that there is no room for negotiation or even consideration of a compromise in the instance of rape and sexual assault because doing so would be an affront to the victim's honour. Courts and other bodies involved in the administration of law are tasked with the obligation of maintaining objectivity and neutrality in order to fulfill their job of ensuring that all parties involved receive a fair trial. These kinds of strategies will damage the survivors' belief in the courts' ability to operate impartially in situations involving rape and sexual assault. In addition, the Supreme Court emphasised the dilemma of women and the negative attitude that society has toward them, emphasising that women endure a significant deal of suffering as a result of these factors. They already confront a number of hurdles simply by virtue of being women living in today's culture. As a result of legal mandates, directions such as tying Rakhi on the wrists of accused molesters convert them into brothers, reducing and humiliating the gravity of the offence of sexual harassment. Under no circumstances is it permissible to utilise logic or wording that aims to trivialise the victim or downplay the seriousness of the offence. Even if the survivor has been subjected to multiple traumatic experiences, has been coerced into involuntary acceptance, or has been forced by circumstances to accept and condone behaviour that constitutes a severe criminal offence, the law does not authorise or condone such behaviour. It does not matter.

It is without a doubt that judges play the most important role as the teacher, the protector, and the guardian, and whatever they say becomes the precedents that are then followed by lower courts in their rulings; for this reason, it is absolutely essential that judges exercise the utmost caution when making any statement that affects the foundation of the judiciary and the faith of the people. Even a minor error in the form of a judgement or a declaration made by the court in cases involving the body of women, particularly those involving sexual offences, can result in a grave offence being committed against the survivors. This is especially true in cases where the body of the woman was used in the commission of the crime. In a number of gender-related cases in recent years, the courts have advised the victim to make a compromise by allowing the

accused to marry her or, as in the present case, by requiring the offender to have Rakhi tied on his wrist by the victim, or by making any other compromise the court may direct.