

(2001) 03 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 33582 of 1998

Gopalakrishna Lakanidhi

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 21, 226, 234
Criminal Procedure Code, 1973 (CrPC) — Section 179
Evidence Act, 1872 — Section 154, 155(4), 54

Citation : (2001) 3 ALD 436

Hon'ble Judges : S.B. Sinha, C.J; S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. Gopalakrishna Kalanidhi, for the Appellant; Mr. L. Narasimha Reddy, SC for Central Govt. and Government Pleader for Home, for the Respondent

Judgement

S.B. Sinha, CJ

1. A novel question as regards the validity of Sections 54 and 155(4) of the Indian Evidence Act being violative of Article 14 of the Constitution of India has been raised in this application which has been filed by way of public interest litigation. According to the petitioner the character of an accused becomes irrelevant in terms of Section 54 of the Evidence Act whereas the same is used against a prosecutrix in terms of subsection (4) of Section 155 thereof.

2. In the aforementioned situation the petitioner has prayed for the following reliefs:

"It is, therefore, prayed that this Hon"ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus directing the respondent 1 herein to bring in suitable amendment to Sections 54 and 155(4) of Indian Evidence Act, 1872 and also Section 179 of Criminal Procedure Code so as to suit to the women victims insofar as jurisdiction for registration of crimes is concerned and consequently direct the respondents

herein to take effective steps in conduction of efficient and speedy trial to try the offenders who commit heinous crimes on Indian women and also in providing speedy justice by quashing the present existing Sections 54 and 155(4) of the Indian Evidence Act, 1872 and Section 179 Cr.PC and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

It is further prayed that this Hon''ble Court may be pleased to direct the 5th respondent herein to immediately stop granting censor certificates to those films which display the hero marrying two women, pending disposal of the above writ petition in the interest of justice.

It is also prayed that this Hon''ble Court may be pleased to direct the concerned respondents to immediately stop publication of sexy stories, pictures and other pornographic material forthwith in the newspapers and periodicals published in India, pending disposal of the above writ petition and pass such other order or orders as are deemed fit and proper in the circumstances of the case".

3. The learned Counsel appearing on behalf of the petitioner inter alia submits that Sections 54 and 155(4) of the Evidence Act are discriminatory in nature and as such the 1st respondent herein must be directed to bring out an amendment in the Indian Evidence Act so that the character of a woman upon whom rape or attempt to rape is committed becomes irrelevant. Sections 54 and 155(4) of the Indian Evidence Act read thus:

"54. Previous bad character not relevant, except in reply :--In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character; in which case it becomes relevant.

Explanation 1 :--This section does not apply to cases in which the bad character of any person is itself a .fact in issue.

Explanation 2 :--A previous conviction is relevant as evidence of bad character.

155. Impeaching credit of witness :--xxxx

(4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation :--A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence".

4. The question in the opinion of this Court which arises for consideration in this application is of a procedural law and not of a substantive law.

5. In terms of criminal jurisprudence followed in India unless otherwise provided for in any statute every person is presumed to be innocent unless convicted.

Section 54 of the Evidence Act seeks to put a protection to an accused of being put in the category of a person having bad character except in the circumstances mentioned therein so that even in a case where the Court finds it expedient to pass a judgment of acquittal in his favour, he may not be branded as a man having bad character in the society.

6. Section 155(4) of the Evidence Act, however, is in the realm of appreciation of evidence. The said provision, in the opinion of this Court, has to be read having regard to the recent decision of the Apex Court which would be the law of the land laid down by the Supreme Court of India in terms of Article 141 of the Constitution of India.

7. The interpretation of Section 155(4) of the Evidence Act would thus be totally dependant upon a sea change made in the outlook of the Court as regards the offence of rape or otherwise atrocities committed on women. It is now well settled that rape is not only an offence, it has been held to be an infringement of fundamental right of a person guaranteed under Article 21 of the Constitution of India. In *Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty*, the Apex Court held rape in that case as being violative of basic human right. It has been held:

"10. That, the said ceremony of putting sindur (vermilion) on the complainant's forehead by the accused in front of God made the complainant believe that she was lawfully married wife of the accused and with such belief she in good faith completely submitted herself to the accused as an ideal wife and never disbelieved the accused. The complainant even did not have any doubt as to why the accused insisted her to keep their marriage secret. The complainant was forced to undergo abortion even second time in the month of April, 1994 in the Carewell Nursing Home at Dimapur with the pretext that if the complainant gave birth to any child before the accused could convince his parents she would never be accepted by Bodhisattwa's parents and relatives. Further their marriage being a secret one, the developed stage of the complainant would hamper the dignity of her own parents and other paternal relations irreparably and thus taking the privilege of complainant's innocence the accused has exploited the complainant in a very pre-planned way. The accused is so wicked that he even furnished a false name in the said Nursing Home and signed the consent Register/Paper as Bikash Gautam concealing his real name Bodhisattwa Gautam which fact was ... unknown to the innocent complainant. until recently and came to know only in the second week of February, 1995 when the complainant went to obtain a certified copy of the abortion consent paper of the accused".

8. It is not necessary for this Court to advert to the various decisions of the Apex Court keeping in view the fact that an offence of rape is not only viewed with all seriousness it deserves, the same being considered in the light of various international covenants.

9. The Apex Court has also categorically held that even if it be found that the

prosecutrix was woman of a bad character and even a prostitute her right of privacy cannot be violated by any person and the accused must be punished for commission of rape irrespective of her general character. In fact that Apex Court even held that a gang rape of a woman in a public premises would make the owner of such premises liable to pay compensation by way of constitutional tort in a public law remedy. In *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, , the Apex Court not only placed strong reliance upon the General Assembly resolution of 10-12-1948, Declaration on the elimination of violence against women by its resolution dated 20-12-1993 and other international covenants and declarations but went to the extent of applying the principles laid down in the Universal Declaration of Human Rights and the principles thereof holding that even a foreigner is entitled to compensation under the doctrine of constitutional tort. Rape has also been held to be violative of human dignity. It has been held:

"33. The word "LIFE" has also been used prominently in the Universal Declaration of Human Rights, 1948, [See Article 3 quoted above]. The Fundamental Rights under the Constitution are almost in consonance with the Rights contained in the Universal Declaration of Human Rights,, as also the Declaration and the Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them, as out by this Court in *Kubic Darusz Vs. Union of India (UOI) and Others*, . That being so, since "LIFE" is also recognized as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "LIFE" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this Country, but also to a "person" who may not be a citizen of the country.

34. Let us now consider the meaning of the word "LIFE" interpreted by this Court from time to time. In *Kharak Singh Vs. The State of U.P. and Others*, , it was held that the term "life" indicates something more than mere animal existence. [See also: *State of Maharashtra Vs. Chandrabhan Tale*, . The inhibitions contained in Article 21 against its deprivation extends even to those faculties by which life is enjoyed. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, , it was held that the right to live with dignity, free from exploitation. [See also *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, .

35. On these principles, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to "LIFE" in this country. Thus, they also have the right to live, so long as they are here, with human dignity, just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an

obligation to protect the life of the persons who are not citizens".

10. As regards violence against and, dignity of, women the Apex Court has laid down several criteria which militate against the contention of the petitioner. In *Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat*, , the Apex Court held that refusal to act on the testimony of the victim of sexual assault in the absence of corroboration is "adding insult to injury". It observed:

"Why should the evidence of the girls or a woman who complains of rape or sexual molestation be viewed with the aid of spectacles tinged with doubt or disbelief? To do so is to justify the charge of male chauvinism in a male dominated society".

11. The Apex Court in *State of Maharashtra Vs. Chandraprakash Kewalchand Jain*, and *Karnel Singh Vs. State of M.P.*, , held, that corroboration of the victim of rape was not essential and a conviction could rest even on the sole testimony of the victim, if credible. Without multiplying the case laws we may also refer to *Delhi Domestic Working Women's Forum Vs. Union of India (UOI) and Others*, and *Bhodhisattva Gautam's case (supra)*.

12. Having regard to the aforementioned decisions of the Apex Court, Section 155(4) of the Evidence Act for all intent and purport has fell into insignificance and thus it is not necessary to pronounce the said provision as unconstitutional. Furthermore, it is a well settled principle of law that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot direct the Parliament to amend the law. Separation of powers envisaged under the Constitution clearly forbids, such a direction unless it may become absolutely necessary for the Apex Court to do so in exercise of its constitutional power under Article 142 of the Constitution of India. Such power this Court does not have. While considering the question as regards disparity of pay of the employees of the Supreme Court, while holding that the Chief Justice of India is alone competent to make or authorise of making of the rules the Apex Court in *S.P. Jain and another v. Union of India and another*, , has observed:

"111. It is of course true that no Court will, direct the President to grant approval, for a writ of mandamus will not lie to compel a person to exercise a legislative function in a particular fashion (See *A.K. Roy and Others Vs. Union of India (UOI) and Others*, ; *Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others*, . But the President must, upon submission to him of the Rules made by the Chief Justice of India under Article 146(2), exercise his mind as to whether or not he would grant approval, and, without undue delay, come to a decision on the point : See *Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India (UOI) and Others*, ". In the present case, the time for decision by the President has of course riot to me.

112. The approval of the President is not a matter of mere formality. It would, of course, be wrong to say that in no case can the President, which means the

Government, refuse to accord approval. However, once the rules are duly framed by so high a constitutional dignitary as the Chief Justice of India, it will only be in the truly exceptional cases that the President would withhold assent. It is but proper and appropriate that, in view of the spirit of the constitutional provision, approval would be accorded in all but the exceptional cases : see the observations of this Court in *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, . In this connection the observation of Mukharji, J. in *State of U.P. and Others Vs. Renusagar Power Co. and Others*, is apposite:

"The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated".

13. Yet again in *State of Jammu and Kashmir Vs. A.R. Zakki and others*, , it was held:

"10. In our opinion there is considerable merit in this submission. A writ of mandamus cannot be issued to the Legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the J&K Constitution, which is on the same lines as Article 234 of the Constitution of India, vests in the Governor, the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of J&K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court".

14. For the reasons aforementioned we do not find any merit in this application which is accordingly dismissed. There shall be no order as to costs.