
(2013) 11 RAJ CK 0163

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 8609 of 2013

Shiva @ Savaram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 1 Crimes 102

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : Mahesh Bora, assisted by Mr. Nishant Bora, Mr. Manish Vyas and Kapil Purohit, for the Appellant; Anand Purohit, Additional Advocate General assisted by Mr. Mahipal Bishnoi, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.—Today, S.B. Criminal Misc. Bail Application No. 8609/2013 preferred by Shiva @ Savaram and S.B. Criminal Misc. Bail Application No. 8610/2013 instituted by Sanchita Gupta @ Shilpi are listed. Both the petitioners have been named as accused in case FIR No. 122/2013 registered at Women Police Station, Jodhpur (West), Jodhpur corresponding to FIR No. 0/13 registered at Police Station Kamla Market, New Delhi. The FIR has been registered for offences under Sections 342, 376, 354(A), 506 and 509/34 of IPC and Section 23, 26 of Juvenile Justice (Care and Protection of Children) Act 2000 and Section 8 of Protection of Children from Sexual Offences Act, 2012.

2. It has been very fairly submitted that during pendency of these petitions, charge sheet has been filed by the prosecution against the accused.

3. It is stated that now the case is fixed before the trial court on 16.11.2013 for considering as to whether any cognizance of offence is to be taken against the accused or not and if so, for what offence?

4. Counsel for the petitioners has submitted that since charge sheet is voluminous, an adjournment be granted to place the same on record.

5. The case of the prosecution is that a child defined under the provisions of Protection of Children from Sexual Offences Act, has been raped.

6. Section 309 of the Criminal Procedure Code was amended by the Parliament vide the Criminal Law (Amendment) Bill, 2012 i.e. Bill No. 63 of 2013. Proviso to Section 309 Cr.P.C. reads as under:

Provided that when the inquiry or trial relates to an offence under sections 376 to 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.

7. There is a legislative command that in case of rape, every trial must be concluded within a period of two months from the date of the filing of the charge sheet. The relevant portion from the statement of objects and reasons to the Criminal Law (Amendment) Bill, 2012 can be reproduced as under:

The Criminal Law (Amendment) Bill, 2012 was introduced in the Lok Sabha on 4th December, 2012 in order to provide for stringent punishment for crimes against women, as also to provide for more victim friendly procedures in the trials of such cases. After the horrendous incident of gang rape, which occurred on 16th December, 2012 in Delhi, a Committee, headed by Justice J.S. Verma was set up to make recommendations on amending the various laws to provide for speedy justice and enhanced punishment for offenders in cases of sexual assault of extreme nature. The Justice Verma Committee submitted its Report on 23rd January, 2013

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4. The Criminal Law (Amendment) Bill, 2103 seeks to amend the Indian Penal Code, 1860, the Criminal Procedure Code, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012. These amendments seek to:--

.....

.....

(h) amend sections 54A, 154, 160, 161, 164, 198B, 273, 309 and 327 of the Code of Criminal Procedure, 1973 for providing for women friendly procedures; greater sensitivity to the requirement of physically and mentally disabled persons, under-aged children and old persons in the course of investigation and trial; for speedy trial of rape cases, and better recording of evidence.

8. Hon"ble the Apex Court in Akil @ Javed vs. State of NCT of Delhi (Criminal Appeal No. 1735 of 2009) decided on December 6, 2012 has given directions to the every trial court to adhere to the provisions of Section 230 along with Section 309 of Criminal Procedure Code. The trial court is bound to comply with the order

of Hon"ble the Apex Court along with command of law for which Criminal Law (Amendment) Bill, 2012 was introduced.

9. Hon"ble the Apex Court in Akil @ Javed"s case (supra) has held as under:

25.We wish to issue a note of caution to the trial Court dealing with sessions case to ensure that there are well settled procedures laid down under the Code of Criminal Procedure as regards the manner in which the trial should be conducted in sessions cases in order to ensure dispensation of justice without providing any scope for unscrupulous elements to meddle with the course of justice to achieve some unlawful advantage. In this respect, it is relevant to refer to the provisions contained in Chapter XVIII of the Criminal Procedure Code whereunder Section 231 it has been specifically provided that on the date fixed for examination of witnesses as provided u/s 230, the Session?s Judge should proceed to take all such evidence as may be produced in support of the prosecution and that in his discretion may permit cross-examination of any witnesses to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

26. u/s 309 of Cr.P.C. falling under Chapter XXIV it has been specifically stipulated as under:

309. Power to postpone or adjourn proceedings.--(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Provided that when the inquiry or trial relates to an offence under Sections 376 to Section 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.

(2) If the court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be

imposed on him.

Explanation 1 - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by a remand this is a reasonable cause for a remand.

Explanation 2 - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

27. In this context it will also be worthwhile to refer to a circular issued by the High Court of Delhi in Circular No. 1/87 dated 12th January 1987. Clause 24A of the said circular reads as under:

24A disturbing trend of trial of Sessions cases being adjourned, in some cases to suit convenience of counsel and in some others because the prosecution is not fully ready, has come to the notice of the High Court. Such adjournments delay disposal of Sessions cases.

The High Court considers it necessary to draw the attention of all the Sessions Judges and Assistant Sessions Judges once again to the following provisions of the Code of Criminal Procedure, 1973, Criminal Rules of Practice, Kerala, 1982 and Circulars and instructions on the list system issued earlier, in order to ensure the speedy disposal of Sessions cases.

1. (a) In every enquiry or trial, the proceedings shall be held as expeditiously as possible, and, in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. (Section 309(1) Cr.P.C.).

(b) After the commencement of the trial, if the court finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable. If witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded, in writing. (Section 309(2) Cr.P.C.).

2. Whenever more than three months have elapsed between the date of apprehension of the accused and the close of the trial in the Court of Sessions, an explanation of the cause of delay, (in whatever court it may have occurred) shall be furnished, while transmitting the copy of the judgment. (Rule 147 Crl. Rules of Practice).

3. Sessions cases should be disposed of within six weeks of their institution, the date of commitment being taken as the date of institution in Sessions Cases. Cases pending for longer periods should be regarded as old cases in respect of

which explanations should be furnished in the calendar statements and in the periodical returns. (High Court Circular No. 25/61 dated 26th October 1961).

4. Sessions cases should be given precedence over all other work and no other work should be taken up on sessions days until the sessions work for the day is completed. A Sessions case once posted should not be postponed unless that is unavoidable, and once the trial has begun, it should proceed continuously from day to day till it is completed. If for any reason, a case has to be adjourned or postponed, intimation should be given forthwith to both sides and immediate steps be taken to stop the witnesses and secure their presence on the adjourned date.

On receipt of the order of commitment the case should be posted for trial to as early a date as possible, sufficient time, say three weeks, being allowed for securing the witnesses. Ordinarily it should be possible to post two sessions cases a week, the first on Monday and the second on Thursday but sufficient time should be allowed for each case so that one case does not telescope into the next. Every endeavour should be made to avoid telescoping and for this, if necessary, the court should commence sitting earlier and continue sitting later than the normal hours. Judgment in the case begun on Monday should ordinarily be pronounced in the course of the week and that begun on Thursday the following Monday. (Instructions on the list system contained in the O.M. dated 8th March 1984).

All the Sessions Judges and the Assistant Sessions Judges are directed to adhere strictly to the above provisions and instructions while granting adjournments in Sessions Cases.

28. In this context some of the decisions which have specifically dealt with such a situation which has caused serious inroad into the criminal jurisprudence can also be referred to. In one of the earliest cases reported in *Emperor Vs. Badri Prasad*, a Division Bench of the Allahabad High Court has stated the legal position as under:

....Moreover, we wish to point out that it is most inexpedient for a Sessions trial to be adjourned. The intention of the Code is that a trial before a Court of Session should proceed and be dealt with continuously from its inception to its finish. Occasions may arise when it is necessary to grant adjournments, but such adjournments should be granted only on the strongest possible ground and for the shortest possible period.....

(Emphasis added)

29. In a decision reported in *Chandra Sain Jain and others V. The State* - 1982 CrL. L.J. NOC 86 (ALL) a Single Judge has held as under while interpreting Section 309 of Cr.P.C.

Merely because the prosecution is being done by C.B.I. or by any other prosecuting agency, it is not right to grant adjournment on their mere asking and

the Court has to justify every adjournment if allowed, for, the right to speedy trial is part of fundamental rights envisaged under Art. 21 of the Constitution, Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, Foll.

(Emphasis added)

30. In the decision reported in *The State V. Bilal Rai and others* - 1985 Cri. L.J. NOC 38 (Del) it has been held as under:

When witnesses of a party are present, the court should make every possible endeavour to record their evidence and they should not be called back again. The work fixation of the Court should be so arranged as not to direct the presence of witnesses whose evidence cannot be recorded. Similarly, cross-examination of the witnesses should be completed immediately after the examination in chief and if need be within a short time thereafter. No long adjournment should be allowed. Once the examination of witnesses has begun the same should be continued from day to day.

(Emphasis added)

31. In the decision reported in *Lt. Col. S.J. Chaudhary Vs. State (Delhi Administration)*, this Court in paragraphs 2 and 3 has held as under:

2. We think it is an entirely wholesome practice for the trial to go on from day-to-day. It is most expedient that the trial before the Court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that Sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available. If it is not, he may postpone the case, but only on the strongest possible ground and for the shortest possible period. Once the trial commences, he should, except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded.

3. We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his Advocate is finding it difficult to attend the court from day-to-day. It is the duty of every Advocate, who accepts the brief in a criminal case to attend the trial from day-to-day. We cannot over-stress the duty of the Advocate to attend to the trial from day-to-day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend. The criminal miscellaneous petition is, therefore, dismissed.

(Emphasis added)

32. In a recent decision of the Delhi High Court reported in *State Vs. Ravi Kant Sharma and Others*, a Single Judge of the High Court has held as under in paragraph 3:

3. True the Court has discretion to defer the cross-examination. But as a matter of rule, the Court cannot order in express terms that the examination-in-chief of the witnesses is recorded in a particular month and his cross-examination would follow in particular subsequent month. Even otherwise it is the demand of the criminal jurisprudence that criminal trial must proceed day-to-day. The fixing of dates only for examination-in-chief of the lengthy witnesses and fixing another date i.e. 3 months later for the purposes of cross-examination is certainly against the criminal administration of justice. Examination-in-chief if commenced on a particular date, the Trial Judge has to ensure that his cross-examination must conclude either on the same date or the next day if cross-examination is lengthy or can continue on the consecutive dates. But postponing the cross-examination to a longer period of 3 months is certainly bound to create legal complications as witnesses whose examination-in-chief recorded earlier may insist on refreshing their memory and therefore such an occasion should not be allowed to arise particularly when it is the demand of the criminal law that trial once commenced must take place on day-to-day basis. For these reasons, the order passed by the learned Additional Sessions Judge to that extent will not hold good in the eyes of law and therefore the same is liable to be set aside. Set aside as such. Learned Additional Sessions Judge should re-fix the schedule of dates of examination of prosecution witnesses and shall ensure that examination-in-chief once commences cross-examination is completed without any interruption.

(Emphasis added)

33. In a comprehensive decision of this Court reported in *State of U.P. Vs. Shambhu Nath Singh and Others*, the legal position on this aspect has been dealt with in extenso. Useful reference can be made to paragraphs 10, 11 to 14 and 18:

10. Section 309 of the Code of Criminal Procedure (for short "the Code") is the only provision which confers power on the trial court for granting adjournments in criminal proceedings.

The conditions laid down by the legislature for granting such adjournments have been clearly incorporated in the section. It reads thus:

309. xxx xxx xxx

11. The first sub-section mandates on the trial courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the sub-section sounded for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initial limb of the subsection by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such

examination "shall be continued from day to day until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the court. In such situation the court is not given any power to adjourn the case except in the extreme contingency for which the second proviso to sub-section (2) has imposed another condition, "provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing".

(emphasis supplied)

12. Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.

13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a "special reason" for bypassing the mandate of Section 309 of the Code.

14. If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case).

18. It is no justification to glide on any alibi by blaming the infrastructure for skirting the legislative mandates embalmed in Section 309 of the Code. A

judicious judicial officer who is committed to his work could manage with the existing infrastructure for complying with such legislative mandates. The precept in the old homily that a lazy workman always blames his tools, is the only answer to those indolent judicial officers who find fault with the defects in the system and the imperfections of the existing infrastructure for their tardiness in coping with such directions.

(Emphasis added)

34. Keeping the various principles, set out in the above decisions, in mind when we examine the situation that had occurred in the case on hand where P.W. 20 was examined-in-chief on 18.09.2000 and was cross examined after two months i.e. on 18.11.2000 solely at the instance of the appellant's counsel on the simple ground that the counsel was engaged in some other matter in the High Court on the day when P.W. 20 was examined-in-chief, the adjournment granted by the trial Court at the relevant point of time only disclose that the Court was oblivious of the specific stipulation contained in Section 309 of Cr.P.C. which mandate the requirement of sessions trial to be carried on a day to day basis. The trial Court has not given any reason much less to state any special circumstance in order to grant such a long adjournment of two months for the cross-examination of P.W. 20. Everyone of the caution indicated in the decision of this Court reported in Raj Deo Sharma Vs. The State of Bihar, was flouted with impunity. In the said decision a request was made to all the High Courts to remind all the trial Judges of the need to comply with Section 309 of the Code in letter and spirit. In fact, the High Courts were directed to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as per the law.

35. It is unfortunate that in spite of the specific directions issued by this Court and reminded once again in Shambhu Nath (supra) such recalcitrant approach was being made by the trial Court unmindful of the adverse serious consequences affecting the society at large flowing therefrom. Therefore, even while disposing of this appeal by confirming the conviction and sentence imposed on the appellant by the learned trial Judge, as confirmed by the impugned judgment of the High Court, we direct the Registry to forward a copy of this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision reported in Rajdeo Sharma (supra) and reiterated in Shambhu Nath (supra) by issuing appropriate circular, if already not issued. If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial Courts without providing scope for any deviation in following the procedure prescribed in the matter of a trial of sessions cases as well as other cases as provided u/s 309 of Cr.P.C. In this respect, the High Courts will also be well advised to use their machinery in the respective State Judicial Academy to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decisions reported in Rajdeo Sharma (supra) which has been extensively

quoted and reiterated in the subsequent decision of this Court reported in Shambhu Nath (supra) and comply with the directions at least in the future years.

36. In the result, while we upheld the conviction and sentence imposed on the appellant, we issue directions in the light of the provisions contained in Section 231 read along with Section 309 of Cr.P.C. for the trial Court to strictly adhere to the procedure prescribed therein in order to ensure speedy trial of cases and also rule out the possibility of any maneuvering taking place by granting undue long adjournment for mere asking.

10. It goes without saying that speedy trial in rape cases, not only ensures fair trial and examination of the witnesses without any influence, but also is for the benefit of the accused whose reputation is at a stake. Acquittal if granted, shall not only restore reputation, but shall bring an end to the ordeal faced by the accused.

11. It will be also necessary to notice that Law Commission in its Report No. 239 has recommended that expeditious investigation and trial of criminal cases against an influential person, is an imperative.

12. It will be apposite here to quote few portions from the above Report of Law Commission:

1.3 Public interest demands that the criminal cases especially those related to serious crimes are concluded within a reasonable time so that those guilty are punished. Further, from the point of view of accused also, the right to speedy trial is a fundamental right. People get frustrated in the system if at every stage there is delay and the process of justice is not allowed to take its normal course, more so, when deliberate attempts are made to subvert and delay the process. Further, with the long passage of time, whatever evidence is there, it will vanish or eclipse. Oral evidence which in most of the cases is vital to the prosecution, will take a devious or distorted course. Hostile witnesses and witnesses with faded memories will be writ large in the system, with the long passage of time.

13. One of the accused in the present case, is perceived as a Godman and wields a lot of influence as he is having a very large following. As to who can be termed influential in public life, Law Commission in its report observed as under:

3. Influential persons in public life - illustrative list. The question whether the term "influential person in public life" needs to be defined has engaged the attention of the Law Commission. The Commission feels that such definition is not feasible and it does not serve any purpose. The influential persons are not merely those who are holding or who have held public offices; even their henchmen and close relations, the rich and powerful and men with muscle power having links with one or the other political party are quite influential in their own way and they have the potential to create stumbling blocks for smooth investigation and effective trial. Moreover, it is not desirable to give too much of an expansive meaning to this term so as to include elected representatives at

the Panchayat level or all the office-bearers of various political parties. To specify with precision the term "influential person in public life" is a complex task. It is a wide and nebulous term. The whole object of specifying influential persons in public life as a category is to enable the Police and Judicial Officers concerned to keep track of cases involving such persons and to endeavour avoidance of delays and bottlenecks in the way of speedy investigation and trial.

14. It is to be noted that in the State of Rajasthan, Special Courts have been created for trial of offences against woman. A court too, to this effect has also been established at Jodhpur.

15. Thus noticing the necessity of speedy trial, this Court directs the trial court to proceed with this case from 16.11.2013 onwards and decide the issue whether cognizance is to be taken against the accused or not and if so, for what offences? The trial court shall without any interruption and hindrance proceed with the trial on day to day basis till its conclusion so that the speedy trial is ensured.

16. In the present case, as per prosecution case, a child has been raped. This case has attracted much publicity. Reputation of the family of the child has immensely suffered. Till today, the State has given no compensation to the child.

17. Way back, this Court in *Suo Moto Vs. State of Rajasthan*, took suo moto notice and had given directions to evolve a scheme for providing compensation to the victims of rape. This Court has held as under:

COMPENSATION TO VICTIM:

27. Turning to the question of compensation. It is now well established by a series of decisions of the Apex Court that "right to life does not mean animal existence but means thing more namely the right to live with human dignity". This was first held by the Apex Court in *Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others*,

28. The Mallimath Committee has also made recommendations as to the compensation for victim. In para 6.8.7 and 6.8.8, the Committee has recommended as follows:

6.8.7 Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts. In India have a late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The recent decisions. In *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, and in *Chairman, Railway Board v. Chandrima Das* are illustrative of his new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial

monetary compensations have been awarded against the instrumentalities of the State for failure to protect the rights of the victim.

6.8.8 These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle Invoked is the obligation of the State to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably.

29. In *Shri Bodhisattwa Gautam's case* (supra), the Court observed as follows:

Rape is thus not only a crime against the person of a woman (victim), It is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects.

30. In a landmark judgment of the Apex Court in the case of *Delhi Domestic Working Women's Forum Vs. Union of India (UOI) and Others*, , parameters have been laid down under which a case of rape is to be travelled.

31. In *P. Rathinam v. Union of India*, : 1989 Supp (2) SCC 716 the Apex Court laid down the principle of interim compensation to be paid to the victim pending trial. In the said case, the Apex Court directed the State Government to pay a compensation of Rs. 20,000/- to the victim pending trial.

32. In another case *State of Maharashtra Vs. Rajendra Jawanmal Gandhi*, the Apex Court awarded compensation to the victim in a sum of Rs. 40,000/-.

33. A leading case of the Apex Court in this line is *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, . In the said case, a foreign tourist (Bangladeshi) was gang raped at the Howrah Railway Station. The Apex Court upheld the compensation of Rs. 10 lacs awarded by the Calcutta High Court on a petition filed under the label of "P.I.L." by an advocate viz; Chandrima Das. In the said case, the Apex Court has referred to the number of instances, wherein the compensation has been awarded by the Constitutional Courts. In India i.e. the Supreme Court and the High Courts. In exercise of their powers under Articles 32 and 226 of the Constitution respectively in cases related to the custodial deaths and medical negligence. Reference may be made to (1) *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, (2) *State of M.P. Vs. Shyamsunder Trivedi and Others*, (3) *People's Union for Civil Liberties*

Vs. Union of India and another, ; (4) Kaushalya v. State of Punjab, (1999) 6 SCC 754; (5) Supreme Court Legal Aid Committee Vs. State of Bihar and Others, ; (6) Dr Jacob George Vs. State of Kerala, (7) Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, and (8) Manju Bhatia (Mrs) and Another Vs. New Delhi Municipal Council and Another, .

34. Thus, the argument that the victim is a foreign national and, therefore, no relief can be granted to her under the public law, is not available for two reasons:

Firstly; on the ground of domestic jurisprudence based on Constitutional provisions; and

Secondly; on the ground of human rights jurisprudence based on the Universal Declaration of Human Rights, 1948 which has the international recognition as the "Moral Code of Conduct" having been adopted by the General Assembly of the United Nations.

35. The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory states and the meaning given to the provisions of those Declarations and Covenants have to be such as would help in effective implementation of those rights. The applicability of the United Nation's Universal Declaration of Human Rights and the principles thereof may have to be read, if need be, into the domestic jurisprudence.

36. Our Constitution guarantees all the basic and fundamental human rights set out in the Universal Declaration of Human Rights, 1948, to its citizens and other persons. These basic human and fundamental rights are enumerated in Part III of the Constitution of India. The nature of the enumerated in Part III are basic in nature. These are the basic human rights without which the development of woman's personality will be in jeopardy.

37. The fundamental rights enumerated in the Constitution are available to all people who are residing within the territory of India of course some fundamental rights are exclusively reserved for the citizens of India only. Article 21 of the Constitution of India ensures right to life and personal liberty to all. The meaning of the word "life" in Article 21 cannot be narrowed down. According to the tenor of the language used in Article 21, it is available not only to every citizen of the country but also non-citizens. On this principle, any person coming within the country as a tourist or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They are also entitled to right to life in this country. Thus, they are having 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 but are in the country either residing as a tourist. The fundamental rights under our Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the Declaration of Civil and Political Rights and the Covenants of Economic Social and Cultural Rights, to which India is a

party, having ratified them. 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 the Apex Court in its various decisions relating to Article 21 of the Constitution.

38. However, the rights guaranteed under Part III of the Constitution are not absolute. These rights are subject to reasonable restrictions. Therefore, in case of non-citizens also these rights are available subject to such restrictions as may be imposed in the interest of the security of the State or other important considerations. Interest of the nation and security of the State is supreme since the adoption of the Universal Declaration of Human Rights world has undergone many changes. Many political, social and economic changes occurred world wide. The new global menace-terrorism has greatly disturbed the global scenario. Primacy of the interest of the nation and security of the State will have to read Into the Universal Declaration as also in every article dealing with fundamental rights including Article 21.

39. In National Human Rights Commission Vs. State of Arunachal Pradesh and Another, the court held that the Indian Constitution confers certain rights on every human being, may be a citizen of this Country or not, which Includes right to life. The Court observed thus:

We are a Country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus, the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise...

40. The Gujarat High Court in Ktaer Abbas Habib Al Qutaifi and Another Vs. Union of India (UOI) and Others, relying on the Universal Declaration of Human Rights and the Article 33 of the United Nations Convention on the Status of Refugees, held that the protection of human life and liberty is available to refugees, if his activities are not prejudicial to the law and order or security of the Country. The Court also observed that the Member nations are expected to respect such conventions. It was a case of an Iraqi refugee. The Court applied the principle of "Non-refoulment" which means that no State shall return a refugee to the country where his life may be in danger.

41. In the case of People's Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another, the Supreme Court referred to Article 17 of the International Covenant on Civil and Political Rights, 1966 and Article 12 of the Universal Declaration of Human Rights, 1948, so as to derive from Article 21 a right to privacy in India. The court observed in this connection:

International law today is not confined to regulating the relations between the States. Scope continues to extend. Today matters of social concern, such as health, education and economics apart from human rights fall within the ambit of

International law is more than ever aimed at individuals. It is almost an accepted proposition of law that the Rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law.

42. In the instant case, the German tourist is not a citizen of India, but she being a tourist, entitled to all the constitutional rights available to a citizen so far as "right to life" is concerned. She is entitled to be treated with dignity and is also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she cannot be subjected to a treatment which is below dignity, nor could she be subjected to physical violence at the hands of anybody. In this case, it is not merely a matter of violation of an ordinary right of a person, but the violation of fundamental rights is involved.

43. Considering all the facts and circumstances of the case, we consider it appropriate to award a compensation of Rs. 3 lacs to the victim in the instant case, payable by the State Government.

18. It is to be noted with lot of satisfaction that due to initiative taken by the courts, the Legislature by introducing Act No. 5 of 2009 had introduced Section 357A by enacting Victim Compensation Scheme. Whether accused is acquitted or convicted irrespective of that, a victim is to be compensated.

19. Having held that a victim of rape is entitled to compensation, this Court has to ponder, whether in the facts and circumstances of given case, the compensation, as an interim measure, can be awarded to the victim and if so, what safeguards are to be ensured by the Court that the same is not misused.

20. National Commission for Women had prepared a Revised Scheme for Relief and Rehabilitation of Victims of Rape. The scheme revised on 15th April, 2010 has noticed the necessity of providing interim compensation to the victim of rape.

21. The statement of objects and reasons of the Scheme read as under:

The Hon"ble Supreme Court in Delhi Domestic Working Women's Forum Vs. Union of India and others writ petition (CRL) No. 362/93 had directed the National Commission for Women to evolve a "scheme so as to wipe out the tears of unfortunate victims of rape". The Supreme Court observed that having regard to the Directive principles contained in the Article 38(1) of the Constitution, it was necessary to set up Criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatized to continue in employment. The Court further directed that compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries compensation board whether or not a conviction has taken place. The Board shall take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.

To give effect to the aforesaid direction of the Hon"ble Court, the National

Commission for women had sent a draft scheme to the Central Government in 1995. The Committee of Secretaries had on this given the following guidelines in this regard:-

(i). That a plan scheme would be prepared by the NCW/DWCD for disbursing compensation to the victims of rape and the scheme should also provide for interim compensation.

22. For re-integration and rehabilitation of the victims of rape, ground realities are too traumatic. A victim of rape requires long term counseling; physical and psychological therapy, social security, gainful employment. All these facilities are lacking. To make the rape victim to wait and have patience till the trial is concluded, is to leave her to the miseries without applying any balm or providing succour. A rape victim cannot stand in the hostile atmosphere, until some aid is provided by the society. Since institutions for providing psychological counseling to overcome the scar, are not available and for gainful employment, institutions to provide vocational education are also lacking. Only means to rehabilitate victim of rape is to provide compensation. What compensation is to be awarded is a prerogative of the trial judge, after conclusion of the trial. Rape victims urgently require sustenance or subsistence for integration and to live with dignity in the society. The courts always in a given case can provide interim compensation. Providing of interim compensation, in no way, shall have any bearing on the trial. The courts while awarding interim compensation, neither pronounce the accused as guilty nor victim as sufferer.

23. Suffice it to say, where a person, who has levelled an allegation and has opted to come in public glare, efforts must be made to insulate her, so that he can defend her case with dignity. For availing lawful remedy, best legal professional help should be made available to the rape victim to espouse her cause. One cannot become oblivious of the fact that in present case top-notch professionals are standing for the accused.

24. The interim relief awarded, can always be reduced or enhanced by the trial court. In the given circumstances, to ensure that such an interim compensation awarded is not misused, way can be evolved for return of the amount, if it is held by the trial court that the case has been falsely instituted. In that case, the amount can be recovered along with damages from the person, who, on the basis of false allegations has set the criminal law into motion.

25. Consequently, a direction is issued to the State Government to pay compensation of Rs. Three Lacs, as an interim measure, to the victim. The compensation shall be paid to the victim within one month from today. The State Government while disbursing compensation, shall take an indemnity bond from the victim, so that in case the case is held to be false, the amount is returned to the State with interest and damages to be accessed by the trial court.

26. Nothing said herein shall be construed as expression on the merits of the case and the trial court shall confine itself strictly to the evidence adduced in the

trial, uninfluenced by any observation made herein above.

27. On prayer made by counsel for the petitioners, the case is adjourned and the present petitions be listed after order of the trial court on issue of cognizance is placed on record. Copy of this order be forthwith sent to trial court for strict compliance.