GOVINDASWAMY V. STATE OF KERELA: CASE ANALYSIS

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I. INTRODUCTION

After the issuance of a notice for the contempt of court to Justice Markandey Katju, the Soumya Rape case[1], which was already in the headlines in the anticipation of death penalty for the accused, has gained the momentum once again. Without any inclination to any of the sides in the disagreements between Justice Gogoi and Justice Katju, in my humble opinion, this judgment is as a classic instance of the literal interpretation of section 300 of the Indian Penal Code (IPC) in addition to safeguarding the rights of the accused. Thus, in this article, I aim to analyze the judgment and emphasize the importance of the rights of the accused in the Criminal Law system.

The facts of the case were as follows. The victim, a girl aged 23 was travelling in Ernakulam-Shoranur train from Vallathol Railway Station. The accused after seeing the girl alone in the compartment, made sexual advances towards her. When the girl tried to run for help and escaping the accused, he caused multiple injuries to her, leading to her falling from the moving train. The accused who was a habitual offender, jumped out of the train himself, dragged the girl to a abandoned place near the railway tracks and raped her as she lied unconscious due to injuries. Followed by that, he stole her cell phone and ran away from the crime scene. The girl was discovered later by the police covered with blood and almost naked. Thereafter, she was admitted in a hospital where she took her last breath after three days of the incident.

The accused was held to be guilty of rape and murder by Thrissur Fast Track Court in October 2011.[2] The decision was appealed to the High Court of Kerela and it upheld the

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[1] Govindaswamy v. State of Kerela, Criminal Appeal No. 1584-1585 of 2014 (Supreme Court, 13/11/2016)

[2] *Soumya Killer gets death sentence by Kerela Court*, The Times of India (11/11/2011), available at http://timesofindia.indiatimes.com/india/Soumya-killer-gets-death-sentence-by-Kerala-court/articleshow/10689896.cms, last seen on 12/5/2017.

decision of the trial court.[3] Lastly, the after an appeal to the Supreme Court, it set aside the charges of murder and awarded life imprisonment to the accused.[4] This decision was subjected to a review after various criticisms but the judgment of the supreme court remained the same.

II. CONSONANCE WITH THE INDIAN PENAL CODE

Before we delve any further into the critique, it is imperative to set out a few important points. Firstly, my study is mostly centered around the question of legality of offence of culpable homicide amounting to murder, which was the major reason behind the critisim of the judgement. The other allegations of rape and robbery have been held to be true confirmed by the Supreme Court.

On a plain reading of section 300 (a) of the Indian Penal Code (IPC)[5]one may get a hint that the accused must cause the bodily injury to the deceased either (a) with the 'specific intent' of causing death or (b) with the 'specific intent' of causing bodily injury of the nature which will, in most of the probability cause death.

However, it is important to note that Justice Gogoi held that the accused Govindaswamy lacked the 'specific intent' to cause the death of the victim and this was visiblestraight the initial assaults on the victim's body. He remarked that "the intention of the accused(Govindaswamy) was to make victim sub-conscious or in a supine position, so that she does not protest and resist when he commits the sexual intercourse with her"[6].It was also remarked by him that since the intention of the commission of sexualadvancements towards the victim was clear since the beginning, the murder, if at all had to be carried, would have been done after the intercourse.[7] Therefore, when the intent of the accused was to weaken the victim so that she is not able to protest during the rape, the provision for murder does not apply. Hence, the accused was acquitted of the charge for murder. Justice Gogoi, also upheld the principal laid down in *William*

[3]The State of Kerela v Govindaswamy, Death Sentence Reference No.3 of 2011 (Kerela High Court, 04/11/2013).
[4]Supra 1.
[5] S. 300(a), The Indian Penal Code, 1960 ("If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused").
[6]Supra 1.
[7]Ibid.

Staney v State of Madhya Pradesh[8] also took into consideration the fact that the death of the victim did not happen on the spot but she survived for some days in the hospital before death, which implies that the injuries were not of the nature that will in all probability cause death of the victim.[9]

Prima facie the judgment complies with sections 300(a) and (b) of the Indian Penal Code. However, taking section 300(c)[10] into consideration, it is to be noted that the fatal injury inflicted "should be sufficient in the ordinary course of nature to cause death". In the present case, in accordance with the forensic reports, among others, there were two major injuries. The first of them was caused due pushing forward of the victim and banging her head against a flat surface leading to severe implications in her skull.The second injury needs to be studied very carefully since it was the point of contention and the decisive factor for the judgment.The prosecution argued that the victim lost consciousness after the first injury and thereafter the accused pushed her out of the moving train, leading to even more injuries. However, the defence argued that the victim herself jumped out of the train in order to run from the accused thereafter injuring herself. However, in either of the cases, the chain of causation gets completed and the liability of the accused arises. In order to reach at a conclusion, a further analysis of the forensic reports is done in the next section.

III. FORENSIC ANALYSIS

According to the forensic evidence, the medical reports clearly mentioned that the injury caused due to the jump (or falling) from the train was on the cheek and towards the eye of the victim, showing an upward glide and no resistance by the hands of the victim.[11] The inference that the medical reports suggest is that the train was moving at a negligible speed when the victim was pushed out (or jumped) from the train and her left side of the face hit the rail track, causing this injury. No injury marks on the hands show that the victim was not in a position of defending her body, as a natural reflex, from getting hurt

[8]SC 1956, AIR 116.
[9]Ibid.
[10] S 300 (c), The Indian Penal Code, 1960 ("If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death")
[11]Supra 1.

by the train.[12] The point that is to be noted out of these medical reports is that, even if the accused pushed the victim out of the train, since it was moving at a negligible speed, and he himself jumped out of the train after the victim(as was seen by the security guard), the entire transaction did not include any major risk to the life of the victimat the time of commission of the offence.The death of the victim was ultimately caused by the combined effects of both the injuries.[13]The speed of the train is of utmost importance here. The negligible speed of the traincombined withmoderate injuries without any specific cuts or permanent privations, show that the victim did not die of solely because of any one of the injuries but due to the cumulative effect of the injuries, rape and abandonment leading to a delay in the medical care. Hence, it can sufficiently be proved that the injuries were not sufficient in the ordinary course of nature to cause death.

It could not be proved beyond reasonable doubt that the accused had formed a specific intent of killing the victim and this saved the accused from being charged for murder. It can be observed that there not a singular hypothesis available in order to prove the intention of the accusedfor causing murder. Although it is true that the death of the victim was caused because of the injuries inflicted by the accused, however, in order to be held guilty under section 300, it is to be proven that the accused had sufficient "mensrea" to cause death or the act was so dangerous that it will, in all probability, cause death of the victim.[14]It should be noted that even the medical report has not attributed either of the injuries to be the sole cause of death and has mentioned about the combined effect of both in addition to the forced sexual intercourse.[15]And needless to reiterate, it is the common knowledge that the guilt of the accused has to be proved "beyond reasonable doubt" in order to convict him.

Thus, the case simply can be stated in the form of a condition where the accused caused injuries to the victim in order to rape her and the victim died as a result. The decisive question before the court was whether the accused would be liable for causing the death of the victim when he clearly wanted to commit some other crime and death was a resultant? And in a situation of lack of substantive evidence against the accused, whether

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[12] Ibid.
[13] Ibid.
[14]KI VIBHUTE, PSA PILLAI'S CRIMINAL LAW, 2012
[15] Ibid.

he should be made liable for a crime as grievous as murder and subjected to death penalty for the same?

From the analysis and decision, it seems that the Supreme Court has not exonerated but maintained the conviction for rape and for lack of evidence could not substantiate the charge under 302 IPC - ultimately only the sentence was changed from death to life imprisonment, thereby striking the balance between the wrong done to the victim and the rights of the accused.[16]

IV. THE CRITICAL PERSPECTIVE

This decision of the Supreme Court has largely been criticized by many legal scholars, media houses and women rights activists on factual and moral basis.[17] A former judge of the Supreme Court, Justice Markandey Katju had been one of most vociferous critics of this judgment and he urged the Supreme Court to take into account the plight of the victim.[18]Justice Katju has also made a legal challenge to judgment by remarking that "there are four sub sections in S 300, the satisfaction of any of which, is enough to prove the offence of murder" and just because it can factually be inferred the intention of the accused was to make victim weak and supine, does not mean he never intended to kill her.[19]He also reminded the court of the increasing number of rape cases in the country and the efficacy of Supreme Court's decisions in curbing the malpractice. It was also argued that the Delhi Rape Case[20] should be looked upon as a good example for the injuries that are sufficient in the ordinary course of nature to cause death. The standards of punishment should be strictly interpreted against the accused when the victim is not able to survive after rape, and since after the Delhi Rape Case, such incidents have been on a rise, where the accused causes gruesome injuries to the victims, the Supreme Court

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[16]Supra 1.

[17]*Soumya rape and murder case: SC commutes convict's death sentence to 7 years*, Firstpost(15/09/2016), available at http://www.firstpost.com/india/soumya-rape-and-murder-case-sc-commutes-convicts-death-sentence-to-7-years-3005426.html. lastseen on 18/02/2017.

[18] Blog of Justice Markandey Katju, available at http://justicekatju.blogspot.in/2016/09/the-supreme -court-judgement-in-soumya_16.html, last seen on 12/5/2016.

[19] *Soumya Rape Case judgment needs to be reviewed, says Markandey Katju*, The Indian Express (29/09/2016) available at http://indianexpress.com/article/india/india-news-india/sc-grievously-erred-in-soumya-rape-case-markandey-katju-3034232/, last seen on 12/5/2016.

[20]2014(2)ACR1615(SC).

should award the strictest of the punishment to the accused in order to set a deterrent for the society and such minded people.

Moreover, the simple chronology of the death of the victim, 3 days after getting brutally raped and injured by the accused point towards the role of accused, though minimal in causing the death of the victim. In such circumstances, the prerogative of the apex court should be to provide a good deterrent to the society.[21]

V. CONCLUSION

In my humble opinion, the critical perspective is based on the sentimental and moralistic attitude of the society. It should be noted that almost all the criticisms of the judgment fail to acknowledge the rights of the accused and the 'rarest of the rare' doctrine for the award. There has only been one strong legal challenge posed by Justice Katju[22] and I have rebutted that in the analysis of all the sub-parts of section 300.[23]

Right from the landmark criminal case of Virsa Singh v State of Punjab[24], the standards of interpretation of forensic reports have been an objective one. The courts have relied on the medical reports without further analysis in order to prevent any bias. This was done because of the fact that the inference of judges might differ and it will cause difficulty in the establishment of a clear set of precedents. Moreover, it is in the interest of the accused to be saved from any violations of natural justice principles. The maintenance of this balance between the rights of he accused and the victim becomes more difficult in the cases of murder and death penalty because the crime needs to be proved 'beyond a reasonable doubt' in order for the court to pass the sentence for the deprivation of accused's life.[25]

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[21] TA Ameerudheen, *SC Verdict on Soumya rape- murder case not 'punishment enough' for the crime?*, Hindustan Times (26/09/2016) available at http://www.hindustantimes.com/india-news/sc-verdict-on-soumya-rape-murder-case-not-punishment-enough-for-the-crime/story-89HuXiSdcozRY0yw1fyOCM.html, last seen on 12/5/2017.

[22] Supra 19.

[23] See Part III, Forensic Analysis (above).

[24] 1958 AIR 465.

[25] Supra 15.

In the present case, the court has highlighted a distinction between the death that is caused as a result of grievous injuries and the death that is caused with a specific intention. The bench gave preference to the literal interpretation of the medical reports over the actual plight suffered by the victim. The reason for the same is discussed in the preceding paragraph regarding the prevention of subjective interpretation of medical reports.Moreover, the court also differentiated in factual and legal causation. A person could be liable for factually causing a wrong, however, if the acts of the wrongdoer are not contrary to any legal principals or is not a substantive reason for the commission of the crime, the benefit of the doubt is generally given to the accused.

It needs to be understood that the mensrea for causing rape is different from the mensrea of causing death. In the present case, the victim died of the cumulative effects of the bodily injuries and forced sexual intercourse in addition to abandonment. However, none of the acts alone were capable of leading to the death of the victim. There arose a situation of lack of evidence to prove the guilt of the accused. So in this scenario, he was given the benefit of doubt. In these circumstances, a blatant criticism of the judgment is not the wisest thing to do. The critiques, who are mostly media-houses and journalists should look into and try to understand the legal aspect of the situation and the restrictions of the highest court of the land. The arguments they have been advancing are non-legal and have a very light weightage against the established legal practices and settled precedents of Criminal Law.

In addition to that, there is a high discouragement against capital punishment for any kind of crimes, how big whatsoever.[26] The same media houses and journalists criticising this judgment have been creating a pressure on the courts not to award death penalties Thus in this scenario, passing this judgment has reinstated the balance between the rights of both the parties in the eyes of law.

Thus, in my humble opinion, the SC has portrayed itself to be as much of the accused as of the victim. It has adjudicated the case on simple balance of probabilities and in

[26] *Why death penalty should be abolished*, International Commission against death penalty, available at http://www.icomdp.org/arguments-against-the-death-penalty/, last seen on 12/5/2017.

accordance with the strict principles of law, which in the socio-legal scenario that followed the incident has been a herculean task.

Therefore, this decision of the Supreme Court will go down the books as a classic example of literal interpretation of the statute while acknowledging and safeguarding the rights of the accused, in a socio—legal context and amidst the rage of the society against the judgment, where deterrence needs to be established such crimes of rape and causing grievous bodily injury.