

BACK GROUND FOR THE MOOT PROPOSITION

Since times immemorial India i.e. Bharat is known as a highly civilized country. We have paid highest respect, regards and reverence to women. Our culture, conventions and traditions have taught us to maintain modesty, dignity and honor to females of all ages. However, with influx of many philosophies, illicit sex hunger, liberal attitude of women, consumption of alcohol, persons in authority and eminence at work places, coaching and educational centers, etc are indulging in molestation, abducting, rape, domestic violence, etc, spoiling our national image and dignity of women. Many provisions to penalize exist to curb such ill-treatment, but are ineffective. Women do not feel safe and secured. The moot proposition highlights the menace of outraging modesty of woman to arouse awareness in youth.

MOOT COURT PROPOSITION

Brief Facts:

1. Jainendra Pratap Singh Rajput, the appellant – accused a highly educated, holding dignified position as Inspector General of Police at the material time was in the Tennis Management Board, Jodhpur as Director (Vigilance & Security). He also founded Marudhar Tennis Association (in short M.T.A.) in the year 1988, whose office of M.T.A. was established in the garage of House, 469, Sector 6, Jodhpur owned by the appellant – accused which was divided into three portions wherein front portion was being used as the office of M.T.A. and other two portions were being utilized by T. Thomas and Kuleep Singh, Coach and Manager respectively of the Association for residential purposes.

2. Ms. Ruchika (since deceased) daughter of Shri Malhotra and Ms. Aradhana daughter of Shri Jai Prakash (the complaint) both aged about 20 years, residents of Jodhpur, brilliant students of Five Year Law College, got themselves enrolled as members of the Association. Both of them were good friends and used to go together for practice at the Tennis Court. Ms. Ruchika was

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crowned as “Beauty Queen” in a function where Shri J.P.S. Rajput was Chief-guest. The appellant – accused was also a frequent visitor to the said Tennis Court. One day, when Ms. Ruchika informed the appellant-accused met her father – Shri Malhotra on 11.08.1990 in order to persuade him to not to send his daughter out of the Country for specialized tennis Coaching and promised that special coaching would be arranged for her at M.T.A. itself and also asked him to send Ruchika to his office on the very next day in connection with the same. Shri Malhotra asked her to meet the appellant-accused in his office on 12.08.1990.

3. On 12.08.1990, Ms. Ruchika in skirt and top with face make-up visited the house of Ms. Aradhana and then both of them went to meet the appellant-accused who was standing outside the office. The appellant-accused insisted them to come inside the office. On his insistence, both the girls went inside the office. The appellant-accused got fetched one chair which was occupied by Ms. Ruchika and Ms. Aradhana kept standing on the right side of Ms. Ruchika while the appellant-accused sat in his chair which was on the other side of the table. The appellant-accused requested Ms. Aradhana to call for Mr. Thomas – the Coach. Accordingly, Ms. Aradhana went outside leaving behind the appellant-accused and Ms. Ruchika in the office. Ms. Aradhana asked the person who fetched the chair for her in the office to inform the Coach to come to the office of the appellant-accused. However, the Coach refused to come.

4. Immediately thereafter, when Ms. Aradhana returned to the office, she witnessed that Ms. Ruchika was in the grip of the appellant-accused, who was holding one hand of Ruchika in his hand and his other hand was around her waist. The appellant-accused was pulling her towards his chest so as to embrace her and Ruchika was trying to push him back with her free hand. The appellant-accused was also seen to kiss Ms. Ruchika and trying to open her skirt.

5. On seeing Ms. Aradhana (PW-13), the appellant-accused got frightened and released Ms. Ruchika and fell on his chair. The

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appellant-accused asked Ms. Ardahana to go out of his room again and personally bring the coach with her. The appellant-accused insisted Ruchika to stay in his room, but she somehow managed to escape. When Ardahana was about to go behind Ruchika, the appellant-accused told her “Ask her to cool down, I will do whatever she will say”. After listening to this Ms. Aradhana also ran behind. The appellant-accused informed on mobile to Ms. Ruchika to come on 13.08.1990 at the office of the Association at 6.00 P.M. along with all certificates and credentials.

6. Ms. Ruchika left for office on 13.08.1990 in her Car wearing salwar and sleeveless kurta, with usual make-up and a file. She parked the Car and left her maid servant in the Car. She found the appellant – accused in his office in dim-light, drinking wine and waiting for her. He offered wine or beer, but she refused. While she was showing the certificates and credentials from her file, the appellant-accused forced her on the couch lying in the office and tried to undress and attempted rape. However she escaped and rushed to her Car leaving the file there.

7. On 14.08.1990, Ms. Ruchika along with Ms. Aradhana went to the Tennis Court at about 4.30 p.m., instead of their usual timing, in order to avoid the appellant-accused, who used to visit the court in the evening. When both the girls were about to return, at about 6.30 p.m., Mr. Paltoo – the ball picker, came out of the ground and told Ms. Ruchika that the appellant-accused had called her in his office for collecting the recommendatory letter. . However, Ms. Ruchika refused to meet him. She pointed out to Ms. Aradhana that since they had not informed their parents about the mis-beahaviour of the appellant-accused on 12.08.1990 and 13.08.1990, the appellant-accused was feeling emboldened and had again called her to his office with a bad motive. Thereafter, both of them decided to disclose the incidents that took place on 12.08.1990 and 13.08.1990 to their respective parents. Accordingly, Ruchika narrated the incident of her molestation and attempt to rape to her father, Shri Malhotra. Also, the parents of Ms. Aradhana were made aware of the entire incident.

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8. On hearing this parents of both girls gathered the residents of the locality, who were mostly parents of trainee boys and girls and they went to the M.T.A. office to meet the appellant-accused but they were informed that the appellant-accused had already left for Jaipur. On 15.8.1990, a Memorandum/petition, duly signed by Ms. Ruchika, Ms. Aradhana, Mr. Malhotra and Mr. Jai Prakash and some residents was presented to the then Secretary(Home), Rajasthan. After the approval of the Home Minister, Shri R. R. Singh, the then DGP was directed to hold an inquiry into the allegations leveled against the appellant-accused in the Memorandum / petition.

9. After conducting the enquiry into the incident, Shri R.R. Singh concluded that the allegation of molestation is based on true facts and a cognizable case is made out against the appellant-accused under the provisions of the Indian Penal Code, 1860 (in short 'the IPC') and forwarded his enquiry report dated 13.09.1990 to the Secretary(Home), Government of Rajasthan.

10. During investigation it was also revealed that after the incident of molestation, Ms. Ruchika confined herself in her house. Later, on 28.12.1993, she committed suicide by consuming poison and died on 29.12.1993. In her suicide note she mentioned the above incidents as the root cause.

11. The enquiry report by Shri R. R. Singh was examined by the Legal Division of the Government of Rajasthan in 1990 and 1992 which also recommended for registration of a case against the appellant-accused. Jai Prakash – the complainant / Respondent No. 2 herein requested several authorities in the Government of Rajasthan for registration of a case but no action was taken on which he filed a Criminal Writ Petition being No. 1694 of 1997 before the Rajasthan High Court. The High Court, vide Order dated 21.08.1998, issued directions to the Superintendent of Police, Jodhpur that after registration of the case, the investigation shall be handed over to the Central Bureau of Investigation (CBI) and the same shall be conducted by an officer not below the rank of DIG. Supreme Court, by its order dated 14.12.1999, upheld the

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order of the High Court dated 21.08.1998, which culminated into registration of a First Information Report (FIR) being No. 516 of 1999 under Sections 354 and 509 of the IPC as PS Jodhpur, Rajasthan against the appellant-accused.

12. The CBI filed charge-sheet dated 16.11.2000 before the Court of Special Judicial Magistrate, CBI, Jodhpur under Section 354 of the IPC. A petition under Section 473 of the Code of Criminal Procedure, 1973 (in short 'the Code') was filed by the CBI for condoning the delay in filing the charge-sheet and for taking cognizance which was allowed by the Court of Special Judicial Magistrate, by his order dated 05.12.2000. Being aggrieved by the order dated 05.12.2000, the appellant-accused preferred Writ Petition (Criminal) being No. 46381 of 2000 before the High Court challenging the condonation of delay. The High Court, by its order dated 18.04.2001 dismissed the petition with a direction to the trial court to dispose of the case preferable within six months.

13. Further, a petition was filed for addition of Section 306-IPC in the charge-sheet which was allowed by an order of the Trial Court dated 23.10.2001. Being aggrieved by the order dated 23.10.2001; the appellant-accused preferred Criminal Misc. Petition being No. 44607/M/2011 before the High Court. The High Court, by its order dated 12.02.2002, set aside the order dated 23.10.2001 passed by the Trial Court. In appeal, this Court also upheld the order dated 12.02.2002 passed by the High Court.

14. Findings of the Court of Chief Judicial Magistrate, by its judgment and order dated 21.12.2009 in Challan Nos. 3/17.11.2000, 12-T/10.04.2006 RBT 191/17.11.2009, held the appellant-accused guilty of offence under Section 354 of the IPC and sentenced him to suffer rigorous imprisonment (RI) for six months along with a fine of Rs. 1,000, Judgment of the Session's Judge, Jodhpur.

Being aggrieved by the judgment and order dated 21.12.2009; the appellant-accused preferred Criminal Appeal being No. 5 of 12.01.2010 before the Court of Additional Sessions Judge,

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Jodhpur. The CBI and Jai Prakash – Respondent No.2 herein also preferred Criminal Appeal being Nos. 26 of 12.01.2010 and 22 of 05.02.2010 respectively, before the Court for enhancement of sentence. Learned Additional Sessions Judge, Jodhpur, by his order dated 25.05.2010 dismissed the appeal filed by the appellant-accused while allowing the appeals filed by the CBI and Jai Prakash for inadequacy of the sentence and for enhancement of sentence of imprisonment and the appellant-accused was awarded with rigorous imprisonment for 3 years for committing offence under Section 354 of the IPC. The fine remained unchanged.

Judgment of the High Court of Rajasthan –

Being aggrieved of the judgment and order dated 25.05.2010; the appellant-accused preferred Criminal Revision being No. 1558 of 2010 before the High Court. The High Court, by its order dated 01.09.2010, dismissed the revision filed by the appellant-accused.

A. Counsel for the accused rose following arguments:-

1. MTA being a public office surrounded by number of persons and families it was impossible to do such act
2. Accused did not ask for the meetings, prosecution story is false, frivolous and with ulterior motives.
3. Memorandum / petition is at the behest of several interested persons including senior police officers of the State. Name of Ms. Aradhana has been planted when she did not visit. Details of incident have not been elaborated.
4. No complaint was filed by Ms. Ruchika, Ms. Aradhana or/and their parents in the police station. No FIR was filed.

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5. Inquiry conducted by Shri R. R. Singh was without jurisdiction. The IPS lobby in the State was against him. There was rivalry between two tennis associations. Enquiry was not conducted in fair and proper manner. Media played negative role. Picker Paltoo and Coach were not examined. Lot of lacunas is in the statements of witnesses.

B. Counsel for the CBI rose following arguments:-

1. Occurrence is well proved by the testimony of Ms. Aradhana, eye witness.
2. Shri Malhotra stated the accused met him and told not to send Ruchika abroad and insisted to meet her and Ruchika narrated all the incidents to him.
3. Signatures on Memorandum / petition of Ms. Ruchika have been established beyond doubts. As she is dead hence could not appear. Other persons signing have seen her signing and reliance on hand writing experts evidence is wrong.
4. No manipulation was made in F.I.R. Presence of high officials was to record the F.I.R. Name of Ms. Aradhana was not mentioned in the memorandum to avoid her harassment, as accused is high profile officer.
5. R. R. Singh's appointment was competent. He was authorized legally by the State Government to report after investigation.
6. The alleged rivalry is of no relevance. Case u/s. 354 has been made out and is full proof.
7. Number of witnesses like fathers of the two girls and they being members of M.T.A, stand proved.

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8. It would be unusual in a conservative society that a woman would be used and more so an unmarried girl as a pawn to wreak vengeance. Such incident ultimately forced Ms. Ruchika to commit suicide leaving the note.
9. The essence of a Woman's modesty is her sex. It is a virtue which attaches to a female owing to her sex. No woman would admit that any incident which is likely to reflect upon chastity has occurred, being danger of the Society being looked down.
10. No particular number of witnesses is required. It is the quality and not the quantity.

SLP before the Hon'ble Supreme Court under the title "JPS Rajput v/s. C.B.I.

Aggrieved by the above said order, the appellant-accused has preferred this petition by way of special leave before the Supreme Court. The Hon'ble Court admitted the appeal and has fixed on 29th July, 2017, for final hearing. The Hon'ble Court also directed to file memorials on behalf of the parties by 15th July, 2017 positively with copy of the memorial to each other. No extension is permissible.

Relevant Laws:

- Constitution of India 1950
- Indian Penal Code 1860
- Criminal Procedural Code 1972
- Indian Evidence Act 1872
- Any other Appropriate Laws