

statement has been made as to why the said arms and ammunition had been kept by him at the time of his apprehension. In our view, in the facts and circumstances of the case, the accused had sufficient opportunity to explain the purpose of possession of the said arms and ammunition and to rebut the statutory presumption under Section 5 of the TADA Act but he has failed and neglected to give any explanation or evidence which may be even remotely construed as an evidence by way of rebuttal. In the aforesaid circumstances, we do not find any merit in this appeal and the same is therefore dismissed.

Criminal Appeal No. 733 of 1992

5. In view of the decision referred in Criminal Appeal No. 732 of 1992, no further order need be passed in this appeal and the same is also dismissed.

(1995) 1 Supreme Court Cases 14

(BEFORE M.N. VENKATACHALIAH, C.J. AND S. MOHAN
AND S.B. MAJMUDAR, JJ.)

DELHI DOMESTIC WORKING WOMEN'S FORUM . . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petition (Crl.) No. 362 of 1993[†], decided on October 19, 1994

A. Constitution of India — Arts. 32 and 21 — Rape on domestic working women — Compensation and rehabilitation of rape victims — Scheme regarding, directed to be evolved by National Commission for Women under S. 10 of National Commission for Women Act within six months and thereupon, Union of India directed to examine the same and take necessary steps for its implementation — National Commission for Women Act, 1990, S. 10 — Penal Code, 1860, S. 376-B r/w S. 341 (Paras 17 and 18)

Oxford Handbook of Criminology (1994 Edn.), pp. 1237-38, *relied on*

B. Penal Code, 1860 — S. 376 — Rape — Broad parameters in assisting rape victims laid down — Problems arising from rape and defects in existing criminal justice system in this regard stated — Constitution of India, Arts. 32, 21 and 14 — Judicial activism

It is rather unfortunate that in recent times, there has been an increase in violence against women causing serious concern. Rape does indeed pose a series of problems for the criminal justice system. There are cries for harshest penalties, but often times such cries eclipse the real plight of the victim. Rape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behaviour and values and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings.

(Para 13)

The defects in the present system are : Firstly, complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative

[†] Under Article 32 of the Constitution of India

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and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had had to suffer as a result of the rape itself. (Para 14)

a In this background, it necessary to indicate the broad parameters in assisting the victims of rape.

(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

b

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

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(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

d

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

e

(6) In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

f

(8) 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 will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape. (Para 15)

Modern Legal Studies — Rape and the Legal Process by Jennifer Temkin, 1987 Edn., p. 7, relied on

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In the present situation, the third respondent will have to evolve such scheme as to wipe out the tears of such unfortunate victims. Such a scheme shall be prepared within six months from the date of this judgment. Thereupon, the Union of India, will examine the same and shall take necessary steps for the implementation of the scheme at the earliest. (Para 18)

R-M/13646/CR

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Advocates who appeared in this case :

R. Venkataramani and S.M. Garg, Advocates, for the Petitioner;
Altaf Ahmed, Additional Solicitor General, V.C. Mahajan, Senior Advocate (Krishan Mahajan, Ms Anil Katiyar, S.N. Teral, A.S. Pundir, Ms P. Prasad and N. Sudhakaran, Advocates, with them) for the Respondents. a

The Judgment of the Court was delivered by

S. MOHAN, J.— This public interest litigation invokes the benign provision of Article 32 of the Constitution of India, at the instance of the petitioner Delhi Domestic Working Women's Forum to espouse the pathetic plight of four domestic servants who were subject to indecent sexual assault by seven army personnel. b

2. The incident, with a filmy background, has outclassed even the movies. On 10-2-1993, six women, by name, Usha Minz, Shanti, Josphine Kerketta, Rosy Kerketta, Nilli and Lili, domestic servants, were travelling by the Muri Express. The journey was from Ranchi to Delhi. One of the victims Miss Lili described the incidence graphically as follows: c

"I was coming from my home town to Delhi by the Muri Express. On 10-2-1993 at about 11.00 p.m., the Muri Express was at Khurja Railway Station. At that time, I along with my village girls (1) Usha Minz D/o John Minz (2) Shanti D/o Siri Anuas Minz (3) Josphine Kerketta D/o Junus Kerketta (4) Rosy Kerketta D/o Remis Kerketta (5) Nilli Ross D/o Boas Minz, was travelling in SHI Coach. I slept on Berth No. 50. Our friend, Shanti, woke up and told that some persons were teasing her. When, I and my remaining friends got up, we saw that about 7/8 army 'jawans' had come near us. Then we all friends got up and sat on our respective seats. Then all those army men began to molest us. First they — two Sikhs and 6 clean-shaved men made me and my five friends sit on lower seats and then kissed and hugged us and lured on our body and breasts. On our objection they caught us from our hair and began to beat us. When we tried to cry, they shut our mouths. Then they threatened me and my friends that in case we will make any hue and cry they will throw us out of the running train and will kill us. On this we got frightened and sat there. From these 8 army men — two Sikhs and 6 clean-shaved, one Sardar and one clean-shaved man forcibly made me to lie down on the lower berth and on the other adjacent lower berth another Sardar took another girl and one clean-shaved fauji took Rosy to bathroom. Two other army men made Shanti to lie down on the nearby seat. Another two men tried to take Usha and Nilli but both sat under the seat to hide themselves. Thereafter, first Sardar fauji (whose name has been disclosed in the court as Dhir Singh S/o Puran Singh, PO: Dostpur, PS : Kalanaur, District Gurdaspur, Punjab) forcibly put off my clothes and removed underwear, raped me. After him, another clean-shaved fauji, whose face is round and height is about 5'8" raped me. My friends, Shanti and Rosy were also forcibly raped by remaining army men. Thereafter, we tried to lodge a report with the police on the way, but nobody listened to us. When the train stopped at New Delhi Railway d e f g h

DELHI DOMESTIC WORKING WOMEN'S FORUM v. UNION OF INDIA (*Mohan, J.*) 17

a Station, then I and my friends attempted to catch these persons. They all got down and ran here and there. However, I and my friends could catch hold of aforesaid Sardar Dhir Singh, who had raped me. We all caught him. In the meanwhile, some persons gathered there. Some army officers and policemen overpowered him and took him to MCO office. Then after a while they came in Station and handed over Sardar Dhir Singh to you. Sardar Dhir Singh has raped me and his colleagues have raped my friends.”

b 3. This formed the basis of the first information report for offences under Section 376-B read with Section 341 IPC which was registered at the Police Station, New Delhi Railway Station (Crime & Railways) as No. 049 of 1993 at 6.35 a.m. on 11-2-1993. It appears after registering the FIR the six rape victims were sent for medical check-up.

c 4. The members of the petitioner-forum went in groups to all the addresses given by the police to meet the victims. In none of the places they were allowed to meet the victims though the employers admitted gaining knowledge about the rape and the victims were with them. The petitioner-forum is very much concerned as the victims are its members, to get the needed social, cultural and legal protection. Further, the victims are helpless tribal women belonging to the State of Bihar at the mercy of the employers and the police. They are vulnerable to intimidation. Notwithstanding the occurrence of such barbaric assault on the person and dignity of women neither the Central Government nor the State Government has bestowed any serious attention as to the need for provision of rehabilitatory and compensatory justice for women. In such matters this Court has been affording relief. It is in this context the writ petition under Article 32 of the Constitution of India is moved. The grounds urged in support of the writ petition are as follows:

e 5. Speedy trial is one of the essential requisites of law. In a case of this character such a trial cannot be frustrated by prolongation of investigation. Therefore, this Court has to spell out the parameters of expeditious conduct and investigation of trial; otherwise the rights guaranteed under Articles 14 and 21 of the Constitution will be meaningless.

f 6. This Court ordered notice to respondents on 18-11-1993.

g 7. A counter-affidavit was filed on behalf of Respondents 2 and 4 stating, on the statement of Kumari Lili, FIR No. 042/93 under Sections 376-B read with Section 34, Indian Penal Code, was registered. Accused Dhir Singh was arrested and sent to judicial custody. The case-report under Section 173 CrPC had been filed in the Court of the Chief Judicial Magistrate, Aligarh on 13-8-1993 against the accused persons, namely Dhir Singh and Mikhail Heranj. The case is pending trial before the District and Sessions Court, Aligarh.

h 8. It appears, apart from these two accused, others could not be identified. Two other accused, Pharsem Singh and B. Kajoor were discharged. Three other police personnel, namely, Head Constable Ranjeet,

constable Naresh Singh and constable Shiv Sarup Singh were arrested as they were on guard duty in the Muri Express train at the time of incident and failed to provide necessary protection to the tribal women/victims. The prosecution is in progress and it is stated that the case is likely to be committed. a

9. At one stage of the case, the Court was informed that the victims could not be traced. This statement caused dismay in us. Therefore, a direction was issued to the State of Uttar Pradesh to trace the victims. This Court doubted whether the police were at all serious in this case. On our part, we could not tolerate this nonchalant attitude. Fortunately, the victims have been traced. As such we think the prosecution will go on with due diligence and the law be allowed to take its course. b

10. While the matter stands thus, as to the prayer of the petitioner that Respondents 1 to 3 will have to engage themselves in framing an appropriate scheme to provide inter alia compensation and rehabilitation to the victims of such crimes of violence, the submissions are as under: c

11. The National Commission for Women is rightly engaged in the evaluation and suggestion of changes in various legislations pertaining to women. Yet steps are to be taken as regards framing of scheme for compensation and rehabilitation to ensure justice to victims of such crimes of violence. Victims of such violence, by and large belong to weaker sections of the society. They are not in a position to secure justice through civil courts. No doubt, the Indian Penal Code and the Indian Evidence Act have been amended. In spite of it, victims of such violence are not able to get adequate remedy in securing justice. Therefore, the first (*sic* third) respondent — National Commission for Women must be called upon to engage itself in the exercise of drafting such a scheme and impress upon the Union of India to frame a scheme as early as possible. d
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12. This stand is opposed by the third respondent. It is stated that the National Commission for Women was constituted by the National Commission for Women Act, 1990 (hereinafter referred to as 'the Act'). This Act came into force on 31-1-1992, as per Notification No. SO 99(E) dated 31-1-1992. The functions of the Commission are set out in Chapter III of the Act. The prayer that the Commission must engage itself in framing appropriate schemes and measures is beyond the mandate given to the National Commission for Women. f

13. We have given our careful consideration to the above. It is rather unfortunate that in recent times, there has been an increase in violence against women causing serious concern. Rape does indeed pose a series of problems for the criminal justice system. There are cries for harshest penalties, but often times such cries eclipse the real plight of the victim. Rape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behaviour and values and generating g
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DELHI DOMESTIC WORKING WOMEN'S FORUM v. UNION OF INDIA (*Mohan, J.*) 19

endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings.

- a 14. We will only point out the defects of the existing system. Firstly, complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had had to suffer as a result of the rape itself. As stated in *Modern Legal Studies — Rape and the Legal Process* by Jennifer Temkin, 1987 Edition, page 7:

- c “It would appear that a radical change in the attitude of defence counsel and judges to sexual assault is also required. Continuing education programmes for judges should include re-education about sexual assault. Changes in the substantive law might also be helpful in producing new ways of thinking about this type of crime.”

Kelly writes:

- d “The most common cries were for more compensation and personal treatment from police officers. Victims remarked that, while they recognised officers had many cases to handle, they felt the officers did not seem sufficiently concerned with their particular case and trauma.”

Shapland concludes:

- e “The changes in the criminal justice system necessary to approximate more closely to the present expectations of victims are not major or structural. They are primarily attitudinal. They involve training the professional participants in the criminal justice system that the victim is to be treated courteously, kept informed and consulted about all the stages of the process. They involve treating the victim as a more equal partner This might include a shift in working practices of the professional participants that might initially appear to involve more work, more difficulty and more effort, but paradoxically may result in easier detection, a higher standard of prosecution evidence and fewer cases thrown out at court.”

O'Reilly stresses the attitudinal training thus:

- g “We are now victim-oriented and have taken an active role in getting the entire helping network — lawyers, doctors, nurses, social workers, rape crises centre workers — to talk and to interact together We are then in a position to concentrate fully on the primary goal that unites us all —helping victims of sexual assault to get their lives back together.”

15. In this background, we think it necessary to indicate the broad parameters in assisting the victims of rape.

- h (1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-

acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

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(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

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(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

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(8) 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 will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

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16. On this aspect of the matter we can usefully refer to the following passage from *The Oxford Handbook of Criminology* (1994 Edn.) at pages 1237-38 as to the position in England:

“Compensation payable by the offender was introduced in the Criminal Justice Act, 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where ‘injury, loss, or damage’ had resulted. The Criminal Justice Act,

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1982 made it possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penological thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act, 1988 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, impose a duty on the court to give reasons for not doing so. It also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review

The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation."

17. Section 10 of the Act states that the National Commission for Women shall perform all or any of the following functions, namely:

- (a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.
- (b) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal.

18. Having regard to the above provisions, the third respondent will have to evolve such scheme as to wipe out the tears of such unfortunate victims. Such a scheme shall be prepared within six months from the date of this judgment. Thereupon, the Union of India, will examine the same and shall take necessary steps for the implementation of the scheme at the earliest.

19. The writ petition is disposed of subject to above directions.

(1995) 1 Supreme Court Cases 21

(BEFORE K. RAMASWAMY AND N. VENKATACHALA, JJ.)

U. P. JAL NIGAM AND ANOTHER .. Appellants;
Versus
NARESHWAR SAHAI MATHUR AND ANOTHER .. Respondents.

Civil Appeal No. 6867 of 1994[†], decided on October 6, 1994

Constitution of India — Art. 226 — Alternative remedy — Similar bar of availability of, should be taken in all similar cases — Promotion to the post of

[†] From the Judgment and Order dated 19-1-1994 of the Allahabad High Court in W.P. No. 928(SS) of 1992