

**State (GNCT of Delhi) v. Vipin @ Lalla**

- ❖ **TOPIC :** 'Prosecutrix's Testimony Doesn't Inspire Confidence' : Supreme Court Affirms Acquittal In Rape Case
- ❖ **BENCH:** Justices Sudhanshu Dhulia and Prashant Kumar Mishra
- ❖ **FORUM:** Supreme Court
- ❖ **FACTS**
  - The prosecution had alleged that when the victim was coming from the school the accused caught hold of her hand and put a knife on her back.
  - Thereafter, the accused took her to a grocery shop nearby and established physical relations with her.
  - The accused was booked for the offence punishable under the Indian Penal Code and Protection of Children from Sexual Offences Act.
  - However, the Trial Court concluded that the prosecution had failed to prove its case beyond all reasonable doubt and acquitted the accused.
  - The same was affirmed by the High Court. Thus, the present appeal.
- ❖ **MAIN ISSUE**
  - Regarding a conviction is based on sole evidence of a single witness.
- ❖ **OBSERVATION**
  - The Supreme Court observed that in rape cases if a conviction is based on the sole evidence of a single witness, even that of the victim herself, such evidence should inspire confidence in the Court.
  - The Court agreed that while the victim's statement is given a very high value, the Court must carefully examine the same.
  - Based on these circumstances, the Court concluded that her statement did not inspire confidence. It thus refused to interfere with the impugned orders and dismissed the present appeal.
  - The Apex Court pointed out that the victim's evidence was mainly produced before the Trial Court.
  - It then pointed out the medical examination, which showed no injuries on the body of the victim.
  - Thereafter, the Court also highlighted the contradictions in her statement. For instance, she said that she had hit the

accused but none of the injuries were noticed in the accused's body once he surrendered.

- The Court also did not find it believable that the victim went with the accused without raising any alarm.
- It is not believable that when the prosecutrix was caught by the accused who is known to the prosecutrix, she went with him quite a distance in the Bazaar and then to a shop, she never raised any alarm. The only reason she gave is that there was a knife with the accused and he had threatened her that if she raises an alarm her brother and father would be killed.
- ❖ **IMPORTANT PROVISION DISCUSSED**
  - Section 164 CrPC (a Magistrate the authority to record confessions and statements from a person during an investigation)
  - Section 183 BNSS

**Prosecutrix X Vs The State Of Madhya Pradesh And Others**

- ❖ **TOPIC :** Madhya Pradesh High Court Grants Custody Of New-Born To Minor Rape Survivor Under Guardianship Of Her Parents
- ❖ **BENCH:** Justice Avanindra Kumar Singh
- ❖ **FORUM:** Madhya Pradesh High Court
- ❖ **FACTS**
  - In the present matter, an interlocutory application was filed seeking permission for the minor prosecutrix and her parents to keep custody of the newly born child on January 1.
  - On December 27, 2024, while disposing of the writ petition, the court had granted "permission for premature delivery/termination of foetus of 32 weeks & 6 days" of the minor rape victim.
  - On the said date, it was directed that if a child is born alive then the State Government has to take care of the child and certain conditions were also imposed.
  - Through the interlocutory application filed on behalf of the prosecutrix and her parents, it was stated that on January 1, a male child has been born to the prosecutrix and both the prosecutrix and newly born baby are in good health.

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❖ **MAIN ISSUE**

- Regarding the custody of a new-born baby to her mother, a minor rape survivor, under the guardianship of her parents.

❖ **OBSERVATION**

- In a recent ruling, the Jabalpur Bench of Madhya Pradesh High Court has granted the custody of a new-born baby to her mother, a minor rape survivor, under the guardianship of her parents.
- Thus, the present interlocutory application and the writ petition were disposed of.
- The single-judge bench of Justice Avanindra Kumar Singh observed, "There is no doubt that mother of newly born baby is the best person in the world to look after the baby and if she wants to take care of her baby then it is in the interest of mother as well as newly born child.
- Therefore, it is directed that custody of newly born child be given to her minor mother (prosecutrix) under the guardianship of her parents."
- The counsel for the petitioner submitted that prosecutrix and her parents wish to keep the newly born child with them and they undertake to ensure safety of the prosecutrix as well as her child and also to provide all possible nourishment and care to the prosecutrix & child.
- It was further prayed that the court may issue that custody of child be given to the prosecutrix so that proper natural breast feeding be provided to the newly born baby which is not being permitted due to earlier order of the Court.

❖ **IMPORTANT PROVISION DISCUSSED**

- Section 26 Hindu Marriage Act (Custody of Children)

**Smt. Gitarani Maity -vs- Mrs. Krishna Chakraborty and others**

- ❖ **TOPIC:** [Arbitration Act] Section 8 Application Must Be Filed Before Or Simultaneously With Written Statement: Calcutta High Court
- ❖ **BENCH:** Justice Sabyasachi Bhattacharyya and Justice Subhendu Samanta
- ❖ **FORUM:** Calcutta High Court

❖ **FACTS**

- The appellant has challenged the impugned judgment and decree passed by the Trial Judge, wherein it allowed an application filed by the respondent under Section 8 of the Arbitration & Conciliation Act, 1996 to refer the dispute to arbitration.
- The appellant argues that even Section 8 does not contemplate a dismissal of the suit, but merely speaks about reference to arbitration.
- Also, the respondent did not file the application under Section 8 either simultaneously with or prior to the filing of the written statement, which was the first statement on the merits of the defence within the contemplation of Section 8.
- Hence, in any event, the application under Section 8 filed after the filing of the written statement in the Trial Court ought to have been dismissed by the Trial Judge.

❖ **MAIN ISSUE**

- Regarding application for reference to arbitration under Section 8 of the Arbitration Act.

❖ **OBSERVATION**

- The Calcutta High Court Bench of Justice Sabyasachi Bhattacharyya and Justice Subhendu Samanta held that when no application for reference to arbitration under Section 8 of the Arbitration Act is made by either party, the civil court may very well entertain the suit and proceed with the adjudication of the same on merits in accordance with law.
- Also, the court held that the Trial Judge committed a patent error of law on both counts: first, the suit could not have been dismissed under Section 8. And secondly, the Section 8 application, having not been filed before or even simultaneously with the written statement of the defendant, could not have been entertained at all by the trial Judge.
- The court observed that a bare perusal of Section 8 of the Act clearly shows that a judicial authority can only refer the matter to arbitration in view of the existence of an arbitration agreement/clause, if the party seeking such reference applies for such reference not later than the date of submitting his first written statement on the substance of the dispute.

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- Additionally, the court affirmed that when no application for reference to arbitration under Section 8 of the 1996 Act is made by either party, the civil court may very well entertain the suit and proceed with the adjudication of the same on merits in accordance with law.
- Also, the court held that the Trial Judge committed a patent error of law on both counts: first, the suit could not have been dismissed under Section 8.
- And secondly, the Section 8 application, having not been filed before or even simultaneously with the written statement of the defendant, could not have been entertained at all by the trial Judge.
- Consequently, the court allowed the appeal and dismissed the Section 8 application filed by the respondent.
- ❖ **IMPORTANT PROVISIONS DISCUSSED**
  - Section 8 Arbitration Act (Power to refer parties to arbitration where there is an arbitration agreement.)

### H. Guru swamy & ors. V. A. Krishnaiah since deceased by lrs

- ❖ **TOPIC :** Delay Can't Be Condoned Based On Merits Of Main Matter If There's No Sufficient Explanation For Delay : Supreme Court
- ❖ **BENCH:** Justices J.B. Pardiwala and R. Mahadevan
- ❖ **FORUM:** Supreme Court
- ❖ **FACTS**
  - An original suit related to a property dispute was initially dismissed for default. Later, the suit was restored but one of the defendants/ respondents had passed away.
  - After granting several opportunities for bringing legal heirs of the deceased defendant on record, the suit ultimately came to be dismissed as having stood abated.
  - As the matter reached the High Court, this delay of six years was condoned. Thus, the present appeal.
- ❖ **MAIN ISSUE**
  - Regarding an application to condone delay.
- ❖ **OBSERVATION**
  - The Supreme Court, recently, observed that while considering an application to condone delay, the court must not start with the merits of the main matter.

- It owes a duty first to ascertain the bona fides of the explanation offered by the party seeking condonation.
- The Bench also observed that the limitation rules are not meant to destroy parties' rights but to prevent them from resorting to dilatory tactics.
- The Court made these observations while deciding an appeal against an order passed by the High Court, allowing a delay of 6 years (about 2200 days) in filing a recall application
- "Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations.
- While considering the plea for condonation of delay, the court must not start with the merits of the main matter.
- "It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.,” the Bench of Justices J.B. Pardiwala and R. Mahadevan observed.
- The Apex Court marked that the High Court has shown a “complete absence of judicial conscience and restraint.” It highlighted that the Court must take into account the length of the delay for determining condonation.
- It further went on to observe that the issue of limitation is not merely a technical consideration but is based on sound public policy and equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time., the Court remarked while allowing the present appeal and setting aside the impugned order.
- ❖ **IMPORTANT PROVISIONS DISCUSSED**
  - Section 5 of the Limitation Act (Condonation of Delay)

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