

COMPENSATION FOR RAPE - A CASE REPORT

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ABSTRACT

The tragic end of the whole episode terminated in the satirical "situation ethics". Despite the ongoing full-scale investigation by the police, the father of the girl connived with the rapist, forced her daughter to eat her statement, and she refused to identify the rapist. In return the father received Rs 200,000/- as "compensation money", medical evidence was castrated, and the law was noose hanged on the bough of avarice and greed. The father made his action tailored to fit objective circumstances, the situation. He had been so full and determined in understanding what was right (for him) that he couldn't visualize what was good (for her daughter and the society).

Key Words: Rape , Compensation, Ethics

CASE DESCRIPTION

Miss SB, 13 years old (as reported by the mother during hospital registration) was brought to the hospital by the mother in a disoriented state but conscious. The matter pertains to the month of July 2003.*

The version given by the mother of the girl child, ad verbatim is illustrative. Last night, i.e. the happening night just preceding the hospital attendance, the girl was found in a desolate area in the outskirts of a small town with her "dupatta"# tied firmly around the neck. She was unconscious at the time she was found by strangers. It was acknowledged that she was strangled, and that an attempt of sexual assault was made, an impression created in the minds by her disarrayed and torn clothes. The mother withheld this fact of probable sexual assault initially. Some one later recognized her and the family was contacted which led her mother to bring the girl to J N medical College Hospital. No other family member accompanied the girl.

The girl was admitted in the medical ward under the charge of a professor of medicine. The tender age of the girl coupled by the lost look on her face brought instant pity in the medical unit. She was examined and treated for the after-effects of strangulation. Later, during routine examination of her abdomen a lump was felt. The medical team felt it to be originating in the genital region and a referral was sent to consultant gynecologist of the rank of professor. She examined the girl, ordered ultrasound, and once the report was available things began to unfold with amazing rapidity.

The ultrasound revealed that the girl was four months pregnant.

REMINISCENCES OF RECENT PAST IN FIRST PERSON NARRATIVE BY THE GIRL

I recall that when my teacher made the first contact with me, I was frightened. My teacher was middle-aged man, married with three children, to whose house I used to go for lessons. I told this to my mother despite that my teacher told me not to disclose this to anyone. Subsequent contacts developed rapidly. My pleas to my mother were ignored. He did nothing; on the contrary she forced me to go there regularly. I came to know later that my mother thought that if I get pregnant the teacher would take me as his second wife. This continued for more than a year. When I became pregnant I did not tell anyone except my teacher who gave me some pills. The pills did not have any effect on me. Subsequently he developed cold feet, took me to a desolate area on some pretext, and tried to kill me by tightening a cloth around my neck. I told my mother on regaining consciousness that my teacher had tried to kill me but she kept quite for reason of her own. Perhaps she still thinks that I stand a chance of marrying him. But after this incident I am determined to tell the whole truth, no matter what.

This narrative was given to the doctors treating her. It then became a medico legal case. The teacher was charged on two counts; one, for attempted murder u/s 307 IPC and second, for repeated rape u/s/ 375 IPC.

FORMATION OF A MEDICAL BOARD

The whole legal machinery was set in motion. The matter was reported to the police, and subsequently a medical board was formed with the explicit term to determine her age. It comprised of senior doctors of various medical disciplines under the headship of medical superintendent of the hospital. After thorough investigation it was determined that her age stood at 14-15 years. This was important because under the legal provisions the statutory rape is below 16 years. It was a serious offense considering the fact that aborted fetus was available which on analysis carried the probability of DNA linking to the alleged father. It appeared that fortified with the medical evidence and legal vise, the culprit could not escape the legal noose. Nothing of this sort happened.

SOCIAL PROJECTION

Each individual involved with the case wore the philosophic mantle. It wasn't that this case was altogether unique in any dimension, neither it was first in orientation. Fear was instilled in all of us, including the authors, by the blatant effect it took place. The innocent girl of tender age was manipulated externally by the monster rapist, and internally by the universal emblem of motherhood. Collective wisdom demanded that if the culprit was not brought to effective justice speedily, drastic insalubrious social change was to be expected.

LEGAL "SHADOW BOXING"

The Indian law empowers the raped girl by two-pronged fork as armor. It considers her to be victim as well as a witness because in majority of instances "rape in solitaire" is a cardinal principle. However, at each step of the investigation the mother intervened and gave her own statements, which contradicted the girl's own. Many times she would silence the girl by gestures. Ultimately the girl was so awe-stricken that for each question she would look up to the mother and expected her to answer on her behalf. In the end it would be assumed that the girl was completely brainwashed.

POSSIBLE SUGGESTIONS

In the initial phase of the cognizance of the offence, the police should take note of the fact that the raped child victim could be under duress of a different kind, and that she could be pressurized into giving untenable statements by her parents / guardians / peers. The police should as an interim measure, bring this fact to the notice of the trial court, which in turn may protect the child as per legal provisions.

Presenting the victim incommunicado by the parents / guardians to the police must not be out rightly interpreted as shyness or unhelpfulness, rather parental pressure could be the operating factor.

The rape case victim, as far as possible, should be interviewed alone in the presence of matronly female police officer, as early in the investigation as situation permits.

Rape is a heinous offence, a social evil of "sphinx" longevity and fortitude, hence out-of-court settlement must not be allowed once cognizance of the offence has taken place. If the rapist and the raped or their guardians agree for mutual settlement, the plaintiff should be ensnared compulsorily in the criminal proceedings for filing a false case. Alternatively the State should take over as the opposing party and fight the case. Suitable legal provisions need to be enacted

The evidence of a victim of sexual assault, irrespective of age, stands almost at par with the evidence of injured witness, and to an extent is even more reliable. This fact should not be undermined at any stage of investigation and trial.

Since the child was within the statutory rape age, it did not matter that physiologically she had matured and crossed menarche. The argument that logistics imply that when the canon is fired in isolatory wilderness (slant reference to the act of sexual intercourse) the beguiling pleasantness obscure whatever feeling the victim may have to resist forced encounter, and subsequent 'not-so-forced' encounters do not hold true.

Redefine consent, in the absence of resistance cannot be deemed as consent. The age of consent should be raised to 18 years instead of the present "more than 16 years".

Molesting a minor and an adult are two different crimes and the punishment accordingly should be different.

The authors feel that such steps taken with sincerity of purpose shall enhance the rate of conviction, and would also contribute towards decline in false reporting of cases. The present case report needs to be published as a sounding board so that such events do form a rarity where the protectors themselves could trade chastity with money.

There is an old Sudanese proverb “hariha harihama” meaning “the protectors became the robbers themselves” – such a befitting epilogue to this narrative.

*

The anonymity has been preserved.

#A cloth 5 1/2 to 6 feet in length and 1 1/2 feet in breadth traditionally worn by Indian girls acts as a scarf and the cover the chest.
