



A Woman Can't Rape Woman

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In **State Govt. V. Sheodayal** (1956 Cr LJ 83 M.P) M.P High court opined that modesty of a woman can be outraged by another women u/s 354. But apex court recently in **Priya Patel V. State Of M.P And Anr.** (JT 2006 (6) SC 303) held that it is inconceivable that women can rape another woman. Actually in this case victim cried for help when husband of appellant was going to rape her. Appellant reached on the spot, instead of helping the victim or prevent her husband from raping the women, slapped the victim, bolt the door from outside and left the scene. She was charged for committing gang rape u/s 376 (2) (g) of IPC 1860. Trial court as well as Madhya Pradesh high court maintained the charge but supreme court, relaying upon biological facts, construed statutory provision in favour of the woman and held that a woman cannot be charged for gang raping another women u/s 376 (2) (g) of IPC 1860. Section 376 (2) (g) of IPC 1860 says:

"Whoever commits gang rape shall be punished with rigorous imprisonment for a term which shall not be less than ten year but which may be for life and shall also be liable to fine."

Explanation 1 appended to this 376 (2) (g) defines gang rape. It tells that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Section 34 of IPC 1860 is also deal with common intention. Common intention, which is given under S. 376 (2) (g) is same to which is given under S.34. Apex court in this case also discussed S. 376 (2) (g) in line with S.34, that is "act in furtherance of common intention". Now questions arise:

What was the need of S. 376 (2) (g), when S. 34 was already there? What would be situation if S. 376 (2) (g) were not there?

Of-course the object of insertion of S. 376 (2) (g) was to inflict harsher punishment on guilty of offence of gang rape owing to high gravity of offence. If S. 376 (2) (g) were not there then even all culprits of gang rape could be convicted under S 376 r/w S 34. An analogy can be drawn from apex-courts interpretation that for conviction under S. 376 (2) (g) or Section 34, every culprit must be able to commit main act. But in **Barendra Kumar Ghosh v. King Emp.** (AIR 1925 PC 1) appellant was standing outside with pistol and postmaster was shot dead by other accused. His defence that he was standing outside near the door and had not shot at the postmaster was not accepted by the court. The privy -council observed that even if the appellant did nothing as standing outside the door, it is to be remembered that in crimes as in other things they also serve who only stand and wait.

Now imagine a situation: There are five persons, one of them is amputated with both the hands, decide to kill a man. Four go inside the room and stab the man and fifth person, amputated with both the hands stands outside do nothing. Question arises whether person who is amputated with both hands, cannot hold knife, can be charged for committing murder. Of-course he can be charged in pursuant of above-mentioned ruling of privy-council.

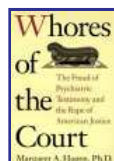
No doubt if apex court solely rely upon S. 376 (2) (g), it was difficult to charge the appellant owing to definition of rape in Section 375 but it is respectfully submitted that appellant can be charge u/s 376(1) r/w Section 34.

Prosecution also pleaded that in spite of the fact appellant cannot be charged under S. 376 (2) (g), but can be charged for abetment. But apex court left question to be decided by trial court. So now wait for trial court whether it would punish demons of humanity.

Recently, amendment (2005) in code of criminal procedure bring into force, which tells that if a woman is to be arrested, she can be arrested only in presence of another woman police officer. And today when parliament is contemplating to give effect to the amendment in code of criminal procedure which provides trial of sexual offence would be conducted by only woman judge then such a ruling of apex court is a blow to womanhood.

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