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**CASE COMMENTARY ON OM PRAKASH V STATE OF UP (2006)<sup>1</sup>****Court:** Supreme Court of India**Decided:** 11 May 2006**Citation(s):** Appeal (crl.) 629 of 2006

<b>Diary Number</b>	19533 / 2005
<b>Case Number</b>	Crl.A. No.-000629-000629 / 2006
<b>Petitioner Name</b>	OM PRAKASH
<b>Respondent Name</b>	STATE OF UP
<b>Petitioner's Advocate</b>	M. P. SHORAWALA
<b>Respondent's Advocate</b>	JATINDER KUMAR BHATIA
<b>Bench</b>	ARIJIT PASAYAT, S.H. KAPADIA

**BACKGROUND OF THE CASE**

Rape as characterized under Section 375 of the Indian Penal Code,<sup>2</sup>1860 is to have been executed when a man had sexual intercourse with a female under the following conditions—

1. Against her will
2. Without the individual's assent
3. With one's assent which is achieved by posing fear of death or of hurt
4. With her assent, in a circumstance wherein consent is given because she believes that he is a man to whom she is or believes herself to be legally wedded
5. With consent obtained due to unsoundness of mind or inebriation or the administration by means of any stupefying or unwholesome substance, which disables her to comprehend the nature and outcomes of that to which she gives consent.

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<sup>2</sup>Indian Penal Code 1860, S 375.

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6. With or without her consent when the victim is under sixteen years of age.

Additionally, Section 376 of IPC lays the punishment for the offence.<sup>3</sup> It states that whoever commits rape shall be penalized with imprisonment of not less than seven years but which may also extend up to being for a lifetime or a term of 10 years coupled with fine. This holds true unless the victim is proven to be his own wife and is not below twelve years of age. The subsection (2) of the Section lists seven sub subsections under which if the crime falls, the punishment for the same would-be imprisonment of not less than ten years.

The case under scrutiny here falls under one of the sub subsections of subsection (2) of Section 376 of IPC. Section 376(2)(e) states that whoever commits rape on a woman knowing her to be pregnant would be guilty under the same.<sup>4</sup>

Therefore, in the case *Om Prakash v. State of UP* the major bone of contention is whether the accused had knowledge about the victim's pregnancy or not. Additionally, the issue of the need for corroboration of statement has also been discussed with respect to the victim of rape and sexual offences.

**TO BE NOTED:** The court does not propose to mention the name of the victim since Section 228-A IPC makes disclosure of identity of victim of certain offences punishable.<sup>5</sup> Therefore, any mention of information that may reveal the victim's identity is not mentioned or published in the paper hereafter. It must also be noted that in case of printing or publishing name which hints on the revelation of the identity of the victim the person/organization involved would be punished under Sections 376, 376-A, 376-B, 376-C or 376-D of the Indian Penal Code. The above proposition was finalized in *State of Karnataka v. Puttaraja*.<sup>6</sup>

### FACTS OF THE CASE

The day prior to the happening of the incident being discussed which is 9/3.1985, the husband of the victim, Ram Saran, was detained by the police of Sursa and a challan was brought to the concerned court on the same day on which the incident being discussed took place i.e., 10.3.1985. Om Prakash (hereinafter referred to as the 'accused'), being a relative of the informant was also present in the court at that day. The accused finding the victim, who was 6 months pregnant at that time, in isolation outside the Zila Parishad at about 3:00 p.m. attempted

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<sup>3</sup>Ibid s 376.

<sup>4</sup>Indian Penal Code 1860, s 376 (2) (e).

<sup>5</sup>Indian Penal Code 1860, s 228 A.

<sup>6</sup>*Karnataka v Puttaraja* 2004 1 SCC 475.

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to rape her. She reprimanded immediately and accused was thereafter taken to the police station where a case was registered.

Internal examination of both, the victim and accused was done. The required piece of clothing of both the informant and accused were also collected and examined further for any medical evidence. The case was primarily submitted to the Sessions Court by the Chief Judicial Magistrate of Hardoi wherein charges under Section 376 IPC were framed but the accused demanded trial and did not submit to the charges framed against him. The suspect's testimony was documented under Section 313 of the Criminal Procedure Code, 1973.<sup>7</sup>

Furthermore, after the case was heard in the Allahabad High Court, Lucknow bench, the accused appealed to the Supreme Court of India to review the High Court judgment.

### **ISSUE IN HAND**

The petitioner calls into question the legal standing of the judgment given by the learned single judge bench in the High Court at Allahabad, Lucknow bench maintaining the appellant's conviction for the offence punishable under Section 376(2)(e) of the Indian Penal Code, 1860 and the sentence given to him which is imprisonment for 10 years.<sup>8</sup>

### **PETITIONER'S ARGUMENT**

#### **ACCUSED BEING WRONG IMPLICATED**

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Upon recording the statement of the accused in the case, he alleged that he was being wrongly implicated stating enmity as the reason. Om Prakash mentions travelling from his village, accompanied by the brother of the victim to be able to get bail for Ram Saran who is the victim's husband. Upon arrival in the town, he made attempts at the police station at night and for the same purpose had also borrowed some money. However, later when the challan was issued, they got into an altercation with Jaipal, who is the eyewitness in this case, and the victim's father regarding the refund of money. The accused states that he was assaulted and it is the aftermath of this very incident that he is being implicated in this criminal case.

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<sup>7</sup>Criminal Procedure Code 1973, s 313.

<sup>8</sup>Indian Penal Code 1860, s 376 (2) (e).

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### **CHARGES BEING FRAMED ARE NON-JUSTICIABLE**

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The petitioner's counsel also submits that the charges being put on their client are baseless and non-justiciable. According to them the version of story presented by the prosecution is has not been set up on practical grounds. The petitioner was a relative of the victim and was present in the Zila Parishad to help the victim's husband get a bail in a challan case. He would not have dared to rape her, that too in presence of people and in broad day light. It is absurd to place such arguments before the court which have no basis. In the light of the present event, the requirements of Section 376(2)(e) were not proved.

### **RESPONDENT'S ARGUMENTS**

#### **CONVICTION BASED ON VICTIM'S STATEMENT**

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In cases involving rape charges the victim's statement is enough for conviction and no corroboration is required on the evidence of the victim. It is settled law that no corroboration is required to the statement of a victim of sexual assault.

#### **ACCUSED KNEW VICTIM WAS PREGNANT**

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There is no doubt about the fact that the accused knew about the victim being six months pregnant. Moreover, he had been in a position to domineer the will of the victim. Considering the same, he must be punished on the ground of raping a pregnant woman and not simply trying to rape or sexually assault a woman.

#### **PRESENCE OF EYEWITNESSES**

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Jaipal, the brother of Ram Saran, also served as an eyewitness in the case. He was very much present at the time of the incident and thus his statement must be taken into consideration for the conviction of the accused.

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## OVERVIEW OF THE JUDGEMENT

The pronounced judgment by the Trial Court had established the punishment on the grounds of Section 376(2)(e) however the Supreme Court reduced the punishment to 7 years as under Section 376(2).<sup>9</sup> A statement was issued by the Court which said, "It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence... The Indian woman has the tendency to conceal such offence because it involves her prestige as well as the prestige of her family. Only in few cases does the victim girl or the family members have the courage to go...and lodge a case. In the instant case...there was no apparent reason for a married woman to falsely implicate the accused after scattering her own prestige and honor." In addition to this it must be noted that a rapist not only invades the victim's privacy and dignity, but also causes irreparable psychological harm to both the victim and his/her family. Hence, strict punishment must be given to the guilty of committing the crime.

When it comes to the issue of evidence in the form of the statement of the victim and the need for corroboration the court observed that under Section 118 of the Evidence Act the woman is to be considered a competent witness in the case.<sup>10</sup> It is also stated that corroboration of any kind, be it by the medical professional too, is not required in cases of rape and sexual assault. In *State of Maharashtra v. Chandraprakash Kewalchand Jain*, it was maintained that if it is ascertained from the totality of the circumstances that the woman had no strong and explicit reason or motive to maliciously involve the person charged, the judiciary must not hesitate to involve her statement as trusted evidence.<sup>11</sup>

In the present case since the victim was pregnant and therefore the punishment is severed under Section 376(2)(e). While considering this specific subsection it must be established without any doubt that the accused had the knowledge about the victim's pregnancy. This is understood from the usage of the phrase "knowing her to be pregnant." Since in the present case there is just a possibility that the accused knew of the victim's pregnancy and no evidence could be

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<sup>9</sup>Indian Penal Code 1860, s 376 (2).

<sup>10</sup>Indian Evidence Act 1872, s 118.

<sup>11</sup>1990 1 SCC 550.

produced to ascertain his knowledge about the same the sentence was reduced to 7 years as under Section 376(2).

## CRITICAL ANALYSIS OF THE JUDGEMENT

### THE NEED FOR COROBORATION OF EVIDENCE

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The term “corroboration” of evidence in cases of sexual offences has been widely debated in various cases. In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, the court felt that asking to corroborate the evidence of a victim of a sexual offence was in a way inflicting more pain and agony to the victim.<sup>12</sup> It affirmed that there existed no good reason for corroboration considering the nature of the crime but at the same time it was noted that medical evidence was a mandate in certain circumstances of the aforementioned crime. It can also be noticed that over the years the need for medical evidence has also been overlooked in many cases. It is believed that in such heinous crimes court should only consider corroboration or added medical evidence when the statement of the victim casts doubts on the happenings and facts of the case being discussed. In a subsequent case of *Sher Singh v. State of U.P.*, it was decided by the court that an uncorroborated statement of a single witness could be accepted and acted upon provided that the evidence is convincing and clear.<sup>13</sup>

However, there are various possibilities in a case of sexual offence which cannot be overlooked. Although the offence being discussed is of grave nature, but so is the punishment given. Therefore, it must be noted that one statement of the victim might affect the entire life of the accused. There are various factors which might interplay in the scenario where the victim’s statement is being recorded. The psyche, surroundings and relatives of the victim might in turn result in a statement being made in the court of law which might not be true in nature. This possibility can surely not be overlooked in any case.

A medical report might just be helpful in confirming the charges and also ascertain whether the person being accused is actually the one who was involved in the crime which was commissioned. Therefore, it must not be overlooked.

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<sup>12</sup>*Bharwada Bhoginbhai Hirjibhai v State of Gujarat* 1983 3 SCC 217.

<sup>13</sup>*Sher Singh v State of U.P.* 2008 SCC 555.

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## OM PRAKASH'S KNOWLEDGE OF THE VICTIM'S PREGNANCY

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It has been affirmed by the learned counsel for the victim that the accused in the case i.e., Om Prakash had full knowledge that the victim was six months pregnant. They asserted that there was full possibility that the accused knew of the victim's condition however, the court does not function on possibilities and probabilities. Therefore, the imprisonment term was reduced in the case from 10 years to 7 years. However, it must also be noted that it cannot be overlooked that the physical appearance of the victim was not enough for the accused to determine whether the victim was pregnant or not. While the Supreme Court indulged in the word play of probability, in my opinion physical appearance and the fact that the accused was a relative of the victim and her family can easily establish the fact that he was aware, beyond any doubt, of the victim's condition.

## MISUSE OF JUSTICE

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The Indian Evidence Act, 1872 does not clearly give a definition of "corroboration."<sup>14</sup> This grey area has further resulted in several men and women taking advantage of the same. While it cannot be overlooked that rape and sexual offences are perhaps offences of grave nature and their victims must not be put under any process of scrutiny that adds to their already psychological and physical pain, but it also cannot always be held that their evidence is solely enough to convict someone. There can be interplay of various factors underlying one's accusations of such heinous offences against another. The fact that one's life can be entirely changed due to one statement given by someone poses a serious question to the entire legal fraternity of the country. Misuse must be prevented in all cases and circumstances and thus a humble proposal in this complicated scenario may be to review the clauses relating to the requirement of corroboration of evidence in heinous crimes and come up with a reformed path which draws a middle path based on law as well as practicality.

Moreover, it cannot be overlooked that medical evidence failed to show nay traces of sexual intercourse in this case. The medical examination which was performed on both the accused as well as the victim, and also their pieces of clothing which were collected for additional evidence did not reveal any such findings that could ascertain that rape had been committed as was being stated by the victim in court,

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<sup>14</sup>Indian Evidence Act, 1872.

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Hence, while it is on the court to act as per their discretion according to the facts and evidence of each case, it must not be blinded by the statement of the victim as also should undertake a scrutiny into other evidence and circumstances of the case which might point otherwise.

### **CONCLUSION**

The aforementioned case like any other has two almost equally weighing sides. While it must be noted that sexual offences are of much grave nature than any other offences, not only to the victim and their families but also to the society at large it cannot also be overlooked that the accused's life is also under purview and decision of the court. It is without any hiccup that it must be concluded that the rapists deserve the harshest form of punishment for their act. It not only causes physical harm, but also psychological trauma to the victim, her family and the society at large. The judgment in this case made escape for such rapists even more difficult in the coming times as the Supreme Court made clear that "victim of the rape is not an accomplice to the crime and her statement should be relied upon" in cases like these. The inability of the court to place reliance on the testimony of the prosecutrix shall be the only situation which gives rise to a need for corroboration.

On the contrary, one also must account that law can be misused terribly in such cases. The fact that the medical evidence failed to prove the commission of any such crime as being alleged by the victim must be taken into account seriously. False cases are lodged in the country in large number all around the country and a mechanism has to be set up on urgent basis to counter such forged claims. It not only causes problems for the ones falsely accused but also causes hindrance to the court in determining whether the case being registered is actually worth the time it is dedicating in hearing it out and giving a judgment. No court can simply presume that the Indian woman is the victim always and will, under no circumstances, indulge in wrong practices as under the eyes of law.

All that being said, the case proved to be a steppingstone towards justice for the innumerable victims of this gross crime in India. Future of the various clauses regarding rape, sexual offences and need for corroboration of evidence will surely be determined on the basis of such precedents.