**CASE ANALYSIS OF**

**MUMTAZ V. STATE (GOVT. OF NCT OF DELHI)**

**2013 SCC OnLine Del 2094**

**By:-**

**Vaibhavi Pedhavi**

**2nd Yr., BA.LLB (Hons.)**

**GUJARAT NATIONAL LAW UNIVERSITY, GANDHINAGAR**

**Mob. : 9527160242**

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**ABSTRACT**

In the preset article, author has summarized the case of ‘Mumtaz v. State (Govt. NCT of Delhi). The judgment which was given by Justice G. P. Mittal has covered the validity of the conviction of the Session court on the Appellant and also addressed the issue of providing legal aid and its effectiveness in the fair trial. The decision by the High Court of Delhi has also dealt with the statutory provision of fair trial guaranteed by article 21 of the Constitution of India. The author of this article has summarized the judgment into various parts which includes facts of the case, arguments advanced by both the parties and the decision given by session court as well as the High court. The attempt has also been made to explain the legal provisions which were referred in the judgment.

**Keywords: Rape, false allegations, legal aid, IPC, conviction.**

**INTRODUCTION**

Rape is considered as one of the heinous crimes. There are several provisions which have been made to address the issue of rape. It causes the great distress and humiliation to the victim of the rape but if the false allegations of the rape was made to the accused, then he can also face the same distress, humiliation and damage. Therefore, it is also important that the accused of the rape should be protected against the false allegation by the victim. The present case is related on the same scenario where the false allegations were made on the appellant. It also raises important questions regarding the importance of fair trial under article 21 and the purpose of legal aid to the underprivileged sections of the society.

**BRIEF FACTS OF THE CASE**

The Appellant in this case was convicted by the trial court for committing the offences which are punishable under Sections 363/376(2)(f)/323 of the IPC.[[1]](#footnote-2) According to the statements made by the victim in the police station (hereinafter referred as ‘J’), the Appellant came to the house of ‘J’ to ask for utensil. Father of the victim asked ‘J’ to give utensil to him. When she was giving utensil to him, the Appellant took her from her house on the pretext of giving toffee to her. According to the statement, the Appellant further lifted the victim in his lap and started pressing her. The victim started to raise alarm due to which many people gathered at the place. The Appellant also slapped her which resulted into an injury over her lip. The crowd brought him to mother of the victim, where ‘J’ narrated the incident to her mother, The case was registered at PS Seelampur police station against the Appellant. When the case was examined by the court of Magistrate, ‘J’ changed her statement and stated that she was repeatedly raped by the Appellant and therefore the case was committed to the court of session. Meanwhile he was convicted under Sections 354/323 of IPC by the court of magistrate. When the matter came to the session court, the victim and her mother again changed their testimonies. The Appellant was not given a fair chance to represent him before the court of law. The session court convicted the Appellant and was sentenced under sections 363/376(2)(f)/323 of the IPC. The present appeal was registered by the Appellant against the decision of the session court.

**ISSUES OF THE CASE**

1. Whether the decision given by the session court which convicted the Appellant for the rape has been rightly entertained?
2. Whether Additional Session Judge has failed to protect the statutory right to protect the Appellant to have a fair trial which is guaranteed under article 21 of the Constitution of India?

**ARGUMENTS FROM THE APPELLANT SIDE**

* The Appellant in this case was represented by the learned counsel Ms. Charu Verma. The Appellant challenged the conviction and the sentence which was decided by the Additional Session Judge under the sections 363/376(2)(f)/323 of the Indian Penal Code. The contention on behalf of the Appellant was mainly based on the ground of improbabilities from the side of the Respondent.
* The argument was also made regarding the total change of version by the victim and her mother. The statement which was made at the time of registration is entirely different from what was stated in the court of Magistrate as well as Session court.
* It was also submitted that the Appellant could have been convicted for his act when he lifted the victim and pressed her and also slapped her. Therefore, he could have been convicted under 354/323 of the IPC at most. The Appellant did not dispute that he had lifted the victim in his lap and when she cried, the Appellant slapped her resulting into an injury on her lip.

**ARGUMENTS ON BEHALF OF THE RESPONDENT**

* The respondent was represented by the learned APP of the state, Ms. Rajdipa Behura. The Respondent supported the different version of the child victim and also submitted that the Appellant has failed to make out any case before the court to take a different view other than the view taken by the Additional Judge of the session court.
* The counsel also tried to convince before the court that the conviction should be based on the sole testimony of the victim of rape. It was also argued that the victim was nine years old who was repeatedly raped by the appellant. The testimony was not given in the infirmity. The contention was also made on the ground that the absence of injury on private parts of the victim is no valid ground to disbelieve the statement by ‘J’.

**LEGAL ASPECTS**

The case revolves around the various sections of the Indian Penal Code and article 21 of the Constitution of India.

Section 323 of the Indian Penal Code, 1860: This section of the Penal Code talks about the punishment for voluntarily causing hurt. The punishment for this crime may extend to one year or with fine.

Section 354 of the IPC, 1860: The section deals with the assault or criminal force to women which outrage her modesty. The punishment under this section is the imprisonment which may extend to five years and will also be liable for fine.

Section 363 of IPC, 1860: This section defines the offence of kidnapping and also provides punishment whoever commits this crime under the territory of India.

Section 376 of IPC, 1860: This provision of IPC provides the punishment for the offence of rape. It also lays down different circumstances in which the offence of rape can be committed by a person.

Article 21, Constitution of India:[[2]](#footnote-3) This article is an important provision which guarantees the right to life and personal liberty to all the citizens. According to this provision, no person should be deprived of his right to life except the procedure established by law.

**DECISION BY THE SESSION COURT**

The session court examined the testimonies of the witnesses including the victim and mother of the victim. The session court came to the conclusion that the testimony of the child victim is truthful and therefore, convicted the Appellant under sections 363/376(2)(f)/323 of the Indian Penal Code. He was sentenced under section 376 (2) (f) to undergo 10 years imprisonment with fine of Rs. 10,000. Under section 323, he was convicted to undergo simple imprisonment for 6 months and fine was also made of Rs. 500.

**VIEWS OF THE COURT**

The court observed that there is no public witness available which can be associated with this case and can prove the allegations of the child victim to the Appellant. The court also took note of the different versions given by the child victim and her mother at the various stages. While deciding validity of the witness of child court relied upon the observation made by the Supreme Court in case *Ratansinh Dalsukhbhai Nayak* v. *State of Gujarat.*[[3]](#footnote-4)In this case, the apex court discussed the earlier decision given in the case of *Dattu Ramrao Sakhare* v. *State of Maharashtra*, where it was held that the evidence of child witness and credibility of the witness would depend on the circumstances and facts of each case. But the court should always keep in mind while assessing the witness is that the witness given by the child should be reliable one and there should be no likelihood of being tutored.[[4]](#footnote-5) The court also took reference from the case of Rai Sandeep @ Deepu v. State of NCT of Delhi, where the quality of the statement of the prosecutrix was discussed in detail which can be made as the basis to convict the appellant.[[5]](#footnote-6)

While analyzing the testimonies given by the child victim and her mother, the court observed that both of them have narrated different versions which are entirely different from the statement which was given while registering FIR. Appellant did not exceed his act from lifting her in his lap and holding her and also slapping her when she raised an alarm. As the child victim was only nine years old, if she had been raped two or three times (as per the statement by the child victim and her mother), she did not suffer from any bleeding or any injuries on her private part or other parts of the body. Therefore, this rules out the possibility that ‘J’ was raped by the Appellant. Due to different testimonies court also discussed the importance of FIR. In the case *Algarsmy* v. *State by Deputy Superintendent of Police[[6]](#footnote-7),* discussed the importance of FIR where it was observed that the importance of FIR cannot be underestimated because it is considered as the first version which acts as a basis through which investigation proceeds. The court did not find this case as a case of rape on the basis of the examination of various evidences. The court also made view that the additional judge of the session court was wrong and the decision of the conviction of the Appellant under sections 363/376 (2)(f) of the IPC was also illegal. It was held that the session judge has failed to protect the statutory right of right to free trial which has been guaranteed under article 21 of the Constitution. The child victim can prove the case only to the extend that the accused who was appellant only lifted her on his laps, pressed her and when she cried, he slapped her. Therefore the Appellant can be convicted only under sections 354/323 of the Indian Penal Code.

The court also discussed the importance of providing legal aid to those who come from the underprivileged background of the society, who cannot get legal assistance on their own. In this case, the Appellant was not in the position to afford legal expenses of their own but he was assigned the legal aid counsel who did not cross examined the witnesses effectively. Therefore, the court held that the requirement of providing legal counsel to the appellant is not only the formal responsibility of the state at their own expenses but it also refers to the act that they should be given an experienced legal counsel who would be able to defend the accused in whichever possible manner by his or her professional expertise.

The court held that the conviction of the Appellant under sections 363 and 376 (2) (f) and 506 of IPC will be set aside though he would be punishable under sections 354 & 323 of the Indian Penal Code, 1860.

**CONCLUSION**

The present case raises many questions leading various concerns regarding the duty of the trial court to protect the statutory rights as well as right to free trial in the criminal matters under article 21 of the Constitution of India. The court is one of the important cases where the purpose of providing free legal aid was discussed elaborately. For the protection of fair trial, it is necessary to have the effective legal system. This case also sets out an example of how the false allegations can be made by the victim which can result in the judgment of the court of law. If there is no effective legal aid then it can destroy the lives of the people who are innocent. The High Court of Delhi has rightly gave its judgment by observing the facts and evidences and sent a strong message to the society that the legal system is capable enough to understand and tackle the problems of the society as per the procedure established by law.

**SUGGESTIONS**

The concept of ‘legal aid’ which was highlighted in this case is an obligation of the state to protect the rights of the citizens. At the ground level, there is so great variation in the effectiveness of the legal aid programme. It is the duty of the state to provide good infrastructure to engage people as well as counsels to participate in the programme of legal aid. The state should also offer them training, resources, and guidance to encourage volunteers in this field. There is need to promote legal aid activities to the grass root level which will broaden the concept of ‘access to justice’

**REFERENCES**

The Indian Penal Code, 1860.

The Constitution of India, 1950.

*Ratansingh Dalsukhbhai Nayak* v. *State of Gujarat*, 2004 Cri. L. J. 19.

*Dattu Ramrao Sakhare* v. *State of Maharashtra*, (1997) 5 SCC 341.

Rai Sandeep @ Deepu v. State of NCT of Delhi, 2012 (131) DRJ 3 (SC).

*Algarsmy* v. *State by Deputy Superintendent of Police, AIR 2010 SC 849.*

**BRIEF ABOUT AUTHOR**

Vaibhavi Pedhavi is a 2nd year B. A LLB(Hons.) student at Gujarat National Law University, Gandhinagar. Her areas of interests include Human Rights law, Constitutional law and the interdisciplinary nature of academia. Apart from academics she enjoys reading books and classical music.

1. The Indian Penal Code, 1860. [↑](#footnote-ref-2)
2. The Constitution of India, 1950. [↑](#footnote-ref-3)
3. *Ratansingh Dalsukhbhai Nayak* v. *State of Gujarat*, 2004 Cri. L. J. 19. [↑](#footnote-ref-4)
4. *Dattu Ramrao Sakhare* v. *State of Maharashtra*, (1997) 5 SCC 341. [↑](#footnote-ref-5)
5. Rai Sandeep @ Deepu v. State of NCT of Delhi, 2012 (131) DRJ 3 (SC). [↑](#footnote-ref-6)
6. *Algarsmy* v. *State by Deputy Superintendent of Police, AIR 2010 SC 849.*  [↑](#footnote-ref-7)