
MAHENDRA VS STATE OF CALCUTTA: A SOCIO-LEGAL ANALYSIS OF BULBBUL (2020)

Shriya Tandon, O.P. Jindal Global University

ABSTRACT:

Re-watching Bulbbul as a law student, I couldn't help but wonder how Bulbbul's story would unfold if we substituted the fantasy-horror theme with a realistic Courtroom plot. Curiosity got the best of me, and I did just that—giving Bulbbul a chance to seek legal recourse. For a better understanding and decoding of the outcome that might ensue from this hypothetical legal battle, I employed a more modern timeline to utilize the contemporary Indian Criminal Law, i.e., *Bhartiya Nyaya Sanhita, 2023*. However, I cannot simply ignore the existence of several uncoded standards and criteria that Courts consider while deciding upon rape cases. It is a silent but known fact that the Indian Criminal Justice System more often than not gravitates towards social constructs of 'what rape is' instead of abiding by the legislative lingo. The dominant explanation of this unnatural phenomenon is embedded in the unrealistic patriarchal standards that are imposed on women, which treat them as accessories to men, and decide whether they are deserving of 'justice' based on their caste, class, creed, purity, and so on. Through this paper I aim to analyze these shortcomings—particularly the persistence of rape myths, and the relevance of mens rea in rape case—by employing them in Bulbbul's case, to accentuate on how justice can be influenced by extra-legal factors.

Rape myths are prejudicial and stereotyped beliefs that set up a false narrative about rape victims, rapists, and rape as a crime. The concept of ‘ideal victim’ and ‘ideal accused’ is the most prevalent rape myth, and in a manner, works as a means to decide whether a rape victim should get justice depending on her conformity to this ‘ideal victim’ box and the perpetrator’s idealness as an accused. The ‘ideal victim’ is usually vulnerable and untarnished, whereas, the ‘ideal accused’ is deviant, violent, ideally a stranger, and always a male¹. However, the Indian Criminal Justice System takes this standard one step ahead and adds the elements of caste and class to it. A prominent example to corroborate this claim is the case of *Bhanwari Devi*. Before her story led to the establishment of the *Vishaka Guidelines*² by the Hon’ble Supreme Court, Bhanwari Devi faced humiliation and oppression by the District Court of Jaipur, who dismissed the rape charges against the five accused by simply claiming that, “*Since the offenders were upper-caste men and included a brahmin, the rape could not have taken place because Bhanwari was from a lower-caste.*” This single sentence is proof enough to realise that the socio-economic status of rape victims can play a huge role in Court’s reasoning to establish whether the rape happened or not, because no matter how progressive we claim our Country or our Judicial System to be, India was, is, and unfortunately, will always be highly driven and motivated by the notions of casteist and classist ideologies that centres arounds oppressing and dehumanising those at the bottom of the hierarchy. Fortunately for our prosecutrix Bulbul, her social standing as a young woman belonging to an upper-class family, at first glance, can help her be classified as an ‘ideal victim,’ where she will at least not face constant character assassination and discrimination based on her socio-economic background that consequently discredits her reliability as a rape victim. However, there exist certain other factors in relation to ‘ideal victim’ and ‘ideal accused’ that can influence the Court to rule otherwise.

An important marker that solidifies the ‘ideal victim’ stereotype is the conventional insistence that a woman’s body should bear visible injuries and marks of stiff resistance to corroborate that rape was committed on her³. Landmark judgements like *Mathura*⁴ and *Mahmood Farooqi*⁵ have upheld the notion that if there are no visible injuries, then there was no resistance to the sexual act, and hence, there was no rape. The injuries that Bulbul sustained on the day of the

¹ Simone Eelmaa and Maria Murumaa-Mengel, ‘Who is worthy of help? Constructing the stereotype of the “ideal victim” of child sexual abuse’ in Daniela Stelzmann and Josephine Ischebeck (eds.), *Child Sexual Abuse and the Media* (NOMOS 2022) pp. 261-278

² *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

³ Uma Chakravarti, ‘Some thoughts on domestic violence: Using violence to regulate a patriarchal family’ in Indira Jaising and Pinki Mathur Anurag (eds.), *Conflict in the shared household* (OUP 2019) pp. 26-39

⁴ *Tuka Ram and Anr vs State of Maharashtra* 1979 SCR (1) 810.

⁵ *Mahmood Farooqui v. State (NCT of Delhi)* (2017) 243 DLT 310.

crime were unrelated to the act of rape since they were caused by a prior episode of domestic violence. Moreover, even if she did resist to an extent despite being injured, she should have sustained some (new) injuries because it is commonly understood, especially in cases of rape, that any amount of resistance is met with violent retaliation. It can also be argued that Bulbbul's upper body was not restrained, unlike her legs, which were tied for medical treatment, so she could've easily used her arm's strength to push the accused away since, after all, she is a woman of sound mind, and the accused was anything but. Furthermore, even if Bulbbul is classified as an 'ideal victim,'—since she is an innocent, upper-class woman who was unable to resist the sexual act properly because of her injuries—the perpetrator, Mahendra, falls outside the scope of an 'ideal accused.' Mahendra's idealness as an accused is of paramount relevance because the roles of victim and perpetrator co-constitute one another. The victim cannot appear weak and vulnerable unless the perpetrator is strong. Therefore, the more ideal a victim is, the more ideal the accused becomes and vice versa⁶. However, in Bulbbul's case, it is evident that Mahendra is of unsound mind and categorizing him as an 'ideal accused' would be inappropriate. Moreover, his unsoundness of mind can be a ground for him to escape criminal liability as it is evident that *mens rea* or guilty mind, one of the essential elements required to establish a criminal activity, is absent in this case.

Mens rea in rape cases, is being aware that the complainant does not consent to the intercourse or being reckless with her consent. Therefore, if the accused believed that the complainant was consenting, there is a probability that he will be acquitted⁷. This principle was established in *Farooqi*⁸ case, where the Court held that for a 'feeble no' to mean 'no' in the strict sense, there must be proper communication of the unwillingness to participate in the intercourse. For Bulbbul, her 'no' lacked the assertiveness and clarity required to get the point of 'unwillingness' across. However, even if the communication of 'no' was clear, the accused Mahendra being of unsound mind, could be said to have no understanding of the concept of 'rape' or 'consent' because, after all, his thought process is akin to that of a 5 to 10-year-old child. '*But no child before attaining the age of puberty displays a primitive desire for lust.*' While this can work as an excellent counterargument, there is a likelihood of defendants debunking this contention by bringing up biological factors—despite having the IQ of a child, Mahendra, was nonetheless a man who could ejaculate. His inability to understand concepts

⁶ Christine Schwöbel-Patel, 'The 'Ideal' Victim of International Criminal Law' (2018) 29(3) EJIL <<http://ejil.org/pdfs/29/3/2909.pdf>> accessed 18 April 2025

⁷ Law Reform Commission of Ireland, *Knowledge or Belief Concerning Consent in Rape Law* (Law Com No 15, 2018) para 1.06

⁸ *Mahmood* (n 5).

such as ‘consent’ or ‘sexual intercourse’, along with his devious acts, can be excused by his cognitive disability since he acted in consonance with his physiological needs, which he psychologically was unable to decipher, much like a child. Therefore, for Mahendra, the said sexual intercourse was simply a game.

Another factor considered while constructing the ‘ideal victim’ and the ‘ideal accused’ profile is the relationship between the victim and the accused. The dynamics of victim-accused relationships have the power to legitimize or depreciate the victim’s credibility⁹. In Bulbbul’s case, the perpetrator being her brother-in-law, could potentially sway the judicial opinion since it is normally understood that the closer the relationship the victim shares with the offender, the more likely she falls outside the ‘ideal victim’ stereotype and the grand narrative of ‘real’ rape¹⁰. Moreover, as mentioned before, an ‘ideal accused’ should ideally be a stranger as well. Circling back to the *Farooqi*¹¹ case, where the prosecutrix’s testimony was disregarded since she shared a close, intimate relationship with the accused, there is a low probability that Bulbbul can retain her victim status considering her familial relationship with the accused. Consequently, Mahendra’s status as an ‘ideal accused’ is further diluted since he is not a stranger to Bulbbul. This gives rise to the possibility of Courts setting this matter aside as a domestic affair, since Indian Courts for a long time have simply refused to interfere in matters that come under the ambit of the private sphere for the purpose of preserving the sanctity of the family-oriented ideology that our Country so preaches. This public-private sphere dichotomy has largely left women unprotected against unrestrained male power and violence, sexual or physical, in their own households¹².

Moving on to the statutory segment, Section 63 and Section 64 of BNS talks about the crime of rape and its punishment, respectively. But Section 22 of BNS exempts a person from criminal liability if they were incapable of understanding the wrongfulness or nature of their act at the time of committing it, due to unsoundness of mind. Since neither Section 63 nor Section 64 provides for a clause when rape is committed by a person of unsound mind, an important question arises—can a general provision be read into rape provisions under BNS? I once again place reliance on *Farooqi*¹³ case, where court employed consent under a general provision, i.e., Section 90 IPC, instead of the one provided under Section 375 IPC. This begs

⁹ Eelmaa (n 1) 271.

¹⁰ *ibid* 271.

¹¹ *Mahmood* (n 5).

¹² D. Nicolson, ‘Criminal Law and Feminism’ in D. Nicolson and L. Bibbings (eds.) *Feminist Perspectives on Criminal Law* (Routledge-Cavendish 2000) pp. 1-25

¹³ *Mahmood* (n 5).

another question—if Court in *Farooqi* can apply a general provision even when a specific provision exist, then who is to say that in Bulbul’s case, where there is a clear absence of a relevant clause to penalize the accused under Section 64, the general provision would not be give precedence over the specific provision? Excuse my partial lack of knowledge when it comes to answering the questions about the interpretation of statutes in such cases, but I believe that in absence of such a specific clause, it is quite obvious that the Court will most likely read Section 22 into Section 63 and Section 64 of BNS. On this basis, the accused, Mahendra, will probably be acquitted from the rape charges.

I am aware that my analysis of this alternative situation where Bulbul seeks legal remedies, instead of allowing a supernatural force to bring her justice, has an evident negative tone and might seem ‘anti-justice’, but it is nonetheless the bitter reality. It is the truth that rape victims face great difficulty in persuading different agents of the criminal justice system (like police, judges, etc.) that they were raped, especially when, their experiences differ from social-legal constructions of ‘real’ rape—involves a stranger, resistance on victims’ part, and visible injuries to prove it¹⁴. These rape myths and stereotypes that continue to prevail in the Criminal Jurisprudence, despite several amendments to penalise and prevent rape, can cause a grave miscarriage of justice—a rape case could be dismissed simply because the uncoded and stereotypical standards could not be satisfied, and the coded regulations weren’t exclusive enough to provide a remedy for the ones who were wronged. The fantasy genre of *Bulbul* ultimately remains what it is: a ‘fantasy’, since there is, sadly, no supernatural force serving justice in real-time, and countless non-ideal victims, like *Mathura*¹⁵ and *Bhanwari Devi*¹⁶, remain helpless and silenced since the Indian Criminal Justice System has so coherently established that the credibility of woman screaming ‘rape’ is multifaceted and largely contingent on her background, especially caste, class, and purity.

¹⁴ Nicolson (n 12) 6.

¹⁵ *Tuka* (n 4).

¹⁶ *Vishaka* (n 2).