

## CASE COMMENT

**GOVINDACHAMY v. STATE OF KERALA**

Crl. A.No. 1584-1585 of 2014

*Written by Samiksha Kandyia**1st Year LLM, NALSAR, Hyderabad***Introduction:**

The present case which is famously known as 'Soumya Rape' case gives a clear picture of injustice towards women who cry desperately for caring and sensitive attention. This case is a proof that despite constitutional guarantees of 'Justice; social, economic and political' and assurances of a life of freedom, equality and dignity, rape and other sexual abuses are ravaging the lives of millions of women, where one such woman is Soumya, a 23 year old who became a victim of rape and murder by the hands of a habitual offender roaming freely on the roads of Kerala.

**Facts:**

The facts of the case thus in a nutshell are, that the victim was travelling on February 1, 2011 in Ernakulam-Shornur passenger train, when the accused Charley Thomas aka 'Govindachamy' on seeing her alone in the female compartment attacked her brutally hitting her head many times against the walls of the coach causing grievous injuries<sup>1</sup>. He then threw her from the train on the railway tracks and raped her. The villagers found her in an unconscious state on the railway tracks near Vallathol station. She succumbed to many serious injuries and died in the hospital after 5 days of the incident and therefore, the Thrissur Fast Track Court imposed death penalty on the accused under section 376, 302 and 394 read with 397 of IPC which was later after 2 years upheld by the Division Bench of the High Court of Kerala. But when the case went in Appeal to the Supreme Court, The court commuted the death sentence to seven years imprisonment for murder and life imprisonment for rape charges.

**Analysis:**

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<sup>1</sup> At a glance: Soumya rape and murder case, [www.thehindu.com](http://www.thehindu.com), last accessed on 29/11/2016.

In this case, the Supreme Court had overlooked Section 300 of IPC which defines murder and has 4 parts. Supreme Court only looked at the first part which requires the intention to kill and ignored the rest of the 3 parts which do not require intention. Moreover, the survival of the victim for few days does not mitigate the brutality of the assault, because the post-mortem report says that the death was caused due to assault as she had 6 wounds on the top left part of her head that cannot be caused by falling off the train but can only happen by hitting her head repeatedly on a surface. It was not just any part of the body like hands or legs, but her head was the target which in an ordinary course causes death and thus itself shows the intention of the accused to kill the victim.

Moreover the Court relied on the testimony of the two witnesses who were sitting in the adjacent compartment of the train, where the middle aged man told that the victim herself jumped off from the train. The court very conveniently ignored that the Hearsay evidences are inadmissible in the court of law under section 60 of the Indian Evidence Act, except in cases of dying declaration and opinion of the expert. The Supreme Court said that it was not clear whether the accused pushed her or she herself jumped out of the train, and therefore liability cannot be attributed to Govindachamy for the injuries sustained due to fall. This conclusion of Supreme Court implies that if the victim had to jump out of the train to save herself from the brutal injuries sustained by her, then there is a break in the chain of causation. If the victim in order to save herself from rape and grievous hurt jumped out of the train, then it is reasonably foreseeable that she would commit such act and this should not be considered as breaking the chain of causation. In Criminal cases, the worst part is that the victim or prosecution has to prove beyond reasonable doubt that such a crime has been committed by the accused. The Court has again proved in this case that it has no place for women. This was an opportunity wasted where the court could have ruled on an important issue of causation in criminal law. The absence of eye witnesses in this case should not be considered as a lacuna and the nature of the crime should have been taken into consideration by the honourable court and declare this as 'the rarest of the rare case'.

The accused Govindachamy is a habitual offender and was previously convicted for robbery and assault. He had almost eight cases against him in his native state, Tamil Nadu. The fast track court awarded death penalty based on the finding that he was a habitual offender and the brutal rape

was a result of it<sup>2</sup>. But this fact was not taken into consideration by the Hon'ble Supreme Court while deciding the final verdict of the case. The accused had no guilt or regret of committing the crime and there is possibility that if not given death sentence, he would again dare to commit such heinous crimes.

This case appears to have hidden layers and therefore more investigations need to be done regarding the actual identity of Govinchamy as his name is registered as Charley Thomas in police records of Tamil Nadu. Also, the one very intriguing question that should have been raised in this case is about hiring BA Aloor, a prominent lawyer who charges Rs. 5,00,000 for each case and has already defended him thrice. The convict was reported to be 'mentally unbalanced beggar', then how all of a sudden he could hire such an expensive lawyer to defend him<sup>3</sup>. Such large amount of money cannot be afforded by the accused, then who is this faceless cash-rich group who wants to save the accused of murder charges<sup>4</sup>. These hidden facts shows that the there is more to this case beyond the issue of justice to soumya which needs to be investigated critically.

### **Conclusion:**

This case was an opportunity where the Judiciary could have set an example in the society by awarding death punishment to the accused having a long list of criminal cases against him. The court already had taken 5 long years to deliver the judgment and as it is rightly said that *Justice delayed is Justice Denied*, which the court could have proved wrong by giving a just decision and declaring it as 'the rarest of the rare case'. Many times Court becomes insensitive towards women victims since all the crimes against them must be proved beyond reasonable doubts. This is the condition in India, where victim women become double victimized by the Criminal Justice System and such long delays by the judiciary in delivering judgment allows the perpetrators to move with courage<sup>5</sup>. Victims need to feel that they are an integral part of the Criminal Justice System and are not disregarded<sup>6</sup>. Therefore there is an urgent need to take a fresh look at the

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<sup>2</sup> <http://www.ndtv.com/kerala-news>, last accessed on 28/11/2016.

<sup>3</sup> Garima Aggarwal, Soumya's Rape and Murder case - Justice denied?, <http://www.hindupost.in>, last accessed on 30/11/2016.

<sup>4</sup> Dinesh Unnikrishnan, Soumya rape, murder case: Which is the faceless, cash-rich group defending 'beggar' Govindachamy?, <http://www.firstpost.com>, last accessed on 29/11/2016.

<sup>5</sup> Dr.Kamalaveni & Dr. Rupa Gunaseelan, Loopholes in Judicial System-Paves way to Violence against Women, (IOSR-JHSS) Volume 18, Issue 3 (Nov. - Dec. 2013), PP 55-56.

<sup>6</sup> Patricia A. Resick, The trauma of rape and the Criminal Justice System, [www.jstor.org](http://www.jstor.org).

position in which the women as a victim of crime is placed in our criminal justice system. Women should be able to rely on the justice system which is not biased and is free from myths and stereotypes, and on the Judiciary whose impartiality is not compromised in any situation. Justice is not a means but it is an end in itself which everyone who is right on their part deserves.

