

## MOOT PROBLEM

1. On date 1<sup>st</sup> January, 2024, Raksha, a college student, aged about 24 years, was celebrating the new year with her friends at the City Centre, Kolkata.
2. At 1 AM, on 2<sup>nd</sup> January, 2024, after the new year celebration ended, Raksha and her friends decided to go back home. Raksha, who came to the place of celebration on a bus, decided to go back on foot alone, since all her friends came on by-cycles and she could find no means of transportation.
3. At around 1:15 AM while Raksha was crossing a lone street, she was surrounded by 3 men and one woman. All pointed their knives towards Raksha and the woman ordered her to give them her purse. Scared, Raksha surrendered her purse to her and stepped back. While the criminals were returning, Raksha looked at the woman criminal and screamed “You are an insult to women”.
4. Enraged, the Female Criminal looked at her accomplices and yelled “Teach her a lesson”.
5. The three men forcefully grabbed Raksha, and started tearing her clothes. When Raksha resisted and fought back, The woman criminal grabbed Raksha’s hair from behind and kept a sharp knife on Raksha’s throat. All three men, gangraped the victim while the victim helplessly watched but could not do much because of the knife kept on her throat.
6. The men violently raped, brutalised, assaulted her, slapped, kicked, and punched her. One of the criminals pulled out a hammer from a bag he was carrying and smashed it in Raksha’s face, brutally breaking all her teeth and causing severe injuries. When the entire ordeal ended, the woman criminal said “She has seen our faces and we can’t let her go”, and slowly slit her throat.
7. Raksha died within a few minutes, and the woman criminal slowly cut her body into 34 pieces and kept her body parts in small polyethene packets, boarded a bus, and throughout the journey from Kolkata to Durgapur, threw parts of the body of the victim at different places and threw the hammer and the knife in a river.
8. However, their entire act was caught in a CCTV camera of a nearby shop. The shop-owner Nandu, saw blood near his shop, and immediately checked his CCTV camera for the cause of it and was horrified to his core. Nandu then uploaded the 24 minutes long video on ‘X’ (Formerly known as Twitter) and tagged Kolkata Police to take action.

9. The video immediately got viral within 3 hours and the entire country erupted in protest and chaos. Hundreds of candle marches were launched and strict action was demanded by the public and the police began investigation immediately.
10. Due to darkness and the poor quality of the camera, only a blurry face of one of the criminals, the one who assaulted the victim with a hammer, could be guessed. The police tracked him in Durgapur and arrested him on 2<sup>nd</sup> June, 2024.
11. As an outcome of long interrogation, the arrested accused revealed his name as Sumit and revealed the names of others as Bilal, Manjeet and Nancy. Based on the evidence of the arrested Sumit, rest three were also arrested.
12. However, since no weapon, no part of the body of the victim, and no other evidence could be gathered against the accused persons, the trial kept getting delayed as the prosecution kept failing to bring any admissible evidence on record.
13. After 2 and half years of the incident, the four accused persons were granted bail from the Hon'ble High Court of Calcutta on the ground that the accused persons had served 2 years of incarceration with the conclusion of trial nowhere in sight, they had clean antecedents, the only available material against them were confession to a police officer, and confession of a co-accused person, which were no substantive evidences.
14. Even though the bail of the accused persons were cancelled by the Hon'ble Supreme Court looking at the heinousness of the alleged offense, the entire country was left shocked and protests erupted across the entire country. #MurderofJustice, #ThisCountryHatesWomen #MotherJusticeCrying and other hashtags trended across social media, the video of the brutal rape and murder was circulated again, panel discussions were conducted on live TV by senior journalists like Arnab Choudhary, Sudhir Goswami, Barkha Sardesai, Rajdeep Dutt etc who also collectively hosted a show 'No Country for Innocent Women'. The Hon'ble Justice who granted the bail was transferred to a different state by the Supreme Court collegium but the country could not forget the ache.
15. The Ruling Party, the HJP, introduced a bill in lok sabha titled "Jaghanya Yaun Apraadh Suraksha Adhiniyam" and on 2<sup>nd</sup> January, 2027 the "Heinous Sexual Offenses Protection Act" was passed and as a tribute to the victim, it was nicknamed 'Raksha Act'.
16. As per the Section 4 of the said act, The act was applicable in all cases of Rape.
17. Section 34 of the said new Act dealt with bail for the covered offenses and laid conditions, and it was passed as under –

**18. Section 34 – Conditions for Grant of Bail –**

1. *No Direction for grant of bail to any person apprehending arrest under Section 438 of the CrPC, 1973 shall be passed in favour of any person accused of any offense to which this Act is applicable.*
2. *No Person accused of any offense covered under this Act, shall be granted Bail in exercise of any power conferred under any Act passed by the Indian Parliament, or the State Legislatures, except when –*
  - a) *There are strong grounds to believe that the accused has not committed such offense, and*
  - b) *There are strong grounds to believe that the accused if released on bail won't commit any further offense.*
3. *In addition to the above given conditions, No person accused of any offense covered under this Act, if jointly charged with any Non-Compoundable Offense as given under Section 320 of the Code of Criminal Procedure, 1973, shall be released on bail, except when –*
  - a) *He has clean criminal antecedent*
  - b) *Has spent three-fourth of the maximum permissible punishment in custody*
4. *No person accused of any offense under this Act, shall be released on Bail only on the ground of illness, infirmity, pregnancy, or old age.*
5. *Nothing provided under any law made by the parliament or the state legislature shall permit the court to release any person accused of any offense to which this act is applicable, to be released merely on the ground of non-submission of chargesheet.*

19. Despite the objections of several criminal law jurists regarding the strict bail conditions, the Act was received with praises by the general public who were fed up of raging sexual offenses in the country.

20. On 30<sup>th</sup> January, 2027, Harjeet Singh, A female student of Lucknow Central College, Lucknow committed Suicide by pouring kerosene on herself and setting herself on fire. The hostel authorities, police and the fire department tried to save her, but since the entire room was set on fire, her body was almost reduced to ashes.

21. One minute before committing suicide, Harjeet wrote a suicide note and posted it on Social Media page in which she alleged that on 26<sup>th</sup> January 2027, at around 11:30 AM, her fellow classmates, Rohit, aged 24, Shabana, aged 24, and Joseph, aged 24, committed brutal gang rape on her and attempted to murder her too. She alleged that they had broken her ribcage, Forearms, and fingers and have tortured her and she has been taking multiple painkillers to subdue the pain and today she has consumed Fentanyl, and has got the courage to say and do what is right.

22. Immediately all three were arrested and the police began their investigation, however, due to almost the entire room being burnt, and no evidence was found apart from a confession posted on social media page which could have been written under influence of Fentanyl, the case kept of dragging as the court was not confident about convicting them but the fear of massive public outrage kept the court from acquitting them.
23. One year after the arrest, Rohit, Shabana and Joseph applied for bail and the Sessions Court, Lucknow granted bail to Shabana on the ground that since she is a woman, Raksha Act does not apply to her since she can't be alleged of Rape, while Rohit and Joseph's bail were denied keeping in mind the stringent conditions of Section 34 of Raksha Act.
24. Rohit and Joseph appealed to the Hon'ble Allahabad High Court and from there also the bails were rejected.
25. After spending five years in Jail, The Jail Warden on 20<sup>th</sup> Feb 2032 found Rohit and Joseph hanging in their jail cells. They left behind a note, claiming that they were innocent and god's curse will fall on everyone who disbelieved them and kept them among actual murders, rapists and dacoits for years.
26. On 2<sup>nd</sup> March, 2032, the police found from the archived record of CCTV footage of a nearby building, that a man jumped out of Harjeet's room's window moments before the room was set on fire and the Police used AI image enhancement software to complete and clear the image.
27. The person identified was Avinash, a disgruntled ex-boyfriend of Harjeet. Upon arrest and interrogation, Avinash confessed about drugging, Raping, Assaulting and murdering Harjeet and posting a fake confession on social media to frame Rohit, Joseph and Shabana, who were good friends of Harjeet and always warned about Avinash.
28. Upon learning that two innocent men committed suicide, The entire country was left shocked and protests erupted across the entire country. #MurderofJustice, #ThisCountryHatesMen #MotherJusticeCrying and other hashtags trended across social media, the suicide note of both boys claiming their innocence was circulated, panel discussions were conducted on live TV by senior journalists like Arnab Choudhary, Sudhir Goswami, Barkha Sardesai, Rajdeep Dutt etc who also collectively hosted a show 'No Country for Innocent Men'. The Hon'ble Justice who refused to grant the bail was transferred to a different state by the Hon'ble Supreme Court collegium but the country could not forget the ache.
29. A PIL was moved by an NGO named '*With Our Men Everywhere in Need*' or W.O.M.E.N, challenging the constitutionality of Section 34 of the Raksha Act in the Hon'ble Allahabad High Court. The Division Bench of Allahabad High Court

passed a split verdict regarding the constitutionality of the said section and granted certificate for appeal in the Hon'ble Supreme Court of India.

30. *With Our Men Everywhere in Need* appealed against the split verdict and the matter is now listed in the Hon'ble Supreme Court of India for arguments on merits.