

Supreme Court Steps In

Posted at: 28/03/2025

Supreme Court Steps In: Redefining Attempted Rape in India

The **Supreme Court** has stayed an **Allahabad High Court** ruling that downgraded charges against three accused from **attempted rape** to **mere preparation**, calling the judgment **insensitive**.

Allahabad High Court's Ruling

The **High Court** removed charges of **attempted rape** and instead directed a trial under **lesser offences**, including:

- **Section 354B of the IPC** (using criminal force against a woman), and
- **Sections 9/10 of the POCSO Act, 2012** (aggravated sexual assault).

Background of the Case

The High Court was hearing an appeal against a **POCSO court order** that had summoned the accused for trial under:

- **Section 376 IPC** (rape), and
- **Section 18 of the POCSO Act** (punishment for attempt).

On **March 17**, the High Court removed **attempted rape** charges, terming the act as mere "**preparation**."

Key Legal Distinction: Preparation vs. Attempt

The case highlights the **crucial difference** between:

- **Preparation** (which is generally not punishable), and

- **Attempt** (which is criminally punishable).

This distinction led to **Supreme Court intervention**.

Legal Criteria for 'Attempt'

In **Abhaynand Mishra v. State of Bihar (1961)**, the Supreme Court outlined the requirements to establish an **attempt**:

1. The accused had the **intention** to commit the offence.
2. The accused **prepared** to commit the offence.
3. The accused took **actions** towards committing the offence (not necessarily the final act).
4. A **penultimate act** occurred in the course of committing the offence (proximity requirement).

Where Does 'Attempt' Begin?

In **State of Maharashtra v. Mohd. Yakub (1980)**, the Supreme Court ruled:

"Attempt begins where preparation ends."

This means an accused **cannot be punished** for mere **preparation** unless an **overt act** leading to the crime is evident.

Allahabad HC's Reasoning for Downgrading Charges

The **High Court** ruled that the prosecution **failed** to prove the offence had progressed beyond **preparation**, and stated:

- The allegations did not meet the legal threshold for **attempted rape**.
- The **1836 English case** *Rex v. James Lloyd* influenced its decision, requiring proof that the accused **intended to gratify their passions despite resistance**.
- There was **no claim of penetrative assault**, a key element in proving **rape** under the IPC.

Reduced Charges and Punishment

Instead of **attempted rape**, the court charged the accused under:

- **Section 354B IPC** (*assault with intent to disrobe a woman*), which carries a punishment of **1-5 years in prison**.

Historical Precedents in Attempted Rape Cases

The **Lloyd ruling (1836)** continues to influence Indian courts in determining whether an accused has attempted to commit **rape**.

Recent Applications of the Lloyd Ruling

- **May 2024:** The **Rajasthan High Court** applied the *Lloyd test*, altering an **attempted rape conviction** to **Section 354 IPC** (*assault on a woman with intent to outrage modesty*).
- **2004:** In *Aman Kumar & Anr v. State of Haryana*, the **Supreme Court** similarly downgraded an **attempted rape** conviction to a **lesser offence**.

Supreme Court's Criticism and Potential Legal Reassessment

On **March 25, 2025**, the **Supreme Court** took **suo motu cognizance** of the Allahabad HC's ruling and **issued a stay**, stating that:

- The **High Court's reasoning** was **legally flawed, insensitive, and inhumane**.
- This case presents an **opportunity** for the Supreme Court to **redefine the legal standard for attempted rape**.

Conclusion

The case underscores the **legal distinction** between **preparation** (not punishable) and **attempt** (punishable), prompting the **Supreme Court's intervention**. The ruling could set a **new precedent** for how Indian courts interpret **attempted rape** cases