

# India: A toddler's 18 month wait for justice

## Summary

Amal\* was three-years-old when she was raped by a neighbour in the Delhi slum she lived in with her family. What followed was a brutal cross-examination by defence lawyers, staggering incompetence from the legal system and extensive medical procedures. Her mother, a 24-year-old construction worker from Bihar, fought tirelessly for justice for her daughter in a case that went all the way to the Delhi High Court.

## Background

The scene in the courthouse at a rape trial in Delhi was nothing out of the ordinary until the accuser took the stand and could barely see over the witness box.

Amal was three when she was sexually assaulted by her neighbour. Aged five by the time of the trial, the child's age did nothing to stop the defence conducting an aggressive cross-examination of her.

The defence lawyer first asked for her parents' names, then the name of her school, before he demanded she describe to the court how she had been raped. In all the girl was forced to record 164 statements before the magistrate.

Her mother Munira\*, who had stopped working as a day-labourer on construction sites to follow proceedings, begged the judge to halt this line of questioning but it was to no avail.

"Why did you decide to go off with a stranger?" the defence lawyer continued. "Child, you are lying right? True or not?"

Unimpressed with her answers, the magistrate dismissed her testimony and moved to acquit the defendant.

In doing so he ignored the fact that Amal had pointed out the accused as her attacker on three occasions, the fact that the defendant had refused to take part in an identification parade and that the victim's blood had been found on the man's clothes.

For Amal's family, if the trial had been tough the events surrounding it were equally difficult.

After the attack, their slum neighbourhood, situated next to one of the many construction sites which dominates the Delhi landscape, was swamped by police who busied themselves interviewing neighbours and turning the place over.

For a Muslim family who had just moved from Bihar to the city, this made them stick out even more. Angered by the attention the incident had brought, Munira was abused in the street by members of her own community as she went to and from her day job.

Twenty-four-years-old and weighing just 40kg, she fed and clothed her family of five through her occasional 10-hour shifts on building sites. Her husband suffers from a mild mental health issue and is unable to work, meaning the £60-a-month she earned from her construction work was the only income the family had.

The injuries Amal sustained in the attack meant she had to undergo three reconstructive surgeries and carry a colostomy bag around with her to aid her digestion for seven months.

With Amal's medical care to be organised, and legal proceedings ongoing, Munira found it impossible to keep working. She stuck with her daughter throughout the process. Going with her to the police station, then to the magistrates court and then through the trial itself, attending every day of proceedings.

The children's rights organisation HAQ supported Munira and her family throughout the case. They were shocked by the outcome of the original trial which concluded in February.

Enakshi Ganguly Thukral, co-founder of HAQ, told the [New Internationalist blog](#) last month: "The order of the sessions judge in February this year, acquitting the accused due to lack of evidence, came as a shock to all of us. Not only did the sessions judge suggest that the victim had been tutored, he explained away the child's blood on the accused's underwear by saying that the evidence had been planted."

## **Getting the case to court**

In August 2014 at a conference in Delhi, HAQ made contact with [Swathi Sukumar](#), from the NGO iProbono, in what Thukral describes as a "providential meeting".

“When I first spoke with people from HAQ they told me there was one case that was really urgent,” recalls Sukumar.

By this time six months had passed since the end of the original trial. The defendant had been let off scot-free for this entire time.

In India, the state can appeal a case if they feel it has been poorly handled by a lower court. This appeal was submitted in August. Weeks later, after agreeing to take on the case and seeing the mountains of disregarded evidence and the incompetent way the trial had been conducted, iProbono submitted a separate appeal calling for the case to be re-examined at the High Court. “The timing was perfect,” says Sukumar.

Sukumar was shocked by what she found from the original trial.

“If you read the lower court’s judgment, you can see it’s really rife with errors and it asks completely irrelevant questions and the scope of inquiry is completely random. The child is criticised for not explaining why she went away with a stranger,” she recounts.

“In this case it was ridiculous to open up an inquiry about why she went away with someone she didn’t know. As if to say that a normal child would not do that. So in some ways they were blaming her.”

Amal was initially represented by a public prosecutor rather than a lawyer, a decision Sukumar calls a “big mistake”.

“She did not have a lawyer of her own to look after her interests and to ensure that these protective measures were in place,” she explains.

## **Outcome**

Months after the original trial concluded the suspect was arrested again after trying to abduct a one-year-old off the street.

By October, after months of analysing the lower court’s judgment and with the media now interested in the case, the Delhi High Court made their decision.

The defendant was sentenced to life in prison, overturning the lower court’s decision.

High Court judges Mukta Gupta and Pradeep Nandrajog found fault with the line of questioning used by the defence lawyer, with the fact that the suspect’s refusal to take part in the identity parade was not accounted for in the judge’s decision to acquit him, and with the failure to consider forensic evidence.

Further admonishing the defence team, they added that "a three-year-old is not accountable for how she accompanied the accused to a secluded spot."

The Court also emphasised that the evidence of a child witness cannot be rejected without first considering the evidence "with close scrutiny". Critically, it stated that if after careful scrutiny a court is convinced about the reliability of the child witness, it can convict the defendant based on the child's testimony.

In a landmark ruling, the judges laid down guidelines on questioning child victims in court, covering matters such as the method of asking questions and specific terminology to avoid.

Drawing on the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, the Court recognised that children are "vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process". It also ruled that the state would fund Amal's medical expenses.

The ruling served to strengthen existing legislation, namely the Protection of Children Against Sexual Offences Act, which came into effect almost exactly two years before the ruling.

Sukumar hopes that the case will provide a boost to rape victims seeking justice in a country where it is rare to secure convictions.

"There is systemic disbelief in this country," she says. "By the time the case reaches the court quite often a lot of the evidence no longer exists, or has not been properly collected or the people involved no longer have the stamina to go on fighting.

"The system is intimidating and the cross-examination can be quite brutal. And if you're looking at people from a poorer background like this child's mother, why should they go on with the matter? Why should they proceed with the case?"

With the press having been engaged in the case from the start of proceedings, interest peaked after the High Court ruling.

[A campaign launched by iProbono](#) to help the family relocate to a safer neighbourhood and get their daughter back to school has so far raised over £12,000, all of which will be put into a trust for Amal's family.

The money will be a welcome relief for the child's family, not least her mother who has amazed all that have met her through the case with her commitment and drive.

In a country where women face terrible struggles to secure rape convictions, this slight, illiterate 20-something, with no education, has defied the odds.

“She speaks Hindi very well and is a very polished and refined person. She is extremely progressive minded, more because of the hardships that she’s had to go through and she wants her daughter and two sons to be educated,” says Sukumar. “She is a remarkable woman.”

Amal now hopes to return to school and get back to a normal life. She faces more complicated surgery as she gets older, but for the time being her body is too fragile to take any more procedures.

After an 18-month fight, involving almost unimaginable hardship for Amal, Munira and all those involved, in October 2014, justice was finally done.

\*The names of the child victim and her mother have been changed to protect the identity of the victim.

---

### Further information

- Read the [judgment](#) by the Delhi High Court in this case (State v. Sujeet Kumar)
- See CRIN’s country page on [India](#), including a list of persistent violation
- Read CRIN’s report on [access to justice for children in India](#)

*CRIN’s collection of case studies illustrates how strategic litigation works in practice by asking the people involved about their experiences. By sharing these stories we hope to encourage advocates around the world to consider [strategic litigation](#) to challenge children’s rights violations.*