

An Insight into an Eight-Year-Old Girl's Rape and Murder Case and the Sections Related to It of The Indian Penal Code

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Abstract

The present review study discusses the core reason behind the rape and murder of an eight-year-old girl who was raped and murdered at Kathua district of Jammu and Kashmir state in India. The review analyzes how it has led to communal problems and political conspiracy. Furthermore, the study explores the exploitation of fundamental right to speech and expression by the media which has created distress among the viewers resulting in rallies within the country and the rest of the world, Jammu bandh and the acceptance of resignations of the ministers of the ruling parties by the Chief Minister of Jammu and Kashmir. It gives an insight into the Indian Penal Code sections to enhance the reader's knowledge in order to understand the depth of the case and the hoax which came into the picture because of this crime. It also suggests to the reader that spreading hoax through social media is a criminal offense. It suggests to the court of law to check the activity of the media.

Keywords: Bakarwal, Defamation, Gujjar, Minor, Muslim

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INTRODUCTION

An 8-year-old girl of Rasana village, Block/Tehsil/Hoblie—Hiranagar, District Kathua of Jammu and Kashmir state in India went missing on 8th of January 2018 and was found dead in a forest near Kathua on 17th of January 2018 [1]. The report says she had been raped and murdered. The incidence of clonazepam, which is a tranquilizer and a seductive, was found in the victim's body [2].

Because of the laxity of the police in investigating, on public demand a special investigation team (SIT) was constituted. The SIT concluded that it was a pre-planned crime and arrested eight accused based on their statements. Some political organizations tried to give communal color and tried to divert the attention of the SIT [3].

The media infringed Section 499 of the IPC that talks about defamation and exploited the fundamental right to freedom and speech and expression to the core by revealing the identity of the victim. It created an environmental distress in the country [4].

METHODOLOGY AND OBJECTIVES

The study reviews the reason behind the eight-year-old girl's rape and murder. It explores the purpose of the news to go viral and turning it into a communal and political matter rather than keeping it confidential. The study checks the participation of media to be completely responsible and it revisits the laws which are related to it. It gives the suggestion to the court of law to check the exploitation of the fundamental right of freedom and speech and expression by the media.

BACKGROUND OF THE CASE

The victim belonged to Gujjar and Bakarwal community, who are Muslim nomadic tribes of Jammu and Kashmir in the Himalayan mountain region. They keep migrating and stay in Jammu during winter and migrate back to Kashmir during summer. Their livelihood is met by rearing sheep and cattle. In 2011, Jammu and Kashmir government approved 100 mobile schools for their children [5]. For the past few years, they have started settling down in the area and have occupied a few hamlets of Jammu. The family of the victim is settled in Kathua district of Jammu.

This settlement was not accepted by the people who are permanent residents of the place and they wanted the nomadic community to leave the place. This has caused the rape and murder case [6].

A First Information Report (FIR) was filed on 12th of January 2018 and a police inquiry took place. A new team, i.e., the special investigation team (SIT) was constituted on public demand on 23rd of January 2018 [7]. The SIT after an investigation arrested eight accused those who had given their statements to the police. The SIT report says that it was a planned crime [8]. It has presented a challan against the accused before the Chief Judicial Magistrate (CJM) holding eight of the accused guilty of rape, murder, kidnapping, wrongful confinement, criminal conspiracy and destroying of evidence [7].

A few people started demanding a CBI inquiry into the case. Many civil society groups directed by the Jammu High Court Bar Association called for a Jammu Bandh on April 11 [9]. This resulted in the acceptance of the resignation by the BJP of its ministers, Choudhary Lal Singh and Chander Prakash Ganga [10].

Initially, social media made the identity of the victim viral with rumors about the false sections of the Indian Penal Code (IPC). After that, electronic media also started showing the girl's picture and revealing her identity [11]. Print media of the country actively wrote the story revealing the girl's identity [12], which is exploiting the fundamental right of freedom of speech and expression according to the Constitution of India.

The news reached the world and some of the foreign news media of the countries with most of the Muslim population started covering the news by revealing the identity of the victim [13].

It became almost a mass hysteria and the slogan "Justice for XXXXX" became popular in the rallies across the country [14].

SECTIONS OF THE IPC RELATED TO THE CASE

Sections 96 to 106 of the IPC talks about the private defense of person and property, which has two major principles

1. Everyone has a right to defend his own body and property and another body and property.
2. The right of private defense is not applicable in those cases where accused himself is an aggressive party.

Section 100 talks about "the right of private defense of the body extend to causing death". The right of private defense of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offense which occasions the exercise of the right of any of the descriptions hereinafter enumerated, namely:

Firstly—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
Secondly—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;
Thirdly—An assault with the intention of committing rape;

Fourthly—An assault with the intention of gratifying unnatural lust;

Fifthly—An assault with the intention of kidnapping or abducting;

Sixthly—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Seventhly—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act (Inserted by Section 2 of 'The Criminal Law (Amendment) Act, 2013].

Conditions

To invoke Section 100 of the IPC, the following four conditions must exist.

1. The person exercising the right of private defense must be free from fault in bringing about the encounter.

2. There must be present an impending peril to life or of great bodily harm, rape, unnatural lust, kidnapping or abduction, wrongful confinement, etc.
3. There must be no safe or reasonable mode of escape by retreat; and
4. There must have been a necessity for taking life.

Section 101 of the IPC talks about the extension of the right to causing any harm other than death. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defense of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any harm other than death [15].

Sections 299 to 307 of the IPC talk about culpable homicide and murder, where Sections 299, 300, 301, 302, 303, 304, 304-A, 304-B, 305, 306, and 307 talk about culpable homicide, murder, culpable homicide by causing death of a person other than the person whose death was intended, punishment for murder, punishment for murder by life-convict, punishment for culpable homicide not amounting to murder, causing death by negligence, dowry death, abetment of suicide of child or insane person, abetment of suicide, and attempt to murder respectively.

Section 300 of the IPC defines murder as, except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –Secondly–If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or–Thirdly–If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or –Fourthly– If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Section 307 of IPC is about attempt to murder—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act death is caused, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts –When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

After 3rd February 2013, the definition was revised through the Criminal Law (Amendment) Act 2013, which also raised the legal age of a minor to eighteen [16].

Section 375 of IPC—A man is said to commit “rape” if he:—(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

Firstly—Against her will.

Secondly—Without her consent.

Thirdly—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly—With or without her consent, when she is under eighteen years of age.

Seventhly—When she is unable to communicate consent.

Explanation 1—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2—Consent means an unequivocal voluntary agreement when the woman by words, gestures, or any form of verbal or non-verbal communication, communicates a willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exceptions—

1. A medical procedure or intervention shall not constitute rape; 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Even after the 2013 reform, marital rape when the wife and husband live together continued not to be a crime in India. Section 376B of the 2013 law made forced sexual intercourse by a man with his wife—if she is living separately—a crime, whether under a decree of separation or otherwise, punishable with at least a 2-year prison term. Forced sex by a man on his wife may also be considered a prosecutable domestic violence under other sections of IPC, such as Section 498(A) as well as the Protection of Women from Domestic Violence Act 2005. The crime of sexual assault on a child, that is anyone below the age of eighteen, is further outlined and mandatory punishments described in The Protection of Children from Sexual Offences Act 2012.

All sexual acts between the members of the same sex, consensual or forced, remain a crime under Section 377 of IPC, after the 2013

Criminal Law reform, with punishment the same as that of rape [17].

Article 19(1) (a) of the Constitution guarantees to citizens right to freedom of speech and expression. The immediately succeeding clause, Article 19(2), however, limits this right in allowing the state the power to impose by law reasonable restrictions in the interests, among other things, of the sovereignty and integrity of India, the security of the state, public order, decency or morality, defamation, or incitement to an offence [18,19].

Section 499 of IPC talks about defamation which is an oral or written statement that harms an individual's prestige directly or indirectly [20].

Essentials of defamation are:

1. The statement must be defamatory.
2. The said statement must refer to the complainant.
3. The statement must be published, i.e., communicated to at least one person other than the claimant [17, 18].

Posting defamatory material or comment is criminal defamation under Section 499 of IPC. Section 66 A of the IT Act is about the social media law in India which says that posting of defamatory comment or material against someone is an offense [21].

Section 233 of the IPC relates to making or selling instruments for counterfeit coins [22].

FINDINGS, CONCLUSION AND FUTURE DELIBERATION

1. It is a rape and murder case.
2. It is a human tendency that no one likes his/her land, property, etc., to be occupied by others. The rape and murder of the girl is the result of it.
3. The news evokes distress and disturbs the viewer which led to rallies with the Slogan “Justice for XXXX”.
4. It turned into a communal and political conspiracy.
5. Self-defense and murder are two different things which are governed under Section 96 to 106 and 299 to 307 of the IPC respectively.

6. Self-defense can be done when someone tries to harm you, whereas, murder is the intentional killing of the person.
7. Self-defense under the circumstances such as rape, if it leads to the death of the accused shall not be considered an offense, under the condition that the victim is proved to be left with no other ways of protecting herself.
8. Section 233 of IPC talks about the making and selling instruments for counterfeit coins. It is no new law for ladies to kill a person who she suspects that he will harm her or rape her [22].
9. Social media has made the case viral. It has also flashed the name and picture of the victim, which is against the social media law in India, under Section 66A of the IPC.
10. After social media, electronic and print media has exploited the fundamental right to freedom of speech and expression by revealing the identity of the victim.
11. According to the Indian Constitution and the IPC, and also under humanity ground such case has to be kept confidential and investigated.
12. The court of law has to check the media for revealing the identity of the victim and misleading the public.

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