

A Questionable Case

Custody Rape in East Delhi

**Peoples Union for Democratic Rights (PUDR)
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On 11 October 2001, it was reported in the newspapers that three persons in the office of the Deputy Commissioner (DC) East raped a woman the previous night. At least two of the accused were employees of the office. PUDR conducted a fact finding into the incident. The team met the police officials (the SHO of Shakarpur PS and the investigating officer, the IO), the DC (East) and the Additional Deputy Magistrate (ADM) East and the victim. The report of the findings is given below.

The victim, aged 35, is a resident of Sunder Nagri, an unauthorized colony near Nand Nagri in East Delhi. She resides in a one room dwelling with her two sons and a daughter. Her daughter, the eldest of the siblings, is about 14 years. Her husband expired about three years ago. She earns her living by working in a nearby ration office where she serves water and tea to the employees from which she makes about 600 rupees. Apart from this she also makes about 300 rupees working in some middle class homes as a malishwali.

The Incident

On October 11, 2001, at around 3 p.m. the victim had gone to the DC's office to get a death certificate for her late husband. There she met Kishan Pal, a chowkidar of the office whom she was acquainted with. Kishan Pal assured her that he would help her to acquire the certificate and on that pretext made her wait till evening. She was made to wait in a room with five other men of whom three left

after working hours. She tried to leave the premises but was prevented. At around 7 p.m., well after working hours, she was forcibly detained in the same room where three persons including Kishan Pal and Om Prakash Kondal, the PA to the DC, raped her through the night. She was allowed to leave only in the morning when the office was about to reopen. She lodged a complaint with the Shakarpur thana specifically naming Kishan Pal as one of the rapist. A medical examination was done the same day, at around 12 p.m. in Guru Tegh Bahadur Hospital.

The Investigation

Two investigations were initiated immediately: the police investigating into the crime and an internal inquiry by the ADM East specifically to look into the security lapses in the office. While the criminal investigation is still on, the ADM has submitted his report.

Kishan Pal and Om Prakash Kondal were both suspended by the DC's office. The ADM has suggested measures to prevent such incidents in the future and the security arrangements have been altered since then. The DC's office is not concerned with anything beyond this.

The police registered an FIR (No. 520/2001) on the basis of the complaint the same day under S. 376/34 (punishment for rape and acts done by several people for common intention) of the IPC. While the minimum punishment for rape is 7 years extendable up to 10 or life, S.34 read with 376 makes the crime in to a gang rape, for which the punishment is 10 years. Om Prakash Kondal, the PA to the DC was arrested the very next day, 12 October and he allegedly confessed to the crime. Kishan Pal is absconding and the third has not been identified. Despite the arrest and alleged confession, Om Prakash is out on bail as the victim failed to identify him in a Test Identification Parade (TIP) in court. The medical examination has not revealed anything concrete as far as the allegation of rape is concerned.

Blaming the Victim

Like in all rape investigations, this time too the PUDR team had to meet the officials repeatedly to gather information. Official inquiries are almost always accompanied with prejudice against the victim and this dilutes the possibility both of convicting the accused and in giving justice to the victim. While the law provides many safeguards for ensuring that the victim is not harassed, the practice of the same contradicts the legal remedies. This case is no different.

Our meeting with the DC revealed the case of official double speak. On the one hand he expressed regret over the incident but on the other expressed doubts over the victim's credibility. Firstly he said that her reason for being in his office was unnecessary, as his office does not issue death certificates. Then he implied that the complaint was false as her moral character was questionable. Finally, he said that she knew one of the culprits and had prior relations with him, presum-

ably suggesting that the rape was consensual. Since the two employees had been suspended and the matter was in the hands of the police and as the ADM was also conducting an inquiry, there was no further responsibility for him in this regard.

On our first visit to the police station, we were told that the team was wasting its time as the complaint was fabricated. Both men and women police officials in the thana said that the victim was a prostitute and that there was a quarrel over the price and number of clients agreed upon. The victim had concocted the rape allegation in order to settle scores. The SHO and the investigating officer informed the team, on its next visit, that the victim was in the habit of filing false complaints as she had filed a similar one concerning her daughter a few months ago. Further, according to them, if indeed the complaint was a genuine one then why had she failed to identify Om Prakash Kondal during the Test Identification Parade?

Inability to identify is not unusual. Since the victim is almost always under mental stress of being identified as a rape victim and is often harassed or intimidated before the TIP, victims are not always able to identify the culprits. In the present instance, the victim is not a minor and the medical examination is inconclusive. Both these facts make her situation more vulnerable in the eyes of the investigating officer and fellow police and court officials. If indeed she was unable to identify Kondal, then why wasn't a second TIP ordered? In our meeting with the victim, the situation became clear. She had met Kondal at the police station before the TIP at a time when he was supposed to have been behind bars. According to her, Kondal pleaded with her and persuaded not to identify him in court. When the police was repeatedly asked whether the victim had indeed met the accused in the police station, the IO agreed that she had met him there.

In short Kondal's meeting with the victim happened in the presence of the police. Further since she had failed to identify him, he is out on bail. The other two are evading arrest perhaps again with the knowledge of the police. The victim believes that the police is protecting Kishan Pal since she had specifically named him in her complaint. Thus a serious charge such as S.376 and 34 of the IPC mean nothing if the investigating agency is not serious. For the future of this case can be either that the police will not file the chargesheet in time (i.e. 90 days) or drop the charges. If, in the rare instance, the matter reaches the trial stage, then, the victim can be harassed into retracting her statement, as the stigma of rape is difficult to erase.

Not a custodial rape?

Our meetings with the ADM revealed another dimension. While he was concerned with the internal inquiry of security lapses, he did believe that the incident could not be classified as a custodial rape as in S. 376 (b), which includes public servants. When asked why the present incident did not fall in the category of custody rape, the reason given was that the victim was not in the "custody" of the

employees of the office. This response is part of the larger administrative response, which believes that the case should not be treated as a custodial rape.

Why shouldn't this be considered as a custody rape? The victim was forcibly detained and assaulted by two of the employees, who are part of the definition of "public servants", who took advantage of their official position over her to mislead her into believing that they would get her the certificate. The fact that she had gone there on her own account cannot be made into a reason for not treating it as a custody rape. By that logic, a patient also goes of her own account to the doctor and if rape happens in the premises, then wouldn't it be treated as custody rape? If a rape is committed within the premises of a public office by the employees of that office, then it falls within the given definition of clause "b" of S.376. By restricting the definition of custody, and by placing over emphasis on the victim's reasons for going to the office, the administration ~~has~~ in fact protected ~~the~~ employees from being treated as culprits of custody rape who can be punished up to 10 years.

The grounds for dismissing the present case as a custody rape are part of a larger attempt to shield the DC's office from adverse publicity.

The victim's battle is a lonely one. The PUDR team almost always met with cold and hostile responses when it tried to inquire about her in the locality or in the ration shop where she works. In spite of the odds against her, she is waiting for the guilty to be booked.

PUDR demands

1. The investigation should be handed over to the crime branch or crime cell
2. The incident be investigated as a custodial rape
3. Compensation be given to the victim