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CASE COMMENT: RANGARAJU @ VAJPEYI Vs. **STATE OF KARNATAKA**

AUTHORED BY - RADHIKA R NAIR¹

INTRODUCTION

“People have different attractions. Mine just happens to be corpses.”

- Hayden²

The subject of necrophilia stands as an unsettling testament to the complexities that can arise when legal frameworks confront the extremities of human behavior. Defined as a paraphilia involving a sexual attraction to corpses, necrophilia raises profound questions about the rights of the deceased, the boundaries of consent, morality, and societal norms. The current case comment delves into the legal landscape surrounding necrophilia in India in comparison with other jurisdictions, and the exigency regarding the criminalization of the same.

FACTS OF THE CASE

Nagesh, the brother of the deceased Rathamma, filed a complaint in 25.06.2015 stating that his sister had gone missing after attending computer classes. Later that day, he learned that a girl had been murdered in Doddahalla, and upon investigation, he discovered that the victim was his sister. It was revealed that she had been murdered and raped between 3.00 pm and 5.00 pm. Upon investigation, the accused, Rangaraju, was apprehended. The investigation team was able to recover various pieces of evidence, including the victim's belongings and items used in the crime. The accused was charged under Sections 302 and 376 of the Indian Penal Code, 1860. The learned Sessions Judge found the accused guilty of both the charges and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs. 50,000 for the offence of Murder and had also sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 25,000 for the offence of Rape. The impugned judgment of the Sessions Judge was then challenged by

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² Oberhaus D, 'The Little Death: Living and Loving as a Necrophiliac' (VICE, 26 October 2015) <<https://www.vice.com/en/article/yvxem5/the-little-death-living-and-loving-as-a-necrophiliac-511>> accessed 25 December 2023

the accused before the High Court of Karnataka.

LEGAL ISSUES

1. Whether the act of the accused attracts an offence punishable under Section 376 of the Indian Penal Code, 1860?
2. Whether the right to dignity as accorded under Article 21 of the Indian Constitution be extended to dead persons as well?

OBSERVATIONS OF THE DIVISION BENCH (HIGH COURT OF KARNATAKA)

The Division Bench comprising of Justices B Veerappa and Venkatesh Naik T had observed that: *“Rape must be accomplished with a person, not a dead body. It must be accomplished against a person's will. A dead body cannot consent to or protest a rape, nor can it be in fear of immediate and unlawful bodily injury. The essence of guilt of rape consists in the outrage to the person and the feelings of the victim of the rape. A dead body has no feelings of outrage. The sexual intercourse on a dead body is nothing but necrophilia. This is not a specific IPC offence categorized under sexual offences mentioned under the Code but could be brought under Section 297 as causing "indignity to any human corpse" by trespass into a place set apart for the performance of funeral rites or as a depository for the remains of the dead Specific IPC offence with Intention of wounding feelings of any person or of insulting any religion, if all the legal ingredients of intention are satisfied.”*

DECISION

The Division Bench of the High Court held that the accused is liable under Section 302 IPC for murder, given the circumstantial evidence and the submissions of the learned counsel for the Appellant, Special Public Prosecutor, and the Amicus curiae. As far as the offences under Sections 376 and 377 are concerned, the Bench concluded that the same wouldn't apply to dead bodies as dead bodies do not come under the definition of a *“Person”*.

However, the Bench did opine that: *“It is high time for the Central Government to maintain the right to dignity of the dead person/woman to amend the provisions of Section 377 of IPC should include the dead body of any men, woman or animal or to introduce a separate provision as*

offence against dead woman as necrophilia or sadism as has been done in United Kingdom, Canada, New Zealand, and South Africa, to ensure the dignity of the dead person including a woman.”

ANALYSIS & CONCLUSION

I believe the accused has not committed an offence as punishable under Section 376 of the Indian Penal Code, 1860. To support my contentions, I would like to refer to two provisions: Section 375 and Section 45 of the Indian Penal Code, 1860.

Section 375 defines the offence of Rape as follows:

“375. Rape.— *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:—*

First.—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.”

Section 46, on the other hand, defines the term Death as the “*Death of a human being unless the contrary appears from the context*”.

Section 375 when read with Section 46 of the Code would make it very clear that the offence of rape can only happen against a live person and not a dead body. The descriptions as specified under Section 375 relate to a woman who is alive and not her corpse. The offence of Rape must be accomplished against a person’s will/consent. A dead body can neither give consent nor can it be put in the fear of immediate and unlawful injury. Henceforth, the act committed by the accused fails to qualify as Rape.

But then, there arises two questions:

- a) If not rape, then has the accused committed any crime? If yes, what is the crime and what are its specificities?
- b) Does the Indian law provide punishment for the same?

Going by the facts of the case, the act committed by the accused is commonly known as Necrophilia. Necrophilia is a term derived from the Greek words *necros* (dead body) and *philia* (love/affection) and involves the sexual attraction to a dead body³. As per the APA Dictionary of Psychology, necrophilia refers to having a sexual interest in dead bodies. It is a rare paraphilia seen almost exclusively in men. The reasons behind necrophilia could be found in a study conducted by Jonathan Rosman and Phillip Resnick in 1989⁴, wherein they reviewed over 122 cases of necrophilic acts. The authors were able to report that:

- 68% were motivated by a desire for a non-rejecting partner;
- 21% were motivated for a reunion with their lost partners;
- 15% were desirous of having sexual relations with dead people;
- 12% wanted to remedy low self-esteem by expressing power over a corpse.

³ Petherick W and Petherick N, *Homicide* (Elsevier Academic Press 2019)

⁴ Rosman JP and Resnick PJ, ‘*Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia*’ (1989) 17 *Journal of the American Academy of Psychiatry and the Law* 153

Over the last two or three decades, India has witnessed copious numbers of necrophilia-related cases. One prominent example is the 2006 Noida Serial Murders (**Nithari Serial Murders/Nithari Killings**). In this case, 8 skeletal remains of children were discovered in the drains of a house in Nithari, Noida on 29 December 2006. The owner of the house and businessman Moninder Singh Pandher and his domestic help, Surinder Koli were arrested. In his confession, Koli gave a detailed account of how he lured the victims (**9 female children, 2 male children, and 5 adult women**) into the house, murdered them and attempted to have sex with inert bodies, chopped the dead bodies, eat their body parts and threw the remains in the drain at the back of the bungalow⁵.

Necrophilia has been identified as an offence in various foreign jurisdictions. For example, Article 225-17 of the French Penal Code makes necrophilia an offence. It allows the judge to punish necrophiles for “*violating the physical integrity of a corpse, by any means*”. The punishment is 1 year imprisonment and a penalty of €15000. In the United Kingdom, Section 70 of the Sexual Offences Act, 2006 makes it an offence for a person who “*intentionally sexually penetrates, knowingly or recklessly, any part of his body into any part of a dead person*”.

As far as India is concerned, we do not have any specific laws/offences relating to necrophilia. However, it could be seen that necrophiliacs are usually charged under Sections 297 and 377 of the Indian Penal Code, 1860. Section 297 very vaguely covers the offence of necrophilia by stating that:

“297. Trespassing on burial places, etc.—*Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”*

⁵ Bharti J, ‘All You Need to Know about Nithari Serial Killings’ (iPleaders, 28 July 2017) <<https://blog.ipleaders.in/need-know-nithari-serial-killings/>> accessed 25 December 2023

As far as this section is concerned, the accused has to commit an act of trespass on burial grounds/places. It is pertinent to note that dead bodies are not exclusively found on burial grounds and are usually present at several places such as morgues, hospitals, locations where the victim was killed, etc. Also, even if the act of trespass is proven, the punishment for such an inhumane act is only 1 year of imprisonment, which does not contribute towards crime prevention.

Section 377, on the other hand, says that:

“377. Unnatural offences. -*Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

To punish a person under Section 377, three elements are to be fulfilled:

- a) Voluntary carnal intercourse;
- b) Against the order of nature; and
- c) With a man/woman/animal.

Firstly, in necrophilic cases, it is impossible to determine whether the act was voluntary or not. The accused cannot seek/obtain consent from a corpse. Hence, the first essential stands failed. Secondly, Section 377 is based on the Victorian Principle that any intercourse that does not result in procreation or is uncommon/unnatural and therefore must be punished. Necrophilia is prima facie against the order of nature, as it is not only uncommon but also does not result in procreation. The second essential, therefore, stands fulfilled. Thirdly, Section 10 of the Indian Penal Code defines Man as a “*male human being of any age*” and a Woman as a “*female human being of any age*”. Now, there arises confusion as to whether the term “*human being*” would mean only a living person or does it include dead persons. As observed by K.Sodesaki, a human body, once dead, is considered only as a weight of material, although it signifies the continuity of what used to be a living being. A corpse is not an integral part of a human being anymore⁶. The third essential, henceforth, stands failed. So, even the provisions of Section 377 cannot be utilized to prevent necrophilic acts.

⁶ Sodesaki K, ‘*The Legal Status of a Human Corpse*’ (2001) 55 *The Japanese Journal of Legal Medicine* 235

To conclude, the act committed by the accused does not attract an offence as punishable under Section 376 of the Indian Penal Code, 1860. Nevertheless, the act of the accused isn't something to be taken lightly. There has to be zero tolerance towards such heinous crimes.

Now, Article 21 of the Indian Constitution guarantees the Right to Life and Personal Liberty. Article 21 is the most organic and progressive provision in our Constitution. It reads as follows: **“21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law”**

Dignity, in itself, is construed to be an abstract notion. The term “*Dignity*” means the state or quality of being worthy/honored. It is derived from the Latin term *Dignitas* which means worthiness. As quoted by Erin Daly, dignity gives rights meaning and purpose. It is the very reason why we insist on rights: we want a healthy environment/we want to express our opinions etc., We insist on rights because we are being treated as something less than human and we believe – because our dignity tells us so – that we are entitled to more or better than mere existence⁷.

The term “*Dignity*” is mentioned thrice in our Constitution: in the Preamble, the DPSPs, and under Fundamental Duties. But, unlike the constitutions of South Africa & Germany, dignity finds no mention in Part III of our Constitution. But, through the use of creative interpretation, the Indian Judiciary had identified “*Dignity*” as forming a part of Article 21. In **Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & Ors**⁸, the Supreme Court had opined that: “*We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing, and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.*”

The aforementioned judgment talks about the right to dignity of a living person. Given the factual matrix of the present case, can we also extend the same to dead persons? The short answer is yes. The long answer is that the Indian Judiciary has interpreted dignity in death and post-death as an inexplicable facet of fundamental rights under Article 21. In **Pt. Paramaanand Katara,**

⁷ Daly E, *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (University of Pennsylvania Press, 2021)

⁸ *Francis Coralie Mullin vs The Administrator, Union Territory of Delhi & Ors* (1981) 2 516 (Supreme Court Reports)

Advocate vs. Union of India and Another⁹, the Supreme Court had observed that: “*We agree with the Petitioner that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death.*”

In **Ramji Singh @ Mujeeb Bhai vs. State of Uttar Pradesh & Ors**¹⁰, the petitioner through his petition had sought to draw the attention of the Allahabad High Court towards the appalling conditions in a mortuary established by the State Government in SKN Hospital attached to the Motilal Nehru Medical College. In this case, the Court had opined that: “*We thus find that the word and expression 'person' in Art.21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he professed.*”

It is also worthwhile to note that on May 13, 2021, the National Human Rights Commission (NHRC) took cognizance of a complaint about several dead bodies found floating in the Ganga River¹¹. Concerning the situation, the NHRC issued an **Advisory for Upholding the Dignity and Protecting the Rights of the Dead**¹². The Advisory provides for certain basic principles for upholding the dignity of/protecting the rights of the dead.

Keeping in mind the aforementioned catena of judgments, it could be very well said that the right to dignity as accorded under Article 21 of the Indian Constitution could be extended to dead persons as well.

To conclude, the current law is very unclear regarding dead bodies/persons and their status/personhood. However, this vagueness cannot justify atrocious acts against a corpse. The Central Government needs to take immediate action to uphold the dignity of deceased individuals. This can be done by adding “*violation of physical integrity/offering any indignity to human corpses*” as an offence under Chapter XVI of the Indian Penal Code, 1860.

⁹ Pt Paramaanand Katara, *Advocate vs Union of India and Another* (1995) 3 248 (Supreme Court Cases)

¹⁰ *Ramji Singh @ Mujeeb Bhai vs State of UP & Ors* (2009) 5 376 (Allahabad Law Journal)

¹¹ ‘NHRC Issues Notice to Centre, UP & Bihar over Dead Bodies Floating in Ganga’ (The Economic Times) <<https://economictimes.indiatimes.com/news/india/nhrc-issues-notice-to-centre-up-bihar-over-dead-bodies-floating-in-ganga/articleshow/82606483.cms?from=mdr>> accessed 25 December 2023

¹² NHRC, ‘*Advisory for Upholding the Dignity and Protecting the Rights of the Dead*’ (NHRC, 14 May 2021) <<https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20for%20Upholding%20Dignity%20%26%20Protecting%20the%20Rights%20of%20Dead.pdf>> accessed 25 December 2023