

Raped and Condemned

Custodial Rape of a Sex Worker

**People's Union for Democratic Rights
Delhi
October 1999**

A narrow door in the wall leads up to the *kotha*. It opens on to a steep and dingy staircase. Garishly dressed women from the age of 18 (or younger) to 45 flank it on either side calling out to passers-by. The going rate is Ra. 60. The world above the stairs consists of a set of dark rooms where the women practise their trade. It is peopled by these women, their several little girl children, an aging 'mummy' and a number of sturdy young men with whom power rests. This illegal world exists about 50 yards away from the Shahganj Police Post of the Kamla Market Police Station (P.S). The policeman on patrol is on familiar terms with the women. He walks casually past, turning a blind eye to the goings on inside the *kotha*. However this forbearance on the part of authority comes at a price and is precarious at best, as was evident in events of 30 September, and their aftermath.

At 6.30 a.m. on Thursday, 30 September 1999, a 30 year old sex worker and mother of two children, was abducted from G.B Road, on her way back from fetching milk, by Constable Deepak Dubey of the Kamla Market P.S. She was brutally raped and sodomised by Dubey, his cousin Sanjeev Dikshit and a TSR driver. She managed to return to G.B Road at about 8.00 p.m. the same evening.

An FIR dated 1 October 1999 was registered at the Shahganj Police Post of the Kamla Market P.S. at approximately 8.35 p.m. The victim identified Deepak Dubey as one of the culprits, whom she recognised since he had been on patrol duty on G.B Road. She was taken to the Lok Nayak Jai Prakash Narayan Hospital (LNJP) for a medical examination and the registration of a Medico Legal Case (MLC). Subsequently, she was taken back to the P.S. and kept there till the morning of 2 October.

On 2 October, Constable Deepak Dubey was arrested under Sections 365 (kidnapping), 376 (rape), 377 (unnatural offences), 506 (criminal intimidation), read with Sections 122 (conspiracy) and 34 (common intention) of the Indian Penal Code (IPC). He was presented in the Metropolitan Magistrate's Court and remanded to police custody for 5 days (in the same P.S. where he had been employed) and sent to judicial custody on 7 October. He was also dismissed from service. The other two culprits are still absconding. The investigation has been transferred to the District Crime Cell (Central District), supposedly to ensure impartiality of investigation.

However, there are vested interests at work behind the police interpretation and actions and this is evident from the different accounts of the aftermath of the incident.

Victim's Account

On the morning of 30 September, the victim was going to fetch milk when Constable Deepak Dubey, waiting in an autorickshaw near the brothel, asked her to come with him. She recognized him though he was not in uniform as he regularly patrolled the area. She refused to go with him. Shortly after, while returning from fetching milk, he forcibly dragged her into the auto and drove away. This episode was observed by the young men and boys who work in the tea shops in the area, and like the victim, recognised Dubey. The woman was taken to a house in Ghazlabad, where the three men- the auto driver, the constable and his cousin raped her at knife point after locking the doors. She managed to escape by late evening and reached G.B Road. She was bleeding heavily, her clothes were stained, and she could barely stand. She went to the P.S with another sex worker to register her complaint. The SHO lined up the policemen in the *thana* and told her to identify her rapist. Dubey had of course not reported for duty that day, and consequently, was not there in the line-up. When she was unable to spot him, the SHO refused to register her complaint. Consequently, she was denied medical aid at LNJP hospital later that night, as the doctors insisted that she be accompanied by a policeman as it appeared to be a 'police case'.

She was then taken by other sex workers to a private clinic in the Bara Tooti area for treatment and returned to G.B Road late at night. The next day (1 October) the police summoned her at about 8.00 p.m. to identify the guilty policeman, since they had by this time picked up the absentee Dubey from his house. She identified him and Dubey was arrested and the FIR finally lodged (360/89) approximately one day after the complaint was first made. Then the victim was taken for a medical examination and MLC to the LNJP Hospital. Though she was visibly in acute pain, the MLC finalised at 11.45 p.m., records that she had no external injuries. Vaginal and anal smears were taken and sent for analysis.

After the MLC the victim, accompanied by the other sex worker, were brought back to the *thana* and kept there till the morning. During this time, the police repeatedly asked her if she was certain of Deepak Dubey's identity, and told her to re-think her allegation.

She was sent for protective custody to the Nari Niketan and subsequently returned to the *kotha*. Her statement was recorded under Section 164 (in-camera) by a Link Magistrate on 4 October. Her abdomen is badly distended since the rape, and she has internal injuries. She is being treated by a private doctor, and recently, through the intervention of an NGO, at Ram Manohar Lohia Hospital.

Police Version

The version of the police varies from that of the victim in several crucial ways. The SHO of Kamla Market P.S Jagdish Mallik and the Additional SHO, Ram Pal claimed that the victim only lodged an FIR a day after the rape at 8.35 p.m. on 1 October. The SHO went to great lengths to assure the PUDR team that an FIR was promptly registered and the victim taken for a medical examination. Dubey was also located, arrested and dismissed without delay. He also claimed that the victim and her fellow sex worker were kept at the *thana* on the night of 1 October for their own 'safety'. While congratulating themselves for exemplary action, the officials cast doubt on the victim's testimony by repeatedly emphasising that the MLC recorded no physical injuries and rape was impossible to 'prove'

as the victim was a 'habitual' (accustomed to sexual activity).

Discrepancies and Omissions

It is evident from the differences in the two stories that the police are guilty of dereliction of duty in not registering the complaint on 30 September. The SHO made the registration of the FIR contingent upon a Test Identification Parade. The delay in registering the complaint meant that prompt medical examination (essential to prove rape) was delayed. Over 24 hours had lapsed when the MLC was done, making it impossible to prove rape and sexual assault.

The police story that the complainant only came to them on 1 October is rendered ridiculous in the presence of witnesses right from the time of the abduction of the victim by the constable on the morning of 30 September to her return the same night. The other sex workers and brothel owner saw her come back and one of them even accompanied her to the P.S and hospital on the night of the 30th.

By dismissing Dubey the police have attempted to make a show of strong and swift action. Behind this lies their effort to show that the victim had herself delayed in lodging complaint which could be used to doubt her testimony at a later stage. The FIR itself provides an instance of the police attempt to shield the guilty. The column in the FIR where the name of the criminal should be written has been left blank. The police state that this is 'routine practice'. Given that the complainant clearly accuses Constable Dubey as her rapist in the same FIR, this omission is deliberate and can easily be manipulated by the accused. And once the criminal charges are dismissed (as they often are in cases of rape) the charged officer can be reinstated on the plea of 'wrongful dismissal'.

Parallel to the attempts to shield the guilty are the police's efforts to protect themselves from the charge of 'custodial rape' by defining this incident as an aberrant act by an individual delinquent policeman. In keeping with this exercise, the District Crime Cell emphasises that Dubey was not in uniform, not on duty, and not on the Police Station premises when the rape was committed. Therefore they argue that Section 376 (2a and 2b) of the IPC, relating to custodial rape do not apply in this case. It is but natural for the police to wish to deny the allegation of custodial rape, as it would implicate the other police functionaries, shift the onus of proof on the accused, and entail enhanced punishment.

The same section, i.e., 376 (2a) can however be understood differently. Section 376 (2a).iii states, "Whoever being a police officer commits rape on a woman in his custody...shall be punished with rigorous punishment for a term...not less than 10 years, but which may be for life and shall also be liable to fine."

Significantly, the definition of custody in law is not confined to only legal detention/arrest or the premises of the Police Station. According to the Criminal Law Journal [Cr. L. J 635 (837) 1970], "Custodial death is defined as death occurring during a period when some limitation is placed upon the liberty of the deceased, and that limitation must be imposed either directly or indirectly by a policeman". The Supreme Court has subsequently upheld this definition of custody in several custodial death cases. This definition is uniformly applicable in cases of custodial violence, in general and rape in particular.

In the present case, the victim was well aware that the accused was a policeman. The women on G.B Road are particularly vulnerable to the coercive power of the police

because of the illegal nature of their trade. The policemen who patrol this area extort 'hafta' from the brothel owner. Other than this extortion in cash, the police avail of the sexual services of the women without payment.

The extortion in cash and kind are regarded by the police as a 'right'. That the sex workers do not have any real choice in the matter is made visible in the victim's case, where she was brutally raped when she refused to comply. The power of the accused over the victim, once she had recognised him, has to be seen in this context. One could certainly state that Constable Dubey had both directly and indirectly placed limitation on the victim's movements by virtue of his office. It is therefore possible to conclude that this should be regarded as a case of rape in custody.

The victim is today likely to be under some pressure from the community of sex workers not to alienate the police as it could prove disastrous to their trade. Economically dependent on her profession for her children's and her own sustenance, the need to continue her trade in the same area makes her vulnerable to such pressures.

The lack of any recorded external injuries, her sexual history as a 'habitual' and most significantly, her profession are all likely to be used to prove consent and weaken the case. The fact that sex workers in the area often accompany policemen and that the victim knew the constable are likely to go against her.

As matters stand now, the victim also seems to be under tremendous pressure from the police. She has been kept in illegal detention at the P.S on the night of 1-2 October. Her statement given to the magistrate mentions 1 October as the date of the rape. But she, along with other residents in the *kotha* categorically stated to our team that the rape occurred on Thursday, i.e., 30 September. This discrepancy would conceal the SHO's refusal to accept her complaint and in all likelihood ensure acquittal of the accused. On the night of 1 October, when in hospital, she spoke to the journalist of *The Statesman* she had stated that she was first assaulted by the constable in the P.S and later taken to Ghazalabad. However, after her detention in the P.S that night, she has made no subsequent allegations of rape on the *thana* premises.

In the light of the above, certain measures need to be urgently taken to secure justice to the victim. To ensure this, PUDR demands:

- That this be regarded as a case of custodial rape and charges duly added against the accused constable, and investigation and prosecution be conducted accordingly.
- Criminal charges of causing delay and thereby destruction of evidence be framed against the SHO and Additional SHO.
- Owing to the tendency of the police (including the District Crime Cell) to protect their 'own', the investigation be handed over to the CBI.
- Compensation be given to the victim.

Published by: Secretary, People's Union for Democratic Rights (PUDR).

For Copies: Dr. Sudesh Vaid, D-2, Staff Quarters, I.P. College,
Sham Nath Marg, Delhi - 110054.

Suggested Contribution: Rs. 1 (please add mailing charges)