

Mukhtar Mai ¹⁰¹⁴⁶⁵ case – an analysis

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Human Rights

In the case of Mukhtar Mai the LHC judgement determines that Manzoor, Punno and Jamil, got hold of young Shakoor (probably thirteen or fourteen years old) took him to a nearby sugarcane field and sodomised him turn by turn. Then sought a promise from him not to tell anybody about it. When he refused they beat him up and handed him over to Abdul Khaliq. The questions that have remained unanswered in this part of the crime are: one, was the crime pre-planned by the culprits? So that they already knew what to do with the boy after they were done with him? Or was everything done at the spur of the moment? If it was preplanned then Abdul Khaliq, though no homosexual himself, was part of the conspiracy. If Abdul Khaliq did not know of their plan, was he a friend of this group and started with a desire to help them out?

The second question that remains unanswered was that of the gun, which Abdul Khaliq was keeping? He was not a rich man fearing theft of his wealth? Did he have an enmity with anyone in his village and wanted to defend himself rather than report the matter to the police? Or, did he have a plan to commit a crime personally? If that was the case, he must have thought long and hard about it.

The third question is: Why did the three Mastoi men pick on a young Gujjar boy when there were probably some Mastoi boys too of a similar age roaming around in the village? Was it because they thought that there will be no retaliation from the Gujjar family? Had it been a Mastoi boy, they must have realized, the consequences of their act would have been grave. When the three men handed over the victimized boy to Abdul Khaliq they must have been sure that he would not only not betray them but also arrange things so that the boy remained in trouble.

Regardless of whether Abdul Khaliq shared his own plan with the three culprits, it is impossible to imagine that he did not share it with his own family and with at least one person outside it. His plan, which became known to the people at large, was that Abdul Shakoor had sex with his sister Naseem. The fact being that no such thing had happened, why did his family agree to such adverse publicity against their own daughter?

man, who was also a Mastoi, had been interceded. So in the end, while the Panchayat may not have sanctioned the rape of an innocent woman, it acquiesced to it.

The only thing that can be said in defence of this unfortunate and cruel acquiescence is that the story told by Abdul Khaliq, who had personally brought the name of his sister into disrepute (he had not alleged that she was raped but hinted that it was consensual sex) was true and therefore his desire for revenge, even though directed against an innocent person, was valid. It probably never crossed their mind that what they were allowing by their inaction was sexual violence as opposed to an apparent consensual sex.

Now we come to the last part of the story, which is that Abdul Khaliq dragged away Mukhtar Mai from the Panchayat and in that he was helped by three persons of his tribe. Were those three persons accessory to the crime of abduction of Mukhtar Mai, an act witnessed by many people, was a point probably not brought to the notice of the court. Therefore, I would refrain from commenting on it and go to the next stage of the crime – that of alleged gang rape of Mukhtar Mai. About that there seems to be some confusion, probably because of Mukhtar Mai's impression that all four of the alleged rapists were present all the time in the room where she was raped.

The facts are that it was night time and the room, which was apparently closed from inside, had no light. She had been thrown on the floor struggling and shouting for help. She must have felt the presence of more than one male. But whether or not they stayed on in the room after she had been subdued and Khaliq began to rape her is not certain. The prosecution case is that they not only stayed on but took turns in the rape. The defence argued that two brothers could have hardly undressed in each other's presence.

Yet the fact that the room was dark and the two brothers, who were so insensitive as to announce publicly about their innocent sister having had sex with a boy, are hardly the type to have any sense of shame. What normally happens in such cases though is that after the victim has been overpowered, the gang allows each member freedom to do whatever he wants to do alone,

His plan that his purpose to drag the name of his sister in mud just because he himself wanted to rape a Gujjar girl would have been hard to sell to his family unless there was something for, at least for the male members of the family in it. The argument that no male member of the family knew the plan cannot hold water because the moment Abdul Khaliq announced that his sister had a sex, his brother who was there in the panchayat would have stood up to defend the honor of his sister and severely reprimanded Khaliq. The fact that he remained mum clearly shows that he was a party to the plan.

People in our culture place a high value on a woman's purity and virginity. A man would normally divorce his newly wed wife if he finds that she is not a virgin. Despite that, how come Khaliq's family found no difficulty at all in finding a husband for their daughter - Naseem, about whom her own brother had said that she was no longer a virgin. What was the promise given by Khaliq to his brother to keep mum and to an outsider asking him not to raise any objection against Naseem?

One can only guess that the outsider had been guaranteed Naseem's virginity and the brother could have been promised a share of the sex with a Gujjar girl, if he allowed his sister's name to be stained for a while. As to who and how many became accessories to the crime against Mukhtar Mai, is not for me to suggest. It is for the court to determine. Now, as to why no one from Khaliq's family came to save Mukhtar Mai when she was being raped and crying for help, it is not for me but for the court to decide.

Now let us look at the Panchayat headed by a Mastoi elder. The allegation carried in the media that Mukhtar Mai's rape was sanctioned by the Panchayat, has not been proved, but the fact is that no one, not even the Chairman of the Panchayat tried to rescue Mukhtar Mai from Abdul Khaliq's clutches, even when he had openly said that he was going to rape her.

It is true that he pulled out his gun and threatened to kill anyone who interceded on his victim's behalf, but it is hard to imagine that he would have tried to kill the influential and powerful Panchayat Chair-

to do whatever he wants to do alone, the other members wait outside to ensure that no one comes to rescue their victim. So far as the victims cries for help having been ignored by Khaliq's family are concerned, one explanation for that is that the family had already given their blessing to his plot when they allowed him to concoct the story of their daughter's affair.

Whatever be the reality there can be little doubt about the victim's version that it was not one but four men who raped her. Her allegation can be denied, firstly, if DNA tests prove otherwise. For some reason the doctor who examined her did not arrange these tests. Secondly, if there are eye witnesses to the contrary. There were no eye witness, but the victim remained with her abductors for one hour which could imply that there were others, besides the main culprit, interested in free sex. Thirdly, if it could be proved to the satisfaction of the court that the three men were elsewhere during the one-hour that she was in the room. Failing that the settled principle of law in such cases is, and I quote from the judgement, 'in a Tazir case, conviction can be based on the sole statement of the victim'.

Normally, I would not have said anything about the observations made in the judgement about the timidity shown by Mukhtar Mai's family in seeking justice for their daughter, and allowing themselves to be led by the police. But I have decided to say a few words because these are needed. It is a well known fact of our culture that if by some mischance a daughter gets dishonoured, great efforts are made to cover up the incident. Because tongues begin to wag about the 'shady' character of the victimized girl. And that bad reputation adversely affects the marriage prospects of other daughters. Secondly, without police protection the family would not have taken on the powerful Mastoi tribe. So police's role was crucial. Yet even if the police misguided the family on some points of law, the main facts of the case cannot be changed and these stand out loud and clear, despite what Mukhtar Mai's helpers or adversaries may have said or done about it.

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