



A GRIM REALITY OF REVENGE CYBER-PORN:

STATE OF ODISHA V. JAYANTA KUMAR DAS

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ABSTRACT

Victimization of women online by way of revenge porn is a jarring reality of the modern society. When revenge porn is coupled with various manners of psychological provocation, it results in women being targeted to express vengeance. This clearly shows the human psyche of earmarking women. Such catastrophic situation when associated with offences such as identity theft, defamation, forgery in electronic records, publication of obscene material electronically results in a hornet's nest of cyber-crime. The cyber laws in our country are still in its rudimentary stage and therefore face various shortcomings. Lack of offence specific laws, implementation and lack of proper framework are only few of them, giving the offenders an upper hand. The discussed case is not only an example of such an offence but also is considered as Odisha's first conviction for cyber-pornography. The case discusses the misuse of cyberspace to justify enmity by ravishing a women's modesty. Furthermore the case also interprets the meaning of obscenity based on various previous judgments and steps towards positive use of technology. Hence the judgment is like a beam of light in the mist of cyber-offences in our country. The present paper embodies moral use of technology to counter such heinous crime with reference to the case. As well as the aim of the paper is to ensure justice by preventing the jeopardizing morality and curbing the misuse of cyberspace.

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INTRODUCTION

OVERVIEW

“Anonymous speakers cannot be unmasked”.¹Internet being a global language of connectivity has exerted various attributes including suppressing ones identity online. The veil of anonymity has opened a hornet’s nest for cyber-crime including cyber bullying, stalking, trolling and cyber pornography. Emerging trend of posting obscene and derogatory content online has left children and women exposed to the dark side of internet. The present case is the perfect of example of expressing vengeance against an individual by targeting women and children.

FACTS

The petition filed was with reference to cybercrime specifically the offence of identity theft, defamation, and publication of obscene content to menace the character of a woman. A written complaint lodged by informant Biswajit Pattanaik in Baseli Sahi Police Station, Puri alleging that on 18 March 2012, he was confronted by a telephone message on his personal mobile number calling him as “ Hello Suchitrarani” “ Got your listing on desi hunt”. On further inspection he found two fake profiles which were created in the name of his wife Smt. Suchitrarani Pattanaik. Both the profiles were made on the website Desi Hunt.com which was a pornographic website, one of the profiles being for “Wife sharing Group” (WSG) or wife swapping. The numbers which were attached to the fake profiles were two mobile numbers, both of which belonged to the informant Biswajit Pattanaik. It was later found that the informant has been harassed by such obscene messages three months prior to the said date. But, was silent due to social stigma and prestige. He was assertive that the act was committed by Jayanta Kumar Das, Managing Partner of one AKJK Enterprisers of Nabakaleba, Puri Town who was lending loans to private persons and has cheated the innocent poor people by grabbing their valuable properties using muscle power for the sake of granting loans. The informant being a journalist by profession published an article in 2008 in a regional

¹ Sarkar v. Doe, 897 N.W.2d 207 (2016).

newspaper “THE PRAJATANTRA” about the illegal acts committed by the said Jayanta Kumar das. The very next day, the accused Jayanta Kumar Das showed a pistol and hurled slang languages on the informant near Gundicha Temple, Puri after which an FIR was lodged by the informant and a charge sheet was also submitted but the case of which is still pending. Being vindictive of the informant and his family, the accused used to file anonymous complaint to government officials accusing informant of various crimes as well as published derogatory posters about informant and claiming his son as junior criminal. Hence the petition was intricately presented before Sub- Divisional Judicial Magistrate.

CONTENTIONS OF THE PARTIES

The case has become significant due to the extensive use of electronic records as evidences. The prosecution contended that the accused had committed offence under:

- Sections / 292, 465, 469, 500 of the Indian Penal Code, 1860², which includes forgery, forgery for harming reputation, publication of obscene content, defamation.
- Sections / Section 6(c)/66C/67/67(A) of the Information and Technology (Amendment) Act, 2008³, which includes the offence of identity theft, sending of offensive messages, identity theft, publishing or transmitting obscene material in electronic form and publishing or transmitting of material containing sexually explicit act, etc., in electronic form.

The defense contended that the evidences reentered were inadmissible on the bases of procedural lacunae, contradictions in the statements of the witnesses, and questions the reliability of the reports given by experts under Section 79A of the Information and Technology (Amendment) Act, 2008.

² The Indian Penal Code, 1860, Act No. 45 of 1860, Section 292, 465, 469, 500.

³ The Information and Technology (Amendment) Act, 2008, Act No. 10 of 2009, Section 6(c)/66C/67/67(A).

JUDGMENT

The court of law convicted the accused and the judgment was in favor of the prosecution based on the electronic evidences, witnesses and reports. While pronouncing the judgment the court interpreted various points which were raised during the proceedings as:

The court observed that the relevancy and admissibility of the evidences shall be put to test latter vis-a-vis the alleged offences during the time of appreciation of evidence. Hence the contradictions in the statements of the prosecution witnesses were minor in nature due to which the evidences cannot be discarded as was suggested by the defense.

On the question of obscenity as well as circulation of lascivious content, the court observed that the test of obscenity is, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are opened to such immoral influences and into whose hands a publication of this sort may fall. The circulation of such posters with derogatory comments on the informant and his son in auspicious places satisfy the requirements of Section 292 of the Indian Penal Code, 1860.

The basic question of the involvement of the accused in creating fake profiles on pornographic website desi hunt.com was proved as:

The reports during the investigation ascertained that the fake profiles were made by using a fake yahoo ID corresponding to a particular I.P address belonging to a BSNL service provider. Further information provided by the Deputy General Manager (D.G.M), BSNL revealed that the connection and the I.P address as well as on the inspection of the hard drive seized from the house of the accused proved him to be the master-mind of the offence.

On the issue of Mens rea or intention of the accused, it was admitted by the informant and accused that there was an enmity between them hence suggesting the commission of the crime. Therefore the accused was found to have opened forged and fake account in favor of the wife of the informant. He did it dishonestly and fraudulently to harass and shake the reputation of the informant due to prior enmity. Hence the court observed that the accused was liable under Section 292, 465, 499, 500 of Indian Penal Code, 1860.

The court also observed that by creating fake profiles comprehended by fake yahoo ID of the wife of informant, the accused was liable of identity theft under Section 66C of the Information Technology (Amendment) Act, 2008. Further the court interpreted that the

messages such as “got your message on wife sharing group”, “I want have sex with your wife”, “Hi CPL sweetie sexy” were vulgar and obscene in nature as per the evidence provided by the informant. With pornographic image which are definitely obscene and vulgar which any prudent man can assess. These images are available in the hard disc who browse the porn site i.e. deshihunt.com. Hence the messages were published or transmitted through an electronic record which makes it sufficient to be an offence under Section 66A, 67, 67A, of Information Technology (Amendment) Act, 2008.

ANALYSIS

The reasoning provided by the court on the very issue was extensive and apt. In this case the court laid down two distinct propositions.

- a. Firstly what can be considered as obscene?
- b. Secondly whether an expert opinion can be rejected as evidence solely on the basis of non-fulfillment of the requirements under Section 79A of the Information Technology (Amendment) Act 2008?

Easy accessibility, wide reach and availability of obscene material on the Internet have made it more convenient for individual⁴ to post obscene content for pleasure or for revenge. The meaning of obscenity has not been specifically defined in Indian Penal Code, 1860 or Information Technology (Amendment) Act, 2008. Obscenity is interpreted by various honorable courts first being the Regina v. Hicklin⁵ also known as the Hicklin test which described obscenity as the tendency to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. Also in the case of Aavek Sarkar and another v. State of West Bengal and other⁶ where it was held that only those sex related materials which have a tendency of exciting lustful thoughts can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards. The Supreme Court further interpreted the word ‘obscene’ as that which is ‘offensive to modesty or decency, lewd, filthy

⁴ Nikita Barman, *Legal Implications of Cyber Crimes on Social Networking Websites*, 5(12) IJSRP, 1 (2015).

⁵ Regina v. Hicklin, 3 QB 360 (1868).

⁶ Aavek Sarkar & anr. v. State of West Bengal & other, (2014) 4 S.C.C. 2567.

and repulsive.⁷ Thus, it can be said that the standards and factors for obscenity vary greatly depending on norms and values of the state, town or city for that matter of foreign countries.⁸ Secondly the admissibility of the evidences given by Central Forensic Science Laboratory (C.F.S.L), Kolkata was challenged on the bases of non-compliance of the provision of Information Technology (Amendment) Act, 2008. As Section 79A of the Information Technology (Amendment) Act 2008 states that any Department, body or agency of the Central Government or a State Government can be notified by the central government as the Examiner of Electronic Evidence for the purpose of expert opinion on “electronic form evidence” which are admissible in court of law.⁹ Therefore as the C.F.S.L., Kolkata has not been notified by the central government in official gazette the expert report provided by the same is not admissible. But C.F.S.L., Kolkata is a laboratory, authorized as an expert laboratory¹⁰ as notified by The Directorate of Forensic Science Services, Ministry Of Home Affairs whose evidence shall be admissible for the purpose of Section 293 of Code of Criminal Procedure, 1973. Under Section 293 of Code of Criminal Procedure, 1973 any report by any government scientific expert is admissible as expert opinion which includes the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory¹¹. As well as according to the Order No. 25020/61/13/FW/MHA by the Ministry of Home Affairs issued on 26.07.13 jurisdiction of certain laboratories have been notified as an expert laboratory¹², one of which is C.F.S.L Kolkata. Hence the electronic evidence admitted by the C.F.S.L Kolkata is also admissible under Section 45 of Indian Evidence Act, 1872. As section 45 Indian Evidence Act, 1872¹³ clearly states that any person especially skilled in such foreign law, science or art expresses their opinion on a point of determination by the court of law such opinions are relevant fact. Moreover these persons are recognised as experts. Hence when Section 293 of Code of Criminal Procedure, 1973 is read with Section 45 of the Indian Evidence Act, 1872 it is not mandatory to comply with the

⁷ Ranjit Udeshi v. State of Maharashtra, A.I.R. 1965 S.C 881.

⁸ Vakul Sharma, *Information Technology: Law and Practice* 191 (4 ed., Universal Law Publishing, 2015).

⁹ Information Technology (Amendment) Act, 2008, Act No. 10 of 2009, Section.79A.

¹⁰ Government of India, Ministry of Home Affairs, *Central Forensic Science Laboratory* (May 17, 2020, 11:15 AM), <http://cfslhyd.gov.in/Contacts.html>.

¹¹ The Code of Criminal Procedure, 1973, Act No. 2 of 1974, Section 293.

¹² Government of India, Ministry of Home Affairs, *Jurisdiction of the Six CFSL: As per MHA Order No. 25020/61/13/Fw/Mha*. Published in the Gazette of India on July 26, 2013, (May 17, 2020, 11:30 AM), <http://dfs.nic.in/jurisdiction.html>.

¹³ The India Evidence Act, 1872, Act No. 1 of 1872, Section 45.

requirements given under Section 79A of the Information Technology (Amendment) Act, 2008 to admit electronic evidence produced before the court as expert opinion.

Cyber pornography expresses sexual excitement inciting venereal thoughts, such are produced by using computers, internet and also includes downloading, transmitting pornographic videos, writings, photos and pictures etc.¹⁴. Cyber pornography does not necessarily present a negative perspective but when fused with addiction, revenge and non-consensual uploads it creates the notion of obscenity. Such uploads when driven by defamatory or ill intent to ravish the modesty of an individual can have menacing psychological effects on the receiver. Furthermore, the notion of electronic evidences and their admissibility is relatively recent when it comes to India. Therefore expert opinion in electronic evidences becomes principal under the huge spectrum of cyber-crimes. Hence minor technical issues should not disaffect the efficiency of expert reports in cases of revenge porn. Considering the sensitivity of cyber revenge porn in respect of women and children paramount the need for quick and adequate technological investigation, thus the technical irregularities should not cease justice.



CONCLUSION

The advancement of technology is the mother cyberspace¹⁵ and has made man dependent on the Internet for all his needs. Internet has given man easy access to everything while sitting at one place. Social networking, online shopping, storing data, online studying, every possible thing that man can think of can be done through the medium of internet. Internet is used in almost every sphere. Now, as man have encountered the dark side of internet; therefore to counter the possible ill-effects it is required to have proper knowledge, awareness, law, agency and adequate use of technology. The present case shows a considerable amount of investigation undergone by the authorities to provide with a conclusive and strong case. Hence attempts have been made since Information Technology Act, 2000 to counter offences in the cyber-space. But the fact still remains that children and women are yet targeted as a

¹⁴Sushila Devi Chauhan, Ritu, *Combating Cyber Obscenity in India and United States of America: A Comparative Analysis*, 3 *Jamia Law Journal* (2018).

¹⁵ Farooq Ahmad, *Cyber Law in India- Law on Internet* 367 (1 ed., New Era Law Publications, 2008).

subject of revenge. The present case is an example of doing justice to a cyber pornography case but yet there is a long way ahead to achieve cyber security.

