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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANALYSIS OF B.D. KHUNTE V UNION OF INDIA

AUTHORED BY - PRIYANSHI AGRAWAL

Introduction

In *B.D. Khunte v Union of India*¹, the Supreme Court upheld the High Court's conviction of B.D. Khunte for murder under Section 302 of the Jammu and Kashmir State Ranbir Penal Code². The Court ruled that a gap of seven hours was sufficient for a person who had been under "grave and sudden provocation" to regain their composure. It further held that the passage of time allowed the provocation to transition into a desire for revenge, thereby constituting a motive for murder. However, this decision raises concerns about the court's interpretation of provocation and its failure to consider critical social, cultural, and psychological factors that could affect the actions of the accused.

Background and Facts of the Case

B.D. Khunte, a member of the military, was charged with murdering a colleague. The court found that Khunte had the opportunity to cool down and reflect after an initial incident that allegedly involved serious abuse. The Supreme Court upheld the conviction, relying on factors such as Khunte's ability to perform administrative tasks after the incident, the lack of evidence for sodomy, and his decision to settle for less grave punishment, like beating up the deceased, to conclude that the provocation was not grave or sudden enough.

Critical Evaluation of the Court's Reasoning

1. Misinterpretation of the Nature of Provocation in Cases of Sexual Assault

The court's assessment of what constitutes "grave and sudden provocation" appears to be overly narrow and does not adequately consider the psychological impact of sexual assault. Sexual assault, including the type allegedly suffered by Khunte, can be a life-threatening and profoundly traumatic event. Survivors often experience a dissociation where their mind feels disconnected

¹ *B.D. Khunte v Union of India* [2014] INSC 486, (2014) 1 SCC 287.

² Ranbir Penal Code, § 302 (Jammu & Kashmir).

from their body.³ This trauma is compounded in close-knit communities like the military, where abuse by a team member can feel akin to abuse by a family member, intensifying the psychological impact.⁴

Male survivors of sexual assault often use terms like "beating" or "torture" instead of explicitly describing sexual violence, due to societal stigmas and the lack of adequate terminology to express their experiences.⁵ Moreover, they may refrain from reporting such incidents due to fear of retaliation or the belief that the offender will remain in their operational sphere throughout their service. The court's reliance on Khunte's lack of a specific complaint about sodomy ignores these complexities and misinterprets his use of language as an absence of grave provocation.

2. Flawed Application of the "Reasonable Man" Standard

The court has also failed to appropriately apply the "reasonable man" standard by not considering the cultural, social, and emotional context of the accused. In *K.M. Nanavati v State of Maharashtra*⁶, the Supreme Court held that what constitutes a reasonable reaction to provocation depends on "the customs, manners, way of life, traditional values, etc., i.e., in short, the cultural, social and emotional background of the class of society to which an accused belongs." Here, the court seems to have generalized the experience of the accused, rather than placing a reasonable person in the specific situation Khunte faced as a military personnel who may have experienced severe abuse.

By focusing solely on the immediacy requirement of the defense of provocation, which emphasizes only the most recent act, the court has ignored the cumulative effect of continuous abuse and its impact on the accused's mental state. As held in *Poovammal v State*⁷, provocation does not always manifest in an immediate, overt act; rather, it may linger in the mind for a period, ultimately leading to a loss of self-control and the commission of an offense. The court's failure to account for these

³ Organization for Security and Co-operation in Europe (OSCE), *Addressing Sexual Violence in the Armed Forces: A Practical Guide* (2022).

⁴ Organization for Security and Co-operation in Europe (OSCE), *Addressing Sexual Violence in the Armed Forces: A Practical Guide* (2022).

⁵ Sandesh Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, 18 *Eur. J. Int'l L.*253 (2007).

⁶ *K.M. Nanavati v. State of Maharashtra*, A.I.R. 1962 S.C. 605.

⁷ *Poovammal v. State*, (2013) 1 M.L.J. (CrI) 413 (Mad.).

nuances has resulted in an unjust outcome that does not reflect the lived experiences of individuals in such traumatic situations.

Addressing the Counterarguments

While the court concluded that the provocation was not "sudden and grave" enough because Khunte had time to regain his composure, it did not fully appreciate the psychological impact of repeated abuse or the effect of seeing one's abuser approach. The sight of the deceased approaching Khunte, despite his pleas for distance, could have acted as a trigger, reigniting the trauma and leading to a sudden loss of self-control. The court's narrow interpretation of "sudden provocation" overlooks the nuanced reality of trauma survivors' experiences.

Alternative Perspectives and Supporting Case Law

Other legal precedents suggest that the interpretation of provocation should be more flexible and context-sensitive. In *Poovammal v State*⁸, the Madras High Court recognized that provocation could accumulate over time and does not necessarily lead to an immediate outburst. This precedent supports the idea that Khunte's reaction may have been influenced by a series of traumatic experiences rather than a single, isolated event.

Moreover, the Supreme Court in *K.M. Nanavati*⁹ emphasized that the standard for assessing provocation should account for the specific social and cultural background of the accused. This case reinforces the argument that a "reasonable person" standard should be adapted to reflect the unique circumstances of those in the military who may be subjected to particular forms of abuse.

Conclusion

The decision in *B.D. Khunte v Union of India* reflects a failure to adequately consider the complexities of trauma and provocation in the context of sexual assault within a military environment. The court's rigid application of the immediacy requirement and its generalized interpretation of the "reasonable man" standard have set a concerning precedent.¹⁰ A more nuanced

⁸ *Poovammal v. State*, (2013) 1 M.L.J. (CrI) 413 (Mad.).

⁹ *K.M. Nanavati v. State of Maharashtra*, A.I.R. 1962 S.C. 605.

¹⁰ *Poovammal v. State*, (2013) 1 M.L.J. (CrI) 413 (Mad.).

approach, one that recognizes the psychological impact of abuse and the unique circumstances faced by military personnel, is necessary to ensure a fair and just legal process. A judicial process that did not intervene against a subedar with a known reputation for sodomising new recruits, made an example of Khunte by sentencing him to life imprisonment.¹¹ Future cases should strive to incorporate these considerations to prevent unjust outcomes and uphold the integrity of the judicial system.



¹¹ Neeta Sharma, *Code of Injustice: Silencing Sexual Assaults in the Military*, *Firstpost* (May 3, 2019), available at <https://www.firstpost.com/india/code-of-injustice-silencing-sexual-assaults-in-the-military-660748.html>.