



From Screen to Courtroom: Criminal Law's Review of 'Rustom'

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Abstract

The article examines the film 'Rustom,' inspired by the K. M. Nanavati case, focusing on the major offense of 'murder' and related defenses. It delves into the trial of Rustom Pavri, analyzing the charged offense and the defense of 'private defence.' The review highlights the gaps in the film's portrayal of the trial, particularly regarding the intricate elements of the offense and exception. Additionally, it contemplates how the trial might unfold if the true facts were presented, discussing the charge of 'culpable homicide' and the defense of provocation. The article critiques the film's depiction of 'honourable killing,' arguing that it contradicts criminal law theory's principles of justice and equality. Despite the complex facts, the review suggests that the film leaves gaps in its portrayal of offenses and exceptions while justifying 'honourable killing.'

I. Introduction

'Rustom' is a crime-thriller, inspired by the famous case of K. M. Nanavati; however, it significantly diverges from the actual events of the case.¹ The film presents multiple criminal offences such as Criminal Force (S.350), Criminal Trespass (S.441), Criminal Intimidation (S.503), Culpable Homicide (S.299), Murder (S.300), and fabricating false evidence (S.192).² However, this review will limit its focus on the major offence of 'murder' and related defences. While contemplating the trial of this offence in the court of law, this review will also focus on the gaps left by the film and their implication on the criminal law theory.

In 'Rustom' there are two sets of facts, *first*, that are presented in the court, forming the basis of the

adjudication. *Second*, the true events Commander Pavri disclosed to the investigating officer towards the film's conclusion. This review will be divided into two parts: first, an analysis of the trial assuming the truth of the first set of facts, and second, a contemplation of how the trial might have unfolded if the true facts had been presented in an Indian court of law.

II. The trial of Rustom Pavri

In the first set of facts, Pavri visits the residence of Vikram Makheeja, the deceased, where they engage in an altercation. During this, Vikram, in a fit of aggression, points his gun at Pavri. A physical scuffle ensues, where Pavri strives to disarm Vikram. However, in the course of the scuffle, Pavri falls to the ground, allowing Vikram to gain possession of the gun, he loads it and points it at him. In response to this imminent threat, Pavri fires three bullets at Vikram, resulting in his death. Consequently, Pavri stands accused in a Sessions Court under the charge of Murder (S.300) of the Indian Penal Code (IPC).³ The trial centers on the offence of murder and the exception of 'private defence.' However, the film has left certain gaps by not showing the adjudication of the intricate elements of the specific offence and the exception.

A. Charge of 'Murder'

To establish a criminal offence, two essential elements are required: Actus Rea and Mens Rea. In cases of unlawful homicide, Actus Rea encompasses the death of a person, while Mens Rea concerns the guilty mind of the accused.⁴ The IPC delineates two fatal offences for illegal homicide: 'Culpable homicide' and 'Murder.'⁵ In the film, the trial focuses solely on the offence of Murder as defined in S.300 IPC. To prove the offence of murder,

¹ *Rustom* (Directed by Tinu Suresh, 2016) <https://www.zee5.com/movies/details/rustom/o-o-movie_1175948338> accessed 1 October 2023

² Indian Penal Code 1860 (IPC), s 350; s 441; s 503; s 299; s 300; s 192

³ IPC 1860, s 300

⁴ Lanius, D., *Strategic Indeterminacy in the Law* (Oxford: Oxford University Press, 2019), p. 113.; The standard common

law test of criminal liability is expressed in the Latin phrase *actus reus non facit reum nisi mens sit rea*, i.e. "the act is not culpable unless the mind is guilty."

⁵ Culpable homicide is defined in IPC 1860, s 299. Murder is the gravest form of culpable homicide, which is defined under s 300, IPC.

any of the four elements listed in S.300, demonstrating the accused's guilty mind in the form of intention or knowledge, must be satisfied.⁶ The prosecution relies on S.300 (Firstly), where 'the act by which the death is caused is done intentionally [to cause] death.'⁷ They seek to establish that Pavri's possession of a gun, coupled with his disappointment over his wife's affair, indicates premeditated intentional murder. In contrast, Pavri contends that he acted in private-defence.

B. Exception of 'private defence'

The jury has decided the case in favour of Pavri, however, the film leaves some gaps by not mentioning the intricate elements of this exception which are essential to absolve the accused. 'Private defence' is a justifiable exception outlined in Section 96 IPC, which stipulates that 'nothing is an offence which is done in the exercise of private defence.'⁸ Furthermore, Section 100 (IPC) extends this right to include the use of force resulting in death.⁹ Nonetheless, this exception is subject to specific conditions that are laid in S.99 and S.102: (a) it must be against unlawful aggression, (b) involve reasonable apprehension of death or grievous hurt, (c) no resort to public authorities, and (d) be proportionate to the threat.¹⁰

The circumstances in which Pavri shot Vikram meet all these conditions. *Firstly*, Vikram's aggression against Pavri was both unlawful and threatening. *Secondly*, Pavri's reasonable apprehension of death is evident from Vikram's aggressive behaviour and his attempts to gain control of the loaded gun. The film also highlights past instances where Vikram displayed a short temper and a tendency to resort to using his firearm. *Thirdly*, at that particular moment, there was no reasonable option to seek the help of public authorities. Moreover, the element of 'proportionality' must be read with its judicial interpretation. The Supreme Court in *Darshan Singh v. State of Punjab* acknowledges that 'when a person is exercising his right of private defence, it is not possible to weigh the force with which the right is exercised.'¹¹ Individuals in fear of life are not expected to calculate their actions in a step-by-step or graduated manner.¹² Accordingly, the firing of three bullets, in this case, cannot be considered disproportionate because it

took place within the context of a genuine and immediate fear of impending death. Pavri made every conceivable effort to keep the gun out of Vikram's reach, but when he found himself on the floor, the fear of imminent harm was substantial enough to justify his action of firing. His actions therefore align with S.100 IPC (Firstly), which extends this right to use of force resulting in death when there is a reasonable belief that it is 'necessary to prevent imminent death.'¹³ Satisfying all the conditions of 'private-defence' Pavri despite having the knowledge that firing three bullets would kill Vikram, was rightly exempted from the charge of murder as his action was lawful and not intentional

III. Contemplating the trial on true facts

Now, considering the true facts revealed by Pavri to the investigating officer, court's decision would turn over. In this version, Pavri entered Vikram's room, staged a fake scuffle by tampering with the items, and then, upon Vikram's emergence from the bathroom, shot him three bullets. Pavri subsequently unlocked Vikram's gun and planted it in his hands.

If these facts are presented in the court, Pavri would be charged under 'Culpable homicide' (S.299) and 'murder' (S.300).¹⁴ According to the Supreme Court, under such charge the trial court can follow a three stage process: test the causality of accused's action, second adjudicate whether the elements of 'culpable homicide' are fulfilled or not, and third if both these stages get successful, check whether it is the gravest form of culpable homicide i.e. murder.¹⁵ In first stage, the test of causality as explained in *Emperor v. MS Murthy* would be successful because it is clear from the facts that Vikram's death was the ultimate result and foreseeable effect of Pavri's act of firing.¹⁶ In second stage, the offence of 'culpable homicide' would be examined. According to Section 299- whoever causes death by doing an act with- (a) the intention of causing death, or with (b) the intention of causing such bodily injury as is likely to cause death, or with (c) the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.¹⁷ In the present case, the elements of actus rea and causality, are satisfied. Furthermore, mens rea can be established by proving either intention,

⁶ IPC 1860, s 300; Culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or— 2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause death or— 3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

⁷ IPC 1860, s 300

⁸ IPC 1860, s 96

⁹ IPC 1860, s 100

¹⁰ These limitations to the exception of private defence have been put with the virtue of IPC 1860, s 99 and s 102.

¹¹ *Darshan Singh v. State of Punjab*, Criminal Appeal 1057 of 2002 [34].

¹² *Ibid* [34]; *Robert B. Brown v. United States of America*, (1921) 256 US 335.

¹³ IPC 1860, s 100; First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault

¹⁴ IPC 1860, s 299; s 300

¹⁵ *State of A.P. v. R. Punayya & Anr*, 1977 SCR (1) 601.

¹⁶ *Emperor v. MS Murthy*, (1912) 22 MLJ 333.

¹⁷ IPC 1860, s 299

likelihood, or knowledge. As per the Supreme Court in *Mahesh Balmiki v State of M.P.*, if it is clear from the facts that death was substantially certain or inevitable consequence of an act which was premeditated, then we can deduce the guilty intention of the accused.¹⁸ In this case, Pavri's premeditated actions, from staging the scene to shooting Vikram three bullets in heart from a very proximate distance, unequivocally demonstrate his intention to kill. With intention established, this act would come under the umbrella of 'culpable homicide.' Moreover, as established in *Reg v. Govinda*, if an intention to kill is proved under S.299(a), the offence committed is always 'murder' under S.300 (Firstly).¹⁹ Pavri would be liable for punishment under S.302, with a potential sentence of death or life imprisonment, along with a fine.²⁰

A. Defence of provocation

The defence may raise the argument of 'grave and sudden provocation' as a special exception, mentioned in S.300.²¹ This exception applies when an act of killing occurs while the accused is 'deprived of the power of self-control by grave and sudden provocation' and reduces the offence from 'murder' to 'culpable homicide not amounting to murder.' To apply this exception, the precedent set by the apex court in *K.M. Nanavati v. State of Maharashtra* has to be considered, specifically focusing on the tests of the 'reasonable man' and the absence of a 'cool-down period.'²²

The argument for proving provocation can be based on two events, one the confession of Silvia and reading of the letters and the second by Vikram saying 'Do I have to marry every woman I sleep with?.' However, in the first scenario, the argument for 'grave and sudden provocation' would falter on the criterion of a 'cool-down period' or suddenness. There was a substantial time lapse between these events and the act of killing, affording Pavri ample opportunity to regain self-control. Subsequent actions, such as Pavri complimenting Vikram's secretary as 'gorgeous' and asking Vikram whether he would marry Silvia, suggest not only the regaining of self-control but also his planning for the future. Moreover, Pavri held a motive for revenge against Vikram, which, as the court in *K.M. Nanavati* stated, is inconsistent with provocation.²³ Conscious contemplation of revenge indicates

thoughtful deliberation, undermining the claim of loss of self-control. Therefore, Silvia's confession and the letters fail the test of suddenness and do not constitute provocation.

Regarding Vikram's derogatory statement, the 'reasonable person' test must be applied. This test assesses whether a reasonable individual of the same societal class as the accused would be provoked to the point of losing self-control.²⁴ As established in *K.M. Nanavati*, cultural, social, and emotional factors of the accused's society must be considered to gauge the standards of a 'reasonable person.'²⁵ In this case, Pavri, a naval officer with a strong emotional constitution resulting from defence training, cannot be reasonably expected to lose self-control due to a derogatory remark. Such a statement is insufficient to push him beyond the bounds of reason, leading to Vikram's killing. Therefore, the 'grave and sudden provocation' exception should not apply, and the act must be categorized under S.300 rather than S.299.

IV. 'Honourable Killing' as shown in the film

The film falls short of the criminal law theory by depicting 'honourable killing' as an ethical practice which is excusable in a court of law. Aarti Sethi in his article discusses how the term 'honour killing' is conventionally used to denote a specific category of extra-legal killings where the act of murder is seen to be legitimate due to public motivation and sentiments.²⁶ Sethi further showcases how the jury in the film is biased with the positive public sentiment towards Pavri and gave its verdict of 'not guilty,' not based on law but from being inspired by the circumstances in which he killed Vikram. The film, by depicting a happy ending, portrays the idea that if someone is considered 'good' and public sentiments legitimize their act as ethical and 'honourable' then they are excusable under the law. However, this depiction directly contradicts the basis of criminal law theory. Criminal law is founded upon the principles of justice, equality, and the rule of law. It operates under the premise that all individuals, regardless of their social standing or public perception, are held accountable for their actions under a uniform set of legal standards. The film's portrayal of 'honourable killing' as an excuse for murder not only

¹⁸ *Mahesh Balmiki v State of M.P.*, (1999) AIR 3338 (SC); In this case, the accused had called the deceased at a particular place. He had brought a knife with him and after a heated exchange of words, he stabbed the deceased. The entire plot was premeditated and hence court held that the intention was evident.

¹⁹ *Reg v. Govinda*, (1877) ILR 1 Bom 342.; IPC 1860, s 300-culpable homicide is murder, if [firstly] the act by which the death is caused is done with the intention of causing death.

²⁰ IPC 1860, s 302

²¹ According to IPC s300, Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by

grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

²² AIR 1962 SC 605.

²³ AIR 1962 SC 605 [81].

²⁴ *ibid* [21].

²⁵ *ibid* [21].

²⁶ Sethi A, 'The Honourable Murder: The Trial of Kaws Maneckshaw Nanavati.' [2005] Sarai Reader 05: Bare Acts 444

<<https://www.yumpu.com/en/document/view/12446908/the-honourable-murder-sarai>> accessed 1 October 2023

distorts the ethical framework of criminal law but also undermines the principles of justice and equality.

V. Conclusion

This film, with complex facts has left some gaps in its portrayal. The intricacies of offences and exceptions have been ignored and 'honourable killing' has been justified.

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