

Study on the Criminal Law Regulation of Online Rumors Insulting "Strangers"

-- A Case Study of a Woman from Hangzhou Being Slandered on July 7

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Abstract. According to the annual legal supervision cases released by the Supreme People's Court of the People's Republic of China in recent years, the online rumors insulting strangers based on their characteristics, which damages the strangers' reputation, will be identified as crime of defamation. The criminal law regulation is significant in this regard, and based on the certain civil liability system, this act should be defined as crime of defamation since it infringes people's fame and dignity. As for the infringement of legal interests, the act of starting a rumor, in essence, matches with the definition of the crime of picking quarrels and provoking trouble, which refers to those acts of fabricating and intentionally spreading false information and seriously disturbing social order. When both the indictment criteria for defamation and the criterion of serious disruption of public order are met, the imaginative joinder offenses arise.

Keywords: Online Rumors Insulting Strangers; Guiding Case; Crime of Defamation; The Crime of Picking Quarrels and Provoking Trouble; Liability of Crime.

1. Presentation of the Problem

Cyberspace, given its virtual and anonymous nature, has led to an increase in the spread of rumors and verbal violence on the Internet, and there are calls for the punishment of false rumors on the Internet. The Supreme People's Procuratorate, PRC announced the ten representative cases of legal supervision in 2020, and the high-profile case of a woman in Hangzhou who was rumored when picking a delivery package was among them.

1.1 Basic Facts of the Case

The victim, Ms. Gu, was secretly shot by Mr. Lang, a man she never met. She was picking a delivery at a post station in Yuhang District at that time. Mr. Lang, together with Mr. He, with the video they shot secretly, fabricated a chat about "an errant young woman dating with a delivery boy" and sent it to a WeChat group. The messages were constantly forwarded and spread through WeChat to more than 110 WeChat groups (with a total of more than 20,000 group members), and were later learned by Gu and her friends. WeChat articles and web posts about the content of the rumor were viewed for a total of more than 60,000 times. Gu received a large number of abusive messages and was dismissed from her company, which resulted in her being diagnosed as suffering from depression. The Supreme People's Procuratorate (Yuhang District) filed an indictment with the People's Court at the same level, requesting that Lang and He be held criminally liable for defamation, and the court ruled at first instance that Lang and He were guilty of defamation [1].

1.2 Heated Issues under Discussion

Online rumors are information published or disseminated on the Internet that is not based on facts or fabricated [2]. Unlike cyberspace violence which is characterized the its aggressiveness, slander and abuse [3], online rumors refer to unsubstantiated statements that can ultimately be proven true or false, but are not necessarily offensive, defamatory or insulting. However, online rumors are also correlated with online violence. When the content of an online rumor is offensive, defamatory,

insulting or abusive, it also constitutes a violent statement on the Internet as the "cyber violence with fake and defamatory nature" shown in Figure 1. The salient feature of this case is that the subject of the rumor-mongering act did not know the target of the act, but only fabricated the online rumor according to certain characteristics of the target. This type of rumor is called as online rumors insulting strangers since it refers to network information that is published or disseminated in accordance with the characteristics of an unfamiliar natural person and whose authenticity is not confirmed. The relationship among Stranger-type online rumors, online rumors and Internet violence is shown in Figure 1. Stranger-type online rumors are one of the rumors spread online, and is overlapped with cyber violence. When Stranger-type online rumors damage the dignity and fame of the victims, and the words are defamatory, the cyber violence arises.

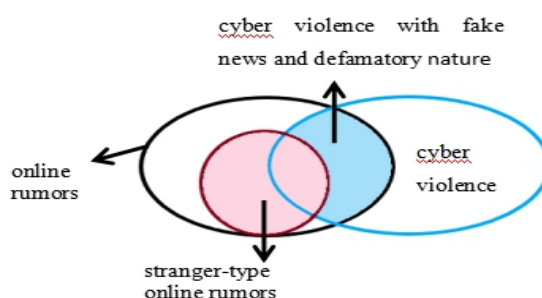


Figure 1. Cyber violence with fake and defamatory nature

There are two main controversies in this case. **The first one is whether the Stranger-type online rumors need to be regulated by criminal law.** In China's judicial cases, online rumors are usually regulated by civil law and administrative law, and administrative detention is a rather severe punishment. In this regard, The necessity of criminal liability is in doubt, and the boundaries separating criminal liability from civil liability and administrative liability are unclear. The second issue under heated discussion is whether Lang and He should be punished and criminalized by defamation in this case. Defamation usually refers to the act of intentionally fabricating and spreading rumors that are detrimental to the character and reputation of others, while Lang and He did not have the intention [4]. In the present case, any unknown young and beautiful lady could have been disinformed, and it is doubtful whether the disinformation should be identified as a provocation against an unspecified person. In addition, questions like "whether the rumor monger can be the subject of defamation" and "whether results of the crime of picking up quarrels and provoking troubles can affect the social order severely" are still unclear and remain to be solved.

2. Analysis on the Stranger-type Online Rumors

Stranger-type online rumors are a new concept raised in this paper. Without a thorough analysis of this issue, it is hard to decide the crime liability and related regulation of it.

2.1 Definition and its Characteristics

In this paper, Stranger-type online rumors are defined as unverified messages spread online according to the characteristics of an unknown natural person. The content and the object being stigmatized have their own characteristics, which can be summarized as the following aspects based on the aforementioned cases:

a) **Both the rumor maker and the object being rumored are natural persons, and they are strangers to each other.** Legal persons and unincorporated organizations do not have the characteristics of "strangers" in the sense of natural persons; the basic information of legal persons and unincorporated organizations can be easily understood via Internet. The strangeness means that rumor monger does not know the natural person being rumored, and the degree of familiarity with him/her is very low and there is no contradiction or conflict. It is worth noticing that such people like

those who have encountered many times without talking and those with certain social popularity and influence should not be considered as "strangers" in the sense of this article.

b) The content of the rumor is fabricated according to the characteristics of an unknown natural person. The rumor monger and the rumor victim are strangers to each other, and the rumor monger can only make use of the visual and apparent characteristics of the rumor victim such as appearance, shape and age to fabricate rumors. Rumors are often spread in the form of photos and videos added with texts of the rumor victim, and the public usually can only identify the authenticity of the rumor content through the superficial characteristics of the people in the pictures and videos, combined with the texts.

c) The rumor-monger only has the direct intent to fabricate the rumor, and does not have the direct intent to damage the character and reputation of the rumor victim. Since the rumor monger do not expect to impair the fame and dignity of the victim, the result caused by the rumor should not be regarded as an intentionally damage, but as negligence. The aforementioned "rumor fabricated based on the person's own characteristics" denotes that the rumor monger do not subjectively want to impair the victim's dignity and fame.

2.2 Causes and Effect of the Stranger-type Online Rumor

As for the generation mode of online rumors, psychologists Allport&Postman from the US once raised a rumor intensity formula: $R=I \times A$ (in which R refers to the intensity of the rumor; I refers to the importance and A stands for ambiguity) [5]. This formula indicates that the intensity of rumors develops proportionally to the importance and ambiguity of the problem. This view, however, fails to notice that rumors are publicly available and can be disseminated. The dissemination of rumors cannot be separated from three elements: the communicator, the recipient and the intermediary, who can be understood as an "environment" in a large sense. On this basis, the paper analyzed the causes and current situation of Stranger-type online rumors from the dimensions of source, intermediary (environment), and audience [6].

a) The "stranger" type of Internet rumor itself has a high degree of ambiguity and concern. The more specific and clear the content of a rumor, the easier it is to dispel it, and the more likely it is to be widely spread. Rumor-mongers fabricate stories based on the apparent characteristics of the person being rumored, mostly using the word "someone", anonymous chat records, as well as brief, unspecified photos and videos to describe the events, and the ambiguity of the events described in the rumors is high. In order to cater to the psychology of netizens being bystanders, or to gain benefits through popularity, the rumor-mongers often fabricate stories about everyday problems or social issues that can be easily discussed and spread by the public.

b) The prevalence of We-Media in the Internet era drives people to gain interest from receiving more attention online. Netizens often share hot events and statements through we-media platforms such as *Douyin* (known as Tik Tok overseas) and WeChat. In order to obtain the economic rewards brought by the traffic online, the number of rumors to attract attention is increasing. The act of cooking up a story of a strangers can be done easily with low cost, and even worse, their unfamiliarity with strangers helps rumor monger to fabricate more details to earn people's attention.

c) Netizens are inclining to form groups. In the era of Internet, functions like Echo Chamber and Filter Bubble on the social media make people with similar values forming groups on the Internet, which gives rise to adverse effect. For example, people among each group are more willing to see what they want to see and believe what they want to believe. As a result, they judge everything with their own value and moral standards, making the truth less important while the emotion and views more prominent [7]. Worse still, The refutation of the rumor, on the contrary, causes the rumor to be believed by more people and widely spread, which undoubtedly hurts the victims of the rumor.

2.3 Detriment of the Stranger-type Online Rumors

For the personal rights and interests of citizens, the victims may suffer serious devaluation of their dignity and fame; their right to privacy is hard to be guaranteed; they are subjected to greater mental

stress and may even be violently harmed by others in real life, which will affect their normal life pace and healthy development. In terms of their property right, this type of rumors will lead to huge property loss. On one hand, the victim may suffer from mental damage, and the cost of their physical and mental treatment will cause their property rights to be damaged. On the other hand, the victim of the rumor may be persuaded to quit his/her job and have difficulty finding a new one, which also causes the loss of property rights. Besides, rumors concerning social issues and people's life can trigger social disorder, harm the integrity and norm, and even prevent people from living harmoniously with their neighborhoods. If these rumors cannot be refuted and dealt with in time, the short-period disorder induced by them may evolve into a longer period of people's dissatisfaction with the society, which undoubtedly increases the possibility of group incidents breaking out and forming a vicious circle. For rumors related to commercial activities, such as the rumors created by competitors in the market, a fair competition mechanism of the market cannot be ensured, which will even impact the market economic order.

3. Extraterritorial Legislation on Internet Rumors

Online rumors have attracted widespread attention around the world. This article aims to summarize the relevant experience of overseas online rumor management and provide reference for the criminal law regulation of "stranger" type online rumors.

3.1 Legal Regulation in Civil Law Systems

a. Germany

The *Basic Law for the Federal Republic of Germany* shows respect to freedom of speech without a censorship on people's speech on the Internet in advance. However, the protection of freedom of speech should be limited by the law on the protection of minors and respect for the rights of individual citizens (According to the Article 5 (1) in the Basic Law for the Federal Republic of Germany, every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.), so the mode of guarantee is in a relative way. In general, the following acts constitute to a crime: (1) Fabricate or disseminate an untrue fact about another person which is suitable for degrading that person or negatively affecting public opinion about that person;(2) Intentionally disseminate misleading information that disturbs the public and endangers the social order (According to German Criminal Code (Strafgesetzbuch – StGB), Section 186 writes: Whoever, despite knowing better, asserts or disseminates an untrue fact about another person which is suitable for degrading that person or negatively affecting public opinion about that person or endangering said person's creditworthiness incurs a penalty of imprisonment for a term not exceeding two years or a fine, and, if the act was committed publicly, in a meeting or by disseminating material (section 11 (3)), a penalty of imprisonment for a term not exceeding five years or a fine.); (3) Rumors causing many deaths; (4) disseminate cruel and inhumanitarian message to people under 18 years of age (According to German Criminal Code (Strafgesetzbuch – StGB), Section 131 (1) writes: Whoever 1. takes material (section 11 (3)) which describes cruel or otherwise inhuman acts of violence against humans or humanoid beings in a manner which glorifies or downplays such acts of violence or which represents the cruel or inhuman aspects of the event in a manner which violates human dignity and a) disseminates or makes it available to the public b) offers, supplies or makes it available to a person under 18 years of age or 2. makes content referred to in no. 1 available through broadcasting or telemedia services to a) a person under 18 years of age, b) the public or 3. produces, obtains, supplies, stocks, offers, advertises or undertakes to import or export material (section 11 (3)) of such content referred to in no. 1 in order to use it or parts obtained from it within the meaning of no. 1 (a) or (b), or no. 2, or to facilitate such use by another incurs a penalty of imprisonment for a term not exceeding one year or a fine. In the cases under sentence 1 no. 1 and no. 2, the attempt is punishable.). It can be

seen that Germany's legislation on Internet rumor regulation is strict and comprehensive, which not only punishes those who spread Internet rumors, but also improves the protection of minors from terrorist, pornographic and violent Internet rumors, which indeed protects the basic rights of citizens and public interests. However, this is also one of the reasons why Germany's network construction and digitalization process is slow. Germany attaches great importance to the protection of personal information and privacy, and the laws related to network data protection and interaction are more stringent, which to a certain extent restricts the construction of its network and digitalization. This is why Germany is often bantered as a country still living in the "2G" era.

b. Japan

In terms of penal code, alleging rumor should be regarded as a pro-indictment crime that is only dealt with by a complaint, and it is necessary to sanction only when the act damages the legitimate rights and interests of a person or the public. In the Chapter XXXIV and Chapter XXXV, these acts can be defined as crimes against reputation and crimes against credit and business. The following behaviors constitute the certain crimes: (1) Defame others regardless of whether they said is true or false (According to the Article 230 (1) of Penal Code of Japan, a person who defames another by alleging facts in public shall, regardless of whether such facts are true or false, be punished by imprisonment with or without work for not more than 3 years or a fine of not more than 500,000 yen.); (2) When the act prescribed under (1) is made with regard to matters concerning a public officer or a candidate for election, punishment shall not be imposed if an inquiry into the truth or falsity of the alleged facts is made and they are proven to be true (The Article 230-2 of Penal Code of Japan makes it clear that when an act prescribed under paragraph (1) of the preceding Article is found to relate to matters of public interest and to have been conducted solely for the benefit of the public, the truth or falsity of the alleged facts shall be examined, and punishment shall not be imposed if they are proven to be true. When the act prescribed under paragraph (1) of the preceding Article is made with regard to matters concerning a public officer or a candidate for election, punishment shall not be imposed if an inquiry into the truth or falsity of the alleged facts is made and they are proven to be true.); matters concerning the criminal act of a person who has not been prosecuted shall be deemed to be matters of public interest; (3) Spread false information which damages the credit or obstructs the business of another (The Article 233 of the Chapter XXXV in Japan Penalty Code states that a person who damages the credit or obstructs the business of another by spreading false rumors or by the use of fraudulent means shall be punished by imprisonment with work for not more than 3 years or a fine of not more than 500,000 yen.). As it can be seen, the penalties for Internet rumors in Japan are not severe, but the areas of regulation are broader, and rumors can be sanctioned regardless of whether they are true or false.

3.2 Legal Regulation in the Common Law System

a. The UK

The Defamation Act of UK provides that publication of material prejudicial to the interests, character and reputation of another person shall be deemed to be defamatory, and that persons who directly or indirectly disseminate such material may also be sued for damages. On the other hand, principles of defenses are adopted to allow the defendant make defenses. It is required to protect the winning party's right to reputation by requiring the losing party to publish the judgment in the mass media. [8] The Article 127 of Communications Act 2003 stipulates that each of the following circumstances constitutes a crime: (1) Publish content via the Internet is grossly offensive, indecent, obscene or threatening; (2) Release false information on the Internet (on a continuous basis) knowing it to be false, or cause it to be sent with the intent to cause annoyance, inconvenience or anxiety to others. After the London riots, the British government expressed its intention to continuously strengthen the regulation of the Internet and increase the penalties for serious criminal acts. Since then, strict control and regulation of the Internet has become an important trend in the British government's management of the Internet.

b. The US

The United States has adopted an absolute guarantee of the right of citizens to express their opinions online. The First Amendment to the United States Constitution prohibits ordinary legislation from restricting freedom of expression, although the US began to regulate the Internet by legal means as early as in 1996. The regulation of online rumors in the United States focuses on its sound legal system, with legal protection as the mainstay and government regulation as a supplement to governance. By sorting out the United States Code [9], it is easy to find that The U.S. federal government and Congress have made detailed regulations covering all aspects of speech, from the national interest and social order to the protection of citizens' rights to privacy and reputation, and penalties for online rumors are based on whether they constitute "malicious defamation" of others. In addition to federal laws, U.S. city and state legislatures have enacted laws specifically addressing the governance of online rumors. The Massachusetts Control Act 2000 follows the principle of actual malice and provides that any person who maliciously defames and intentionally attacks another person in cyberspace shall be convicted of a criminal offense [10]. In general, the U.S. has clear, targeted and comprehensive requirements for identifying and punishing the rumor spreading behaviors. However, the cost of scientific and technological monitoring tools consumed with the cost of justice is large.

3.3 Trends of Legislation around the World

a) Criminalization of Internet rumors. The detrimental effects of online rumors are well known worldwide. Even if they are deleted in time, the special nature of the Internet, as a rumor carrier, makes them extremely easy to be copied, reproduced and disseminated. In contrast to the harm of rumors in real space, the harm of rumors in cyberspace are continuous in nature, and therefore, criminal laws have been introduced worldwide to regulate online rumors and rumor-mongering.

b) Broader and More Targeted Protection of Rights and Interests. The regulation of online rumors is mainly based on legal protection and supplemented by government regulation. From the rights and interests of citizens to the public good, all of them are gradually included in the scope of protection of laws around the world. Legislation regulates the spread of rumors on the Internet, and countries are severely suppressing terrorist and inflammatory rumors; laws are more targeted to protect the legitimate rights and interests of minors, and more and more countries are adopting special legislation to protect them.

4. Theoretical Analysis of the Stranger-type Online Rumors

Crimes related to Stranger-type online rumors include defamation, which violates citizens' personal integrity and reputation, and picking quarrels and provoking trouble, which violates public order. Detailed introduction and analyses are as follows.

4.1 The Crime of Defamation and Stranger-type Online Rumors

According to the general view of Criminal Law, defamation refers to the serious act (Generally, the crime object is personal dignity and the right of reputation, subject a general subject. These elements are not in dispute and will not be discussed.) of intentionally fabricating and spreading certain facts to damage others' integrity and reputation [11]. In the case of Stranger-type online rumor, the rumor monger does not have the subjective purpose of damaging others' integrity and reputation. What the rumor monger has done is to gain attention, rather than to defame a certain person. Therefore, according to the general view, the case of Stranger-type online rumor is not suitable to be identified as defamation.

However, the subjective aspect of defamation is still controversial. In this paper, the author believes defamation does not require the subjective intention of damaging others' personality and reputation, and the rumor-making behavior of Lang and He constitutes defamation. The Criminal Law of PRC is vague and open. There is no legal provision that limits the subjective mentality of a

certain intentional crime to direct intent. The emergence of Internet rumors proves the existence of indirect intent in the subjective aspect of defamation. Second, the general definition of defamation is based on the real-life cases without taking into account the online defamation, which has become prevalent due to the rapid development of Internet self-media. Finally, the general definition of defamation is not in line with the psychological feature of the online rumor publishers and spreaders in the current network environment, and cannot achieve the legislative purpose of protecting citizens' right of reputation. [12]

4.2 The Crime of Picking Quarrels and Provoking Trouble and Stranger-type Online Rumors

The crime of picking quarrels and provoking trouble refers to the act of causing trouble and disrupting the social order (The crime object is public order. The object elements include the behavior of causing trouble and damaging social order. According to Article 1 of the Interpretation of Picking up Quarrels and Provoking Trouble, anyone who seeks excitement, gives vent to his emotions, shows off strength intentionally, causes trouble, and commits the acts stipulated in Article 293 of the Criminal Law, shall be convicted of "picking up quarrels and provoking trouble". The crime subject is a general subject with subjective intent.). Article 5 of the Provocation Explanation stipulates that a person who spreads knowingly false information on the network (organizing or directing people) and creates disturbances, causing serious public disorder, shall be convicted of the crime of picking quarrels and provoking trouble in accordance with the Article 293.1.4 of the Criminal Law (According to the Article 293.1 of the Criminal Law of the PRC, whoever commits any of the following acts of creating disturbances, thus disrupting public order, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance: (1) beating another person at will and to a flagrant extent; (2) chasing, intercepting or hurling insults to another person to a flagrant extent; (3) forcibly taking or demanding, willfully damaging, destroying or occupying public or private money or property to a serious extent; or (4) creating disturbances in a public place, thus causing serious disorder in such place.). It is worth discussing whether the Stranger-type online rumor is consistent with the Article 4 - "creating a disturbance in public places and causing serious disorder". On the one hand, the author believes that it is reasonable to expand the interpretation of public places to cyberspace. First, the principle of a legally prescribed punishment for a specified crime requires that the interpretation of Criminal Law cannot exceed its possible meaning. The legislation spirit and purpose should be found through the objective meaning of "public place" to explain the term. [13] "Public place" is a general term for various places where the public can engage in social life. Cyberspace can be regarded as public place in terms of communication. Thus, it will not go beyond the general prediction to identify cyberspace as public place. Second, making and spreading rumors online is homogeneous with that in reality. Especially under the psychological effects of "information flow" and "group extremization", audiences are even more likely to accept the online rumors [14]. On the other hand, the paper suggests that there are two major situations where Internet rumors insulting "strangers" violate social public order. First, any person with the features mentioned in a rumor may be influenced in the same environment with the rumor-monger, which determines that phenomenon is naturally harmful to the public order (excluding those rumors that are proven to be true or positive). Second, some rumors related to public interest may easily cause public panic and disorder.

5. The Practical Approach to Identifying Criminal Liability for Stranger-type Online Rumors

5.1 Attribution Principle of Criminal Liability for Stranger-type Online Rumors

Stranger-type online rumors include making and spreading rumors. The two acts may violate citizens' personal rights and social orders, possible to be convicted of the crime of defamation or the crime of picking quarrels and provoking trouble, which need to be discussed separately.

a) Circumstances Constituting the Crime of Defamation

Whoever commits the following acts of making Internet rumors shall be convicted of defamation: **(1) fabricating and (organizing and abetting others) spreading false rumors about “strangers” on the Internet; (2) having no direct intention of damaging others’ personality and reputation; (3) the personality and reputation of the people being slandered are damaged; (4) causing serious consequences.** When the victim cannot be identified or the identity information is too ambiguous, and the damage to his/her personality and reputation is minimal or even almost non-existent, it is not appropriate to consider the act as defamation. There are no provisions stipulating the serious result of Internet rumors insulting “strangers” in China’s Criminal Law, but relevant judicial interpretations do provide for it. Thus, the paper supports these provisions of Internet rumors insulting “strangers”. According to the “strangeness” of online rumors insulting “strangers”, the target being rumored cannot be a public figure. Ordinary people are not easy to attract more attention with little social influence, so it is difficult and costly to dispel rumors; when the rumor has more than 5000 views and clicks, it is likely to have a serious impact on the personality and reputation of the victim, which is more appropriate to be regulated by Criminal Law.

Whoever commits the following acts of spreading Internet rumors shall be convicted of defamation: **(1) spreading false rumors about “strangers” on the Internet; (2) having direct intention of damaging others’ personality and reputation; (3) causing serious consequences.** The identification of spreading Internet rumors insulting “strangers” is the same as that of ordinary Internet rumors, so it can be analyzed according to the penal approach of ordinary Internet rumors. Traditionally, “defamation” refers to “fabrication and dissemination”, but the Interpretation of Defamation Cases stipulates that if the perpetrator knows that the rumor is fabricated and still spreads it online, it will be considered as defamation. The paper agrees with the interpretation. According to the Criminal Law of China, the crime of defamation is “fabricating facts to defame others”, which should be interpreted as “defaming others with fabricated facts”, including the act of fabricating facts and spreading them and the act of using false facts fabricated by others and spreading them. There are two reasons why it should not be limited to the former. First, both of them have the direct intention of spreading knowingly false rumors, sharing a similar vicious intent; second, there is no difference between the two in terms of behavior and the consequences of infringing others’ personality and reputation. Therefore, the dissemination of other people’s fabricated facts on the Internet should not be excluded from the crime of defamation. Without dissemination, the fabricated rumor cannot be made public and damage others’ personality and reputation. The key element of the crime of defamation is the “intentional dissemination”. In addition, the Criminal Law emphasizes the importance of “fabrication” because “fabrication” has the direct intention of hoping others’ personalities and reputations will be harmed while knowing that the rumor is false, which should not be erased in the determination of the crime of defamation. In other words, when a rumor spreader does not know whether the rumor is true or false, he or she has not a direct intention and his or her act of spreading rumors should not be considered as defamation, as reflected in the Interpretation of Defamation Cases.

b) Circumstances Constituting the Crime of Picking Quarrels and Provoking Trouble

Whoever commits the following acts of making and spreading Internet rumors shall be convicted of the crime of picking quarrels and provoking trouble: (1) (organizing and abetting others) spreading false rumors about “strangers” on the Internet to cause trouble; (2) having direct intention of the knowledge that the rumor is false; (3) causing serious public disorder. According to Article 5.2 of the Interpretation of Defamation Cases (According to Article 5.2 of the Interpretation of Defamation Cases, anyone who fabricates false information, disseminates knowingly false information on the Internet, or organizes and abets people to disseminate false information on the Internet causing serious public disorder, shall be convicted of the crime of picking quarrels and provoking trouble in accordance with Article 293.1.4 of the Criminal Law.), if a person spreads false information on the Internet and causes serious public disorder, he/she shall be prosecuted for picking quarrels and provoking trouble in accordance with the Criminal Law, which stipulates the key elements “raising

trouble in public places and causing serious disorder”. Cyberspace belongs to the public place. And the “serious public disorder” should be determined according to the nature of the public place, the number of people, the scope and extent of the impact, and the importance of public activities, etc. (According to Article 5 of the Interpretation of Picking up Quarrels and Provoking Trouble, the act of causing a disturbance in a public place shall be determined on the basis of the nature of the public place, the importance of the public activity, the number of people, the time of the disturbance, the scope and extent of the public place affected, and other factors to consider whether it “causes serious public disorder”.) There are no clear and specific provisions. However, the relevant judicial interpretation clearly provides several cases for “serious social disorder” (referred to as “serious social disorder” standard later). (According to Article 2 of the Interpretation of Issues on the Application of Law to the Trial of Criminal Cases of Fabrication and Intentional Dissemination of False Terrorist Information, the act of fabricating and intentionally disseminating false terrorist information shall be identified as “serious disturbing social order” in Article 291 of the Criminal Law under the following circumstances: (1) causing disorder in airports, stations, docks, shopping malls, theaters, sports venues and other crowded places, or leading to emergency evacuation measures; (2) affecting the normal operation of aircraft, trains, ships and other large passenger transport; (3) interrupting state organs, schools, hospitals, factories, and mining enterprises and stopping their work, production, business, teaching, scientific research and other activities; (4) causing serious disorder in the administrative village or community life; (5) causing public security, armed police, fire, health and quarantine, and other functional departments to take emergency response measures; (6) other serious disruption of social order.)

c) The crime of fabricating and intentionally spreading false terrorist information and the crime of picking quarrels and provoking trouble are both crimes against the social administration order. The two are located closely in the Criminal Law, with the benchmark sentence of fixed-term imprisonment of no more than five years, criminal detention or public surveillance. Spreading “false terrorist information” is more serious than ordinary Internet rumors, and the crime needs to reach the “serious social disorder” standard. Thus, the consequence of picking quarrels and provoking trouble (According to Article 291.2 of the Criminal Law, where people fabricates false danger, epidemic, disaster or police information and disseminates it on the Internet or other media, or intentionally disseminates it on the Internet or other media with knowledge of the aforementioned false information and seriously disturbs the social order, the offenders be sentenced to fixed-term imprisonment of not more than three years; If the circumstances are serious, the offender shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.) should reach that standard or even a higher one. In addition, both the two crimes lie in Article 291 of Criminal Law, sharing the same “serious social disorder” standard. As a crime with heavier penalties, the standard for identifying the harm caused by the crime of picking up quarrels and provoking trouble should be no lower than that of the crime of fabricating and intentionally disseminating false information. Therefore, it can be concluded that the spreading of false rumors on the Internet constitutes the crime of picking quarrels and provoking trouble when it reaches the “serious social disorder” standard. In the Hangzhou case, the problem is the insecurity of people’s reputation and life being damaged by the rumors for no reason (According to the Zhejiang Provincial People's Procuratorate, the video material related to the case further spread on the Internet, causing much influence. Lang and He' s behavior not only damaged the victim's right to personality, but also caused insecurity to the general public with the rapid spread of the rumor, seriously endangering the social order. According to Article 246.2 of the Criminal Law, the case should be prosecuted under the public prosecution procedure.), whereas the public order has not been disturbed yet. Therefore, it does not constitute the crime of picking quarrels and provoking trouble.

d) In terms of the decriminalization, there is no special excuse for the crime of defamation and picking quarrels and provoking trouble, except the general excuses such as minor circumstances, underage of criminal responsibility, and failure to meet the elements of crime.

5.2 Concurrence Circumstances

When the act of making and spreading online rumors insulting “strangers” violate others’ dignity, reputation and public order at the same time, the crime of defamation and the crime of picking quarrels and provoking trouble may overlap imaginatively. According to the Criminal Law, the crime of defamation is only dealt with under general prosecution, but when the act seriously endangers the social order and national interests, it will be turned into public prosecution (According to Article 246.2 of the Criminal Law, the crime mentioned in the preceding paragraph shall be handled only upon complaint, except where serious harm is done to public order or to the interests of the State.); Article 3 of the Interpretation of Defamation Cases specifies the circumstances of seriously endangering the social order and national interests (referred to as the public prosecution standard for defamation) (According to Article 3 of the Interpretation of Defamation Cases, the act of defaming others via Internet shall be considered as “seriously endangering social order and national interests” if it features one of the following circumstances as the Article 246.2 of Criminal Law stipulates: (1) causing group incidents; (2) causing public disorder; (3) causing ethnic or religious conflicts; (4) slandering more than one person, causing bad social impact; (5) damaging the national image and seriously endangering the national interest; (6) causing bad international impact; (7) other circumstances seriously endangering the social order and national interest.), which is one of the key elements constituting the crime of picking quarrels and provoking trouble with online rumors. Therefore, the paper discusses the concurrence of the two crimes with the standard of public prosecution for defamation and the “serious social disorder” as the dividing line.

a) When the act does not meet the criteria for public prosecution for defamation, the offender shall be convicted of defamation.

The standard of public prosecution for defamation implies that when the act reaches the standard of endangering social order, it is still convicted of defamation, but changing from personal prosecution to public prosecution. However, not reaching the standard of public prosecution for defamation means that the victim needs to file a lawsuit before being accepted, which means that the consequences are not serious, difficult to constitute the “serious social disorder” as required by the crime of picking up quarrels and provoking trouble. Besides, the crime of defamation is a crime against personal rights, but this does not mean it does not include the violation of social public interests. The change from private prosecution to public prosecution is due to the fact that the act causes a considerable social harm, so that the state public prosecution agency will file a lawsuit to the court on behalf of the state and society.

b) When the act meets the criteria for public prosecution for defamation but does not reach the standard of seriously disturbing the social order, the offender shall be convicted of defamation.

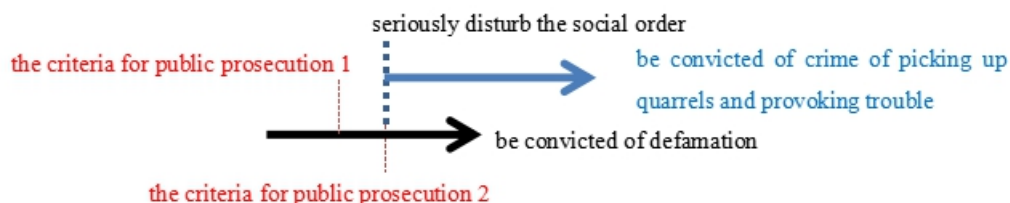


Figure 2. The “serious social disorder” standard

From the judicial interpretation of the standard of public prosecution of defamation and the “serious social disorder” standard, it is not certain which is higher or lower. But from the fact that the non-public prosecution of defamation cannot constitute the crime of picking quarrels and provoking trouble, it can be concluded that the standard of public prosecution for defamation can only be lower than (standard 1) or approximately equal to (standard 2) the “serious social disorder” standard, as shown in Figure 2. Therefore, if the act reaches the standard of public prosecution for defamation but does not reach the criterion of serious social order, it does not constitute the crime of picking quarrels

and provoking trouble, and should be convicted of defamation, without any concurrence. The Hangzhou case is a typical case in line with the situation.

c) When the act meets the criteria for public prosecution for defamation and seriously disturbs the social order, the imaginative joinder offenses arise and the offender shall be convicted of the severer crime.

The imaginary concurrence occurs when the following elements are met in the case of Internet rumors insulting “strangers”: (1) intentionally (organizing or abetting people) spreading knowingly false Internet rumors; (2) satisfying the criteria of public prosecution for defamation; (3) reaching the serious social disorder standard. The crime of defamation is a crime against personal rights. When the act of spreading online rumors constitutes the crime of defamation for public prosecution before the situation of “seriously endangering the social order”, the act may meet the elements of the crime of picking quarrels and provoking trouble at the same time, leading to the imaginary concurrence of the two crimes.

6. Conclusion

Based on the case of a woman from Hangzhou being slandered while fetching her package on July 7, the paper analyzes the Internet rumors insulting “strangers” and clarifies the urgency of regulating the behavior through Criminal Law. The principle of attribution is that only those who directly and intentionally spread rumors, causing damage to others’ integrity and reputation, should be accused of defamation; The result element of the crime of picking quarrels and provoking trouble, “causing serious public disorder”, can be considered with reference to the identification standard of the crime of fabricating and intentionally spreading false terrorist information; When the standard of public prosecution for defamation and the standard of serious social disorder are met simultaneously, the crime of defamation and the crime of picking quarrels and provoking trouble are imagined to overlap. Therefore, the behavior of the two defendants in the case should constitute the crime of defamation under public prosecution, instead of the crime of provoking and provoking trouble. The paper innovatively limits the scope of “disturbing public order”, which reduces the ambiguity of the two crimes’ concurrence and makes the solution more simple and scientific; however, it is a subject that needs to be promoted unremittingly in the future to achieve absolute precision. A clean Internet environment is an important part of the legal construction. As the reform deepens, the legal supervision and management and theoretical research will become more mature, so as to eliminate the online moths, protect citizens’ fundamental rights, and maintain the social stability. In the end, the author hopes that the article will be beneficial to further studies on the online rumor regulation in the field of criminal law, helping to combat online rumors at an early stage and build a harmonious cyberspace.

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