
(2006) 10 AHC CK 0207

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 3557 of 1996

Bhopal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 176
Penal Code, 1860 (IPC) — Section 380, 411

Citation : (2007) 2 ACR 1644

Hon'ble Judges : R.C. Deepak, J;M.K. Mittal, J

Bench : Division Bench

Advocate : C.S. Chaturvedi, for the Appellant; A.G.A., for the Respondent

Judgement

R.C. Deepak, J.—Initially the present criminal miscellaneous writ petition was filed by Bhopal Singh son of Jile Singh resident of Village Ghasipur, Police Station Mansoorpur, district Muzaffarnagar, but he died on 13.3.1998. Smt. Shobha wife of Bhopal Singh has been substituted on his place and now she is the Petitioner therein.

2. Counter - affidavit and rejoinder-affidavit are on record.

3. The brief facts giving rise to this writ petition are that Kamran Steel Pipe Limited was situated at Raja Chowk, Meerut Road Bypass. It is alleged that the theft of the materials of this Factory were continuously being committed for the past two months, that on 15.9.1996 (time not mentioned) Devendra Kumar Sharma (Director of the Factory) son of Mangat Ram Sharma resident of Gandhi Colony, Gali No. 10, Muzaffarnagar found one Satish Kumar son of Bhopal Singh resident of Village Ghasipur, Police Station Mansoorpur, district Muzaffarnagar selling one electric motor of 5 horsepower and 2 millgolle of the factory and the instruments/key and iron rod allegedly used in committing the theft were also recovered from his possession. He (Satish Kumar) was taken to the Police Station Civil Lines alongwith the aforesaid materials where Devendra Kumar Sharma

lodged the report in this regard and a case as Case Crime No. 314 of 1996 under Sections 380 and 411, I.P.C. was registered there at 1.30 p.m. against Satish Kumar, the copy of the F.I.R. is Annexure-I. Thereafter at 22.35 p.m. Satish Kumar was taken into custody of the Police of the Police Station concerned. The police personnel noticed the presence of the certain injuries on his person and his injuries were noted at report No. 34 in the G.D. dated 15.9.1996. Thereafter, Constable No. 1138 Virendra Singh and Constable No. 224 Arun Kumar of this Police Station had taken him to the District Hospital, Muzaffarnagar for medical examination where the Doctor on emergency duty examined Satish Kumar. On 15.9.1996 at 9.45 p.m. he found the following injuries on his person:

1. Multiple contused swellings on the (L) upper limb from arm to base of fingers, reddish blue in colour...(L) elbow.
2. Traumatic swelling on the (R) forearm, back of wrist and hand, blackish blue in colour.
3. Multiple abraded contusion on the (L) leg lower part...2 c x 1 c to 0.54 x 0.54.

Opinion: All injuries are caused by hard blunt objects.

Injury Nos. 2, 3 are simple, fresh.

Injury No. 1 is kept for observation for x-ray.

4. He was brought back at the said Police Station where he was re-lodged at 10.45 p.m. Satish Kumar was produced before the Court concerned on 16.9.1996 at 1.45 p.m. wherefrom he was remanded to the judicial custody. Consequently, he was lodged in the District Jail, Muzaffarnagar the same day at 1.06 p.m. It is alleged that his condition became serious inside the jail and he was allegedly provided some medical treatment. Satish Kumar was found dead at 4.40 a.m. on 17.9.1996 in the jail. The dead body of the deceased was sent to the mortuary for conducting the postmortem and on 18.9.1996 at 1.45 p.m. the postmortem was conducted. The introduction of the injuries on the person of the deceased as deduced in the postmortem examination report would be a repetition of the injuries as most of the injuries are as earlier referred to above.

5. The doctor could not determine the cause of death of the deceased and preserved the viscera. The viscera was sent for chemical analysis and the chemical examiner report dated 19.12.1996 indicates the presence of alcoholic poison. The chemical examiner report is C.A. II. Bhopal Singh, the father of the deceased made an application dated 17.9.1996 to the Superintendent of Police, Muzaffarnagar and copies to His Excellency the Governor of U.P., D.I.G. and I.G., Meerut, District Magistrate, Muzaffarnagar for lodging the report in regard to the death of his son, Annexure-4 is the copy of the application. The facts further reveal that an inquiry in regard to his death was conducted by Ajay Rautela, the Circle Officer, Nagar Police, Muzaffarnagar. The inquiry report dated 17.3.1997 (C.A. II) reveals that the deceased had suffered injuries at the hands of the public at the time of his being apprehended, that he had suffered some internal

injuries as a result he had died but has also referred the viscera report to have died of alcoholic poison.

6. The prayers sought in the writ petition are inter-alia to direct the registration of a criminal case against the Respondents No. 3 and 4. The investigation of the case so registered be entrusted to C.B. C.I.D. and to award a sum of Rs. 5 lacs as compensation to the Petitioner.

7. Heard Sri C. S. Chaturvedi, learned Counsel for the Petitioner, learned A.G.A. for the State and perused the record.

8. The principal submission raised before us by the learned Counsel for the Petitioner is that the death of Satish Kumar is a custodial death and the State of U.P. is liable to pay adequate compensation to Smt. Shobha the mother of Satish Kumar (deceased) for the contravention of the fundamental right to life guaranteed under Article 21 of the Constitution.

9. The main question which crops up for consideration is whether the death of Satish Kumar is a custodial death.

10. The F.I.R. was registered at 20.30 p.m. on 15.9.1996 and just thereafter at 20.35 p.m. Satish Kumar was taken into the custody of the police, that a search on his body was made upon but except the wearing clothes nothing was found from his possession, that after the medical examination accused/Satish Kumar was taken back to the police station concerned and he was re-lodged there on 15.9.1996 at 10.45 p.m. as is apparently clear from paragraph 3 of C.A. dated 29.3.1997, filed by Ajay Rautela the Circle Officer already referred to above. This paragraph further reveals that the accused was produced before the Magistrate concerned on 16.9.1996 at 1.45 p.m. who remanded him to judicial custody and thereafter he was lodged in the District Jail but paragraph 5 of the C.A. dated 21.5.1997, filed by Yadvendra Shukla, the Superintendent of District Jail indicates that the accused/Satish Kumar was admitted/lodged in the district jail Muzaffarnagar on 16.9.1996 at 13.06 hours. It is surprisingly enough to mention that he was produced before the learned Magistrate at 1.45 p.m. how it was physically possible to admit him in jail the same day at 13.06 hours specially when the Magistrate remanded him to judicial custody at 1.45 p.m. These contradictory facts raise serious doubts in regard to the injuries of the victim. The accused/ victim Satish Kumar was declared dead at 4.40 p.m. on 17.9.1996. The postmortem examination on the body of the deceased was conducted by Dr. S. K. Ban, who found several injuries on his person but he could not ascertain the cause of his death because he did not die of injuries and preserved viscera for chemical analysis. The chemical examiner's report dated 19.12.1996, indicates the presence of alcohol poison, therefore, he did not die of injuries but of alcoholic poison.

11. The undisputed facts of this case are that Satish Kumar was apprehended by Devendra Kumar Sharma on 15.9.1996, that he was brought to the police station Civil Lines, Muzaffarnagar where a case as Case Crime No. 314 of 1996 under

Sections 380 and 411, I.P.C. was registered at 20.30 p.m., that he was taken into the custody of the police at 20.30 p.m., that he was medically examined the same day at 10.45 p.m., that he was re-lodged at the said police station at 22.45 p.m., that he was produced before the Magistrate concerned on 16.9.1996 at 1.45 p.m., that he was lodged in the District Jail, Muzaffarnagar same day, that he was found dead on 17.9.1996 at 4.40 p.m. inside the jail while in judicial custody, that the cause of death as per viscera report dated 19.12.1996 (C.A. II) was alcoholic poison.

12. We are detained to go in detail in regard to the truthfulness of the allegations made in the F.I.R. registered against Satish Kumar as he is dead followed by the submissions of final report No. 173 dated 12.11.1996 therein similarly to examine the character of the inquiry report dated 17.3.1997 filed by Ajay Rautela, Circle Officer and the Magisterial inquiry said to have been carried by the City Magistrate as disclosed under para 6 of the counter-affidavit dated 2.4.1997 of Jagdish Tiwari Station Officer, although his report is not on record, because the inquiry was conducted in contravention of Section 176, Cr. P.C. which provides that in custodial death the inquiry be made by the Magistrate. It prohibits the joint inquiry by the Police Officer wherein the role of the Police Officer is to be enquired.

13. The deceased Satish Kumar did not appear to have sustained injuries at the hand of the public during the alleged process of his being apprehended as the F.I.R. is conspicuously silent on the point, the record of Report No. 34 of the G.D. dated 15.9.1996 (C.A. II) in this regard raises a serious doubt on the injury on the person of the deceased, however, these injuries are not responsible for his death so the detail discussion in this regard is not warranted but these injuries indicate the intention and conduct of the police personnel in regard to the death of the deceased. He did not appear to have consumed alcoholic poison before 20.35 p.m. Had he taken the alcoholic poison before lodging him in the police lock-up he must have been under its influence. He was medically examined on 15.9.1996 at 10.45 p.m. The injury report (C.A. II) does not indicate that he was under the influence of Alcohol or poison. The report 34 G.D. dated 15.9.1996 shows that except wearing clothes nothing was recovered from the possession of Satish Kumar, therefore, the possibility of his being keeping any alcoholic poison is ruled out. He was produced before the Magistrate he was not found abnormal. He was lodged in the jail on 16.9.1996 at 1.06 p.m. or at any time after the grant of judicial remand he was normal. He was inside the jail. There was no occasion for him to obtain any injurious substance and to consume it. The character and nature of poison/alcoholic poison is that as soon as it is consumed it starts to affect and congest the functioning of the entire body. Had he taken the poison before being in police/judicial custody the death had not waited to come till he was found dead, therefore, the facts and circumstances narrated above made us to arrive at a conclusion that the alcoholic poison was administered to him inside the jail and the administration of the poison amounts causing fatal injuries and specially when the deceased had died of alcoholic

poison. Consequently we hold that the death of Satish Kumar is a custodial death.

14. Satish Kumar was a young man of 22 years of age. He is said to be the earning member of the family. His father Bhopal Singh is also dead. The Petitioner is an illiterate widow woman of village and she appears to have crossed 50 years of age. She is or likely to suffer from various diseases of old age. She does not appear to have any means of livelihood so an adequate amount of compensation is necessarily required to be paid to her.

15. Since the death of Satish Kumar is a custodial death, the State of U.P. is liable to pay adequate compensation to the Petitioner Smt. Shobha the mother of the deceased Satish Kumar. The following cases in this regard are relied upon:

1. Nilabati Behera v. State of Orissa, (XXX) 1993 ACC 362 (SC) ;
2. Rudul Sah Vs. State of Bihar and Another,
3. Sebastian M. Hongray Vs. Union of India (UOI) and Others,
4. Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others,
5. Saheli, A Women's Resources Centre and Ors. v. Commissioner of Police, Delhi Police Headquarters and Ors. (1990) 1 SCC 1422; and
6. State of Maharashtra and Ors. v. Ravikant S. Patil, 1991 (Supp) SCC 311 (SC).

16. Since learned Counsel for the Petitioner has not pressed for the grant of other relief sought in the writ petition and the cost of the writ petition, therefore, no order is required to be passed in this regard.

17. Consequently the writ petition is allowed.

18. The Respondent No. 1 Secretary, Home Department, Lucknow, is hereby directed to pay a sum of Rs. 2,50,000 (Rs. two lacs fifty thousand) as compensation through account payee cheque in the name of Smt. Shobha widow of Bhopal Singh resident of village Ghasipura, police station Mansoorpur, district Muzaffarnagar through the District Magistrate, Muzaffarnagar, within two months from the receipt of this order.

19. Learned A.G.A. shall be furnished a copy of this order/judgment within 3 days who shall communicate the same to the Secretary, Department of Home, Lucknow, within a week thereafter and submit the compliance report after the expiry of the period indicated above.

20. The same shall be listed on 15.12.2006 for compliance report.