
(2008) 02 P&H CK 0144
In the Punjab And Haryana At Chandigarh

Court on its own Motion

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 323

Citation : (2008) 2 RCR(Criminal) 790

Hon'ble Judges : Vijender Jain, C.J.; Kanwaljit Singh Ahluwalia, J

Bench : Division Bench

Judgement

Vijender Jain, C.J.—The dicta of Hon"ble the Apex Court in Munshi Singh Gautam (D) and Others Vs. State of M.P., should have sounded as alarm bell and forewarned the functionaries of the State in whose custody under-trial or convict is done to death.

2. In the present case, Kewal Singh was facing trial in case FIR No. 27 dated 5.4.2007 registered at Police Station Sadar, Moga under Sections 382, 506, 148, 149 IPC and he was also arrested in FIR No. 34 dated 12.4.2007 registered at Police Station Sadar, Moga under Sections 307, 324, 323, 382, 341 and 506 IPC read with Section 34 IPC.

3. In the first case, arrest of Kewal Singh was effected by the police on 14.4.2007. He was produced in the Court on 15.4.2007 and was remanded to police custody. On 15.4.2007, his arrest was also effected in second case. On 15.4.2007 he was medicolegally examined and at that time, as per the endorsement of the doctor, there was no fresh mark of any external injury on any part of the body of Kewal Singh.

4. On 16.4.2007, he was again produced before the learned Illaqa Magistrate and he was remanded to judicial custody. His medical report on examination remained the same. In judicial custody he was lodged in Sub Jail, Moga, from where on the morning of 20.4.2007, he was shifted to Central Jail, Ferozepur on administrative grounds. In the evening of 20.4.2007, Kewal Singh died in judicial

custody. Post mortem of Kewal Singh was conducted and following 13 injuries were found on his person:

1. Contusion 5 cm X 2cm with swelling underlying 15 cm X 7 cm on the forehead in the middle upper part reddish in colour;
2. Swelling head in left parietal region 8 cm X 4 cm just above the left ear;
3. Lacerated wound 3.5 cm X 7.5 cm on outer side of base of index finger of right hand;
4. Lacerated wound 5 cm X 1 cm in web
5. space between thumb and index finger of right hand;
6. Swelling 14 cm X 12 cm with overlying reddish contusion 11 cm X 4 CM on right elbow dorsally;
7. Diffuse swelling over right shoulder and upper part of right arm with overlying reddish contusion 17 cm X 11 cm;
8. Bluish black contusion 15 cm X 13 cm on the outer and lower part of the right side of chest;
9. Bluish black contusion 12 cm X 3 cm X 4 cm above the injury No. 7;
10. Bluish black contusion 11/2 cm X 11/2 cm in the middle of lumbar spine;
11. Reddish blue contusion 34 cm X 21/2 cm on the upper part of the back in scapular and inter scapular region;
12. Bluish black 11/2 cm X 1 cm contusion on the inner side of right arm in middle; Abrasion 3.5 cm X 1 cm reddish brown on anterior surface of right leg; AND
13. Reddish brown abrasion 5 cm X 2 cm on antero lateral of leg just below the right knee.

5. The matter was reported in the newspaper Times of India on 22.4.2007. Learned Single Judge of this Court ordered an enquiry by the Incharge Sessions Judge, Ferozepur. The story put up by the Jail Authorities as mentioned in the report of Incharge Sessions Judge is as under:

In the evening at about 6 p.m., when he (deceased) along with others were taken out of the Cell for the purpose of taking bath, he was stated to have got violent and started running towards the side of other wards and was also stated to have jumped from one wall to another and went on the roof of the adjoining building of the jail from where he jumped in the other compound. From that he was again stated to have jumped upon another wall from where he jumped down and was taken in custody by those on duty nearby. In that process he was stated to have sustained injury on his hand. Pharmacist of the jail was called who gave him two injections and dressed of his wound on his hand. Thereafter, after about

half an hour his condition became critical. Pharmacist was again called, who removed him to Civil Hospital, Ferozepur where he was declared "brought dead.

6. The final analysis in the enquiry report is in the following terms:

The ultimate analysis of this enquiry is that the deceased Kewal Singh was subjected to torture while lodged in Sub Jail, Moga as well as in Central Jail, Ferozepur, as a result he died on the evening of 20.4.2007. The doctors and the pharmacists deputed to take care of the health of the jail inmates failed to perform their duties. The doctor on duty was away to Jalandhar and was prescribing the treatment on telephone to the pharmacist who did not care to examine the entire person of the deceased to find out if he had also sustained any other injury except that noted on his right hand which too according to him, was a minor injury. The Police and the Executive Authorities also failed to act promptly despite specific allegations of torture in custody having been levelled in the case.

7. After the report of the Incharge Sessions Judge, Ferozepur, the matter was taken on judicial side. The enquiry was also conducted by Additional District Magistrate, Ferozepur and he has opined as under:....

But as per post-mortem report at page 93 there are 13 injuries mark on the body of Kewal Singh. The nature of injuries raises many questions. Even if his hand had got injured due to glass on the wall, there is no explanation for the injuries on the body of Sh.Kewal Singh specially head, back and lower part of back. It appears that excessive force was used and he was given a severe beating by the jail staff. The Superintendent of Jail both Moga and Ferozepur have not shown any justification for shifting the prisoner Kewal Singh. The Superintendent, Central Jail, Ferozepur, did not even bother to get the medical examination of Sh.Kewal Singh done before admitting him in the Ferozepur Jail.

8. We have taken notice on the basis of the report published in the newspaper about the custodial death of Kewal Singh alias Gola son of Buta Singh, while lodged in Central Jail, Ferozepur. When the post mortem report was placed before us, we had opined that the stand taken by the police authorities was false as the complete conclusions, which are totally in variance with the post mortem report, were arrived and thus, directed the Director General of Police, Punjab, to submit a report and explain the circumstances as to why complete variant conclusions have been derived.

9. Pursuant to our direction, report by way of affidavit was filed and the Additional Director General of Police, Crime, Punjab, wherein he named seven persons, who were responsible for causing the death of inmate Kewal Singh. On the basis of the said report, we passed order dated October 31, 2007 inter-alia stating that in paragraph 3 of the report of Jagdish Singh Kahlon, Superintendent of Police (D), Ferozepur, it was stated that Kewal Singh was taken from Moga Jail to Central Jail with back handcuff and was handed over to Pritam Singh, Deputy Superintendent, Central Jail, Ferozepur, and thereafter he was locked up in the

Central Jail, Ferozepur along with other convicts. It was in the evening of April 20, 2007 between 5.0 P.M. to 5.15 P.M. that Head Warden Major Singh, Warden Baldev Singh and Chakkar Havaladar Shinder Singh turned Kewal Singh out of Chakki along with other inmates for the purpose of bath. As per the allegations made in the report, Kewal Singh did not take bath and thereafter certain names of the convicts have been inserted to state that Kewal Singh was taken to Ahata No. 1 in front of Chakki No. 4 and was beaten with sticks, iron rods and pattas by them and Head Warden Maya Singh, Warden Baldev Singh and Chakkar Havaladar Shinder Singh. The report further goes on to say that Pritam Singh, Deputy Superintendent of Jail reached the spot and released Kewal Singh and locked him up in Chakki with handcuffs. As per the version in the report, thereafter, Kewal Singh became serious and Darshan Singh, Pharmacist, was called. But due to his serious condition of Kewal Singh, he was taken to the Civil Hospital, Ferozepur, where the doctor declared him as dead.

10. On the basis of this report, the Court observed that it was Head Warden Major Singh, Warden Baldev Singh and Chakkar Havaladar Shinder Singh who gave beatings to Kewal Singh mercilessly with sticks, iron rods and pattas and if the police investigation was to be believed, by the other inmates also, it was Pritam Singh, Deputy Superintendent of Jail, who reached the spot and according to the report of the Superintendent of Police (D) got released Kewal Singh from the Jail employees and Nambardars and locked him up in Chakki with handcuffs.

11. The Court put a pointer on the report submitted by the Superintendent of Police (D) that a person who was beaten with the sticks, iron rods and pattas, instead of removing his handcuffs, Pritam Singh, Deputy Superintendent of Jail, had put him in the lock up with the handcuffs towards back side. This had shown complete inhuman and reflected a lurking conspiracy to cause death of Kewal Singh by this act of beating and torturing by iron rods, sticks and pattas and thereafter we have said that Pritam Singh, Deputy Superintendent of Jail was also responsible for the offence committed by rest as he was aware as to what was happening but did not provide adequate medical facility and did not order for removing of handcuffs of Kewal Singh and instead of taking the injured straightway to hospital, a Pharmacist who is not a doctor was called. That shows apathetical state of affairs as to why the doctor was not present in the Jail and was absent from duty. But for the cognizance taken by this Court, sordid of a custodial death could not have been noticed.

12. Dr. G.D.Pandey, IPS, Additional Director General of Police, Crime, Punjab, has filed affidavit before us and has stated that regarding death of Kewal Singh, under-trial, case FIR No. 184 dated 19.9.2007 was registered at Police Station City Ferozepur under Sections 302, 148, 149 IPC and after conducting the investigation in the above said FIR, challan has been submitted.

13. In view of the affidavit of Dr. G.D. Pandey, I.P.S. Additional Director General of Police, Crime, Punjab, Chandigarh, in compliance of the order dated January 18, 2008, wherein it has been stated that challans have been filed against eight

persons and the matter is pending in Sessions Court, Ferozepur and the same is fixed for hearing on February 19, 2008, no further orders qua investigation in the matter are required to be passed as we have expressed our satisfaction that after investigation accused had been put to trial, and the law will take its own course.

14. We would have parted with this case at this stage but we cannot become oblivious of the facts and circumstances in which a young man who was an under-trial and was remanded to judicial custody has been done to death. Death of a young man has left his family in lurch. No doubt that the family of deceased require compensation for survival but at the same time, the society at large also look upon the Courts as to what action has been taken against the delinquents where a young man in judicial custody has been done to death without any authority of law. Compensation ought not only be awarded to the family of the deceased but a message should also be sent that functionaries of the State whosoever flouts law has to suffer and in addition to the prosecution, they can also be burdened with heavy compensation, which in this case we will quantify in the later part of the order.

15. In *Sube Singh v. State of Haryana and Ors.* 2006 (1) RCR (Cri) 802 (SC) Hon"ble Apex Court relying on the observations in *D.K.Basu v. State of West Bengal* 1997(1) RCR (Criminal) 372, held as under:

16. In *D.K. Basu Vs. State of West Bengal*, , this Court again considered exhaustively the question and held that monetary compensation should be awarded for established infringement of fundamental rights guaranteed under Article 21.this Court held:

Custodial violence, including torture and death in the lock ups strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.

Any form of torture or cruel, inhuman and degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs, during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilized nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest.... The answer, indeed, has to be an emphatic "No".

Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

16. In the present case, it is established that Kewal Singh who was remanded in judicial custody by the Court to the jail. When an individual is consigned in jail on trust by the Courts of law then the faith of people in the judicial system is trampled in case an inmate of jail is done to death by the officials of the State machinery. This is another added feature which compel us to award exemplary compensation.

17. The human dignity, torture, death caused to the under-trial Kewal Singh, a person who was under-trial, is in judicial custody. He was supposed to undergo imprisonment in terms of imprisonment to be awarded to him by the Courts. A police remand is looked upon, by the under-trial, his counsel, as a place where interrogation will be subject to coercive methods to elicit answers, therefore, there is always prayer that duration of police remand should be short, but in present case, under-trial, who is in judicial custody has been made subject of inhuman torture by Jail Authorities. A person who has committed an offence must be punished so as to set the society in order and that punishment of an offence becomes an example for others not to chose the path of crime, so that it is learnt that jail is not a place to inflict third degree torture inhuman, undignified and insensitive treatment. The instrumentalities of State, and the jail authorities, who are responsible to provide adequate facilities for the persons cannot deprive a person of his life. Nothing can be more serious than custodial death of an inmate in a jail. The whole concept of human rights, life and liberty will be put to naught if this Court does not come heavily on the State and its officers for taking out the life of an under-trial without the authority of law. Therefore, we award a sum of Rs. 10,00,000/-to the next of the kin of the deceased. We also give liberty to the Director General of Police, Punjab, to recover this amount from the erring officials of the State.