
(2014) 07 BOM CK 0080

In the Bombay High Court

Case No : Criminal Writ Petition No. 419 of 2007

Kamalbai

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) ALLMR(Cri) 2798

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J

Bench : Division Bench

**Advocate : U.B. Bondar, Advocate for the Appellant; M.M. Nerlikar, APP,
Advocate for the Respondent**

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—By this Petition, under Article 226 of the Constitution of India, the petitioner is seeking directions to the Respondent Nos. 2 and 3 to register an offence punishable u/s 302 of I.P. Code against the Respondent No. 4 on account of custodial death of Shivaji Laxman Garad and also seeking directions to the Respondent Nos. 1 to 4 to pay compensation of Rs. 15 Lacks to the petitioner.

2. It is the case of the petitioner that, the petitioner has 4 sons and 3 daughters, out of which two sons namely Arjun and Shivaji and one daughter namely Chandrakala were married. The petitioner's husband was habitual drinker. The family of the petitioner is joint family. It is the case of the petitioner that, on 18.02.2006, the offence bearing Crime No. 23/2006 came to be registered at Police Station, Parali Vajinath (Rural) against the son of the petitioner namely Shivaji Laxman Garad on the basis of the complaint lodged by her another son namely Maroti Laxman Garad, thereby alleging that, on 18.02.2006 at about 8.30 p.m. in the night, their father Laxman came in drunken position and started abusing the present petitioner and Shivaji by saying that, the wife of Shivaji is

not behaving properly. It is further alleged that, on account of the said abuses Shivaji got annoyed and gave one axe blow on the left leg of their father Laxman and went inside the room. It is further alleged that, while they were taking their father to Hospital, their father Laxman died before reaching the hospital.

It is the further case of the petitioner that, after registration of the crime, the Respondent No. 4 arrested the son of the petitioner namely Shivaji on 18.02.2006 itself and on next day produced Shivaji before the Judicial Magistrate First Class, Parali-Vaijnath and sought police custody of Shivaji. The learned Magistrate granted the police custody of the deceased Shivaji from 19.02.2006 to 21.02.2006. It is the case of the petitioner that, since the date of arrest of Shivaji i.e. since from 18.02.2006, he was in custody of the Respondent No. 4 in connection with the aforesaid Crime No. 23/2006. After remand of Shivaji in police custody on 19.02.2006, the Respondent No. 4 has given third degree treatment to the deceased Shivaji in the night of 19.02.2006 so as to extort a confession. As such on next day morning i.e. on 20.02.2006 at about 10.30 to 10.45 a.m., her son Shivaji died in lockup due to third degree treatment given by the Respondent No. 4. It is the case of the petitioner that, the deceased Shivaji was aged about 25 years old at the time of his death. He was neither suffering from any disease nor he was having any injury on his person at the time of his arrest in connection with Crime No. 23/2006.

It is further case of the petitioner that, after the custodial death of Shivaji, the Respondent Nos. 3 and 4 by joining hands with each others, got managed to prepare medical report in their favour. It is the case of the petitioner that, as per the postmortem report, there were in all 7 external injuries found on the person of the deceased Shivaji. So far as the postmortem report is concerned, the injuries found on the person of deceased Shivaji supports and corroborates her testimony. It is the case of the petitioner that, the deceased was subjected to third degree treatment by the Respondent No. 4 in order to extort a confession. This act of the Respondent no. 4 cannot be said to be integrally connected or inseparably interlinked with the official duty imposed by law. By giving such third degree treatment to deceased Shivaji in police custody, the Respondent No. 4 has committed one of the worst kind of crime in a civilized society governed by the Rule of law and poses a serious threat to an orderly civilized society and by not giving any heed to the complaint made by the petitioner with this regard, the Respondent Nos. 2 and 3 have given clear signal that, a rule of law can not be applied towards police officials. It is the case of the petitioner that, after the death of Shivaji, on several occasion the petitioner along with his family members have approached to the Respondent No. 3 and requested to register the case of murder against the Respondent No. 4 and further to compensate them, but till this date, the Respondent No. 3 has not taken any cognizance of the same.

It is further case of the petitioner that, if the allegations made in Crime No. 23/2006 are perused, it is alleged that, the deceased Shivaji had given one axe

blow on the left leg on his father and went inside the room. There is no scuffle between the deceased Shivaji and his father Laxman. This fact itself sufficient to show that, there is no question of causing any injury to the deceased Shivaji. It is only during the police custody of the deceased Shivaji from 19.02.2006 to 21.02.2006, the Respondent No. 4 being Investigating Officer of the said Crime, has severally assaulted the deceased Shivaji and committed his murder in police lockup. Lastly, on 07.07.2006, the petitioner and her family members have sent one legal notice to the Respondents thereby requesting to register the offence u/s 302 of I.P. Code against the Respondent No. 4 and further to award them compensation of Rs. 15,00,000/-, but till this date, the Respondents have neither registered the offence nor paid any amount towards compensation for the reasons best known to them.

It is the further case of the petitioner that, this is the clear-cut case of custodial violence at the hands of the Respondent No. 4. At the time of arrest of the deceased Shivaji, there was no injury on the person of deceased. Not only this, but the Respondent No. 4 being the Investigating Officer of the Crime No. 23/2006, it was his duty to get examined the arrested accused i.e. deceased Shivaji from the concern Rural Medical Hospital immediately after his arrest to see whether there is any injury on the person of the accused. The Respondent No. 4 has brutally beaten and ill-treated the deceased Shivaji during police custody, which has caused death of deceased Shivaji at the young age of 25 years. Due to untimely death of deceased Shivaji, the petitioner being mother of Shivaji along with other family members, such as wife of the deceased, 2 brothers and 2 sisters of the deceased have suffered great hardship and they have lost their earning hand. The deceased Shivaji was the only earning member in her family and due to untimely death of deceased Shivaji, the petitioner and her other family members are suffering from starvation.

3. The learned counsel appearing for the petitioner submitted that, since there is custodial death, the Respondent Nos. 2 and 3 be directed to register offence punishable u/s 302 of the I.P. Code against the Respondent No. 4 on account of custodial death of son of the petitioner i.e. Shivaji Laxman Garad. The learned counsel further submitted that, the medical evidence clearly demonstrated that, the injuries sustained by deceased Shivaji were due to beating by the Respondent No. 4 when deceased Shivaji was in police custody. Therefore, the learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed. The learned counsel appearing for the petitioner placed reliance on the reported judgment of the Bombay High Court in the case of Dattatraya Tikkal Vs. The State of Maharashtra, Shri Ashok Rajput, Shri Vikramsing Pawar, Shri L.A. Kamble and Shri Dagadu Ujagare, and also the judgment of the Supreme Court in the case of D.K. Basu Vs. State of West Bengal,

4. The learned Additional Public Prosecutor appearing for the State relying upon the affidavit in reply filed on behalf of Respondent No. 2 and the copies of the enquiry papers submits that, the First Information Report was lodged on

18.02.2006 by Maroti Laxman Garad, R/o. Tokwadi, Tq. Parli, Dist. Beed, alleging that his father Laxman Garad has abused his brother Shivaji and his mother. His father alleged to brother Shivaji that, his wife is not behaving properly and due to that quarrel took place at about 7.30 p.m. on 18.02.2006. Shivaji assaulted his father Laxman by giving axe blow because of which he died. On the basis of the said complaint crime no. 23/2006 was registered u/s 302 of the I.P. Code against Shivaji Laxman Garad and investigation of the crime was handed over to C.L. Savle, API. He had arrested accused on 18.02.2006 at 23.15 hours and accused was kept in the lock up at City Police Station, Parli. He died on 20.02.2006 at 10.20 a.m. at Civil Hospital, Parli. As he had made complaint of sudden uneasiness he was taken to Civil Hospital, Parali. It is submitted that, inquiry into the death of accused Shivaji is conducted by Deputy Superintendent of Police CID Crimes, Beed and he has submitted his report to Taluka Executive Magistrate on 27.04.2006. In the said report he has submitted that, deceased Shivaji suffered natural death due to illness and he did not find any commission of offence. The Deputy Superintendent of Police, therefore, prayed for sanction of summary. It is submitted that, thereafter the A.D. No. 9/2006 u/s 174 of Cr.P.C. was registered at Parli City Police Station. The Deputy Superintendent of CID Crimes had conducted detail inquiry about the death of deceased Shivaji and he also found that, there is no offence made out and the death is natural due to illness and hence submitted summary to the Taluka Executive Magistrate. The Taluka Executive Magistrate has sanctioned Summary No. 1/2007 on 03.07.2007. It is therefore submitted that, in view of the inquiry conducted by the Deputy Superintendent of Police, CID Crimes and in view of the summary accepted by the Taluka Executive Magistrate, the allegations made by the petitioner that, her son Shivaji died due to torture by the police is not correct. The death of the deceased is natural due to illness, therefore, the petitioner is not entitled for any compensation, as prayed in the Petition.

5. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor, with their able assistance, we have perused the pleadings in the Petition, annexures thereto, affidavit in reply filed on behalf of the respondent Nos. 1 and 2 and the copies of the investigating/enquiry conducted by the Deputy Superintendent of Police, State Central Investigating Department, Beed.

6. It appears that, on 18th February, 2006 at about 6 p.m. there was scuffle between the father of the deceased namely Laxman and deceased Shivaji. At this juncture, it would be apt to reproduce hereinbelow relevant portion of the statement of the petitioner recorded by the Police Inspector, Police Station Parli (City), Dist. Beed i.e. Kamalbai Laxman Garad in Vernacular, which reads thus:-

7. Upon perusal of the material placed on record, it appears that, the Crime No. 23/2006 for the offence punishable u/s 302 of I.P. Code was registered in which Shivaji Laxman Garad, i.e. deceased was made accused for murder of his father Laxman. He was arrested on 18th February, 2006 at 11.15 p.m. under the said

Crime registered with Parli Vajinath Police Station (Rural). Accordingly, entry about the arrest of Shivaji was taken at Sr. no. 59 in the Register and thereafter, he was taken in custody. On 19th February, 2006 he was produced before the Magistrate and thereafter, he was again taken to the lockup and to that effect there are entries in the lockup register. It further appears that, there was medical check up on 19th February, 2006. On 20th February, 2006 at 10.40 hours he was brought out of lockup for taking to the hospital. It further appears that, when Shivaji was produced before the Magistrate on 19th February, 2006, he did not complain about the ill-treatment, if any, at the hands of the Police Personnel's. It further appears that, on 19th February, 2006, the Judicial Magistrate, First Class, Parli granted the police custody upto 21st February, 2006. It further appears that, he was referred to Dr. Arvind Surkar in Sub-District Hospital, Parali. The said medical officer did not notice any injury on the person of the deceased Shivaji, however, paracetamol and rantac tablets were given to him since he was suffering from body pain and also had some chest pains. It appears that as many as seven injuries were noticed in the P.M. Report of deceased Shivaji. The Medical Officer gave his final opinion on 13th April, 2006 about the cause of death of deceased which is as under:-

We are of the opinion that the above deceased might have died due to Mitral stenosis with healed rheumatic carditis with bilateral chronic venous congestion of lungs with mild pulmonary oedema with right sided pleural effusion.

It further appears that, the injuries which were noticed to have been caused to deceased Shivaji were possibly caused in the scuffle, which he had with his deceased father and not in police custody. Moreover, as opined by the Medical Officer, the injuries noticed on person of deceased Shivaji have no nexus with his death. As has noted in the postmortem examination report, deceased Shivaji died because of Mitral stenosis with healed rheumatic carditis with bilateral chronic venous congestion of lungs with mild pulmonary oedema with right sided pleural effusion.

8. From the statement of the petitioner herself, it is revealed that, there was scuffle between deceased Shivaji and his father Laxman and Laxman had assaulted Shivaji. The abrasions and contusions noticed on person of deceased Shivaji were because of that. From the medical record it is revealed that, out of four valves, size of "Mitral" valve was reduced, and therefore, deceased Shivaji was suffering from heart ailment and also there was chronic venous congestion of lungs with mild pulmonary oedema with right sided pleural effusion. Therefore, upon reading the statement of the petitioner and considering the fact that, deceased Shivaji was suffering from serious heart ailment and cause of death given by the Medical Officer is due to said ailment, in our considered view, it cannot be said that, the injuries sustained by deceased were during the period when he was in police custody. The material placed on record clearly rules out the possibility of atrocities by the Police, and therefore, the petitioner's prayer in this Petition deserves no consideration. Therefore, the Petition sans merits,

stands rejected.

9. Rule stands discharged accordingly.