
(1997) 01 CAL CK 0011
In the Calcutta High Court
Case No : C.C. No. 18207 (W) of 1995

Lawyer's Forum for Human Rights

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 39, 41, 42

Citation : (1997) CriLJ 1762 : 101 CWN 604

Hon'ble Judges : Bhagabati Prosad Banerjee, J; Asok Kumar Chakravarty, J

Bench : Division Bench

Advocate : Tapas Kumar Bhanja, for the Appellant; Indrajit Sen and P.B. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

Bhagabati Prosad Banerjee, J.—This writ proceeding has been drawn up on the basis of a letter filed by the Lawyers' Forum for Human Rights, Calcutta, praying for necessary directions and orders with regard to the death of one Sri Dulal Gharai, who is stated to have died in lock-up of the panskura police station, Midnapore, on 17-10-1994.

2. This case was assigned by the learned Chief Justice to this Division Bench for its disposal.

3. The fact of this custodial death was published in various newspapers and that the case of the petitioner, as made out before this Court, is that the said Sri Dulal Gharai, since deceased, along with four other accused persons, were arrested on October 8, and that he was kept in the police lock-up, without producing the said accused before the Magistrate watching 24 hours and that the said Sri Dulal Gharai was stated to have been beaten to death and he died on October 17, 1994. It is further alleged that Sri Dulal Gharai, along with four other co-accused, were kept in the police lock-up on October 8, 1994, to October 16 1994, and all of them were mercilessly tortured.

4. It is further stated that Sri Dulal Gharai had two wives and the said widows of the deceased Dulal visited Dulal during 8th October, to ,15th October, 1994, in the panskura police station and found Dulal Gharai alive. It is stated that Duala Gharai expired on 17-10-1994, in the morning at 3.00 a.m., because of the inhuman torture made upon him. In the newspaper report, it was claimed that because of the custodial violence, the death had occurred. The case of the police authorities before this Court on affidavits by the Officer-in-Charge, Superintendent of police, and others, was that Dulal Gharai, was arrested alone on 17th October, 1994. But he fell down from the running police jeep in an attempt to escape and got injured and consequently died, the case of the police authorities was that in the early hours of 17-10-1994, Dulal Gharai was found moving in the street with some deadly weapons and he was taken to the police station after such arrest, and that he jumped from the running jeep in a bid to escape from police custody and fell down on the pucca road. It was specifically stated by the police authorities before this Court that after he fell down, he was again taken into custody and brought to the police station and put up in the lock-up. After some time, Dulal complained of some pain in his head. Then the police authorities decided to take him to a nearby primary health centre and that he was produced in a primary health centre was sought to be proved by means of production of a ticket issued by the said primary health centre. The said token for outdoor patients was signed by some person for the Medical Officer of the primary health centre, and in that ticket, it was only recorded "as stated by the patient fell down from the jeep on the way to police station, transferred to S. D. Hospital for better treatment". No time was mentioned and the reasons for transfer to sadar, hospital for better treatment has not been disclosed.

5. It is further, stated that from that primary health centre, the deceased Dulal was taken to sadar hospital which is a long way from that place and in the jeep, he sat all through and it Was not the case that the deceased Dulal was lying down or was carried in a stretcher. It is stated that Dulal was sitting in the jeep all through, but when he was produced before the sadar hospital, he was declared dead. In the post mortem report, it was specifically pointed out that the "cause of death, in my opinion, is due to cardio-respiratory failure from the shock and haemorrhage in a case of subdural haemorrhage which is ante-mortem in nature and might have been caused following hit with some hard and blunt substance over the area, to be confirmed by further investigation and circumstantial evidence". This was the report of the Medical Officer who had conducted the postmortem. The injury was on the head, but not in other parts of the body. There was no wound in other parts of the body. There was no bruises, the brain was congaed, in the middle of the head, there was severe injury which resulted the death.

6. Mr. Tapas Bhanja, learned Advocate appearing for the Lawyer's Forum, submitted that Dulal was arrested on the 8th and he was in the lock-up till he died. The police authorities produced the G. D. entries of the police station to show that he was not at all arrested on the 8th, but he was arrested for the first

time in the early hours of 17th October, and died in the circumstances stated above. In order to verify this crucial fact, directions were issued by this Court to produce the xerox copies of the G. D. Entry Book, dated October 8, to October 16, 1994, the post-mortem report, unnatural death cases record dead body challan of Dulal Gharai, Lock-up Register dated 8th October to 16th October, 1994, Diet Register dated 8-10-1994 to 16-10-1994. Excepting the G. D. Entry Book, Post-Mortem Report, nothing was produced; the Lock-up Register and the Diet Register were not produced. With regard to this, pursuant to our directions, Sri R. K. Nigam, Director General and Inspector General of Police, West Bengal, submitted a report on 4-4-1996, in which he stated that "Lock-up Register and Diet Register" were not maintained in the police station for lack of any such provision in the PRB, 1943. However, a register of persons arrested is maintained at the P. S. in B. P. Form No. 56-A, vide regulation 323-A of PRB-1943. Further, arrival of prisoners in the police station is noted in the General Diary. It was also stated that a memorandum of expenditure incurred on account of feeding of prisoners at police station and on the way to hazat during a month is sent to the office of the Superintendent of Police by the Officer-in-Charge of the police Station at the end of the month. The said provisions of PRB were followed at Panskura Police Station.

7. It was further stated that for the lack of provision in the PRB, 1943, therefore, no requisition was made from Panskura police station by the authorities concerned for supplying of Lock-up Register and Diet Register not maintained in the police station. The D. G. and Inspector General of Police had also stated that as per the available record, the accused Dulal Gharai was arrested alone on 17-10-1994, and fell down from the running police jeep in an attempt to escape and got injured. No other persons were arrested with him then by the Panskura P. S. The records of Daspur P. S. were also checked and no such arrested persons were found to be sent to Daspur P. S. as alleged in some newspaper reports. It was further mentioned that the departmental proceedings vide Midnapore District Proceedings No. 4/95 and 5/ 95 dated 17-4-1995, had been initiated against S. I. B. Bag, and A. S. I., Amar Char, the then O. C., and the then ASI of Panskura P. S., respectively, for negligence and dereliction of duty in not providing timely medical assistance to the injured accused person and to verify the allegation that the deceased Dulal Gharai was arrested on a date other than 17-10-1994, etc. The departmental proceeding was under enquiry.

8. It is a very unfortunate state of affair if the contention of the Director General and Inspector General of Police is accepted that no lock-up register is required to be maintained at the police station, and/or the diet register. The lock-up register is required to be maintained showing when an accused had been put up in the lock-up and showing movements of the accused, e.g., when an accused is taken out from the lock-up to the Court. The same is also required to be recorded and the time including the time of departure and arrival back to the police station is also required to be recorded. For the purpose of interrogation also if an accused is taken out from the lock-up, the same has to be recorded. It cannot be

accepted that when an accused is arrested, he should be treated like a cattle. He cannot be taken from one place to another, without maintaining any record. It has to be remembered that when a person is arrested on some charge or offence, his other rights are not suspended. The lock-up register must indicate how many accused have been kept inside the lock-up and their respective movements. The diet register should be maintained to show how many accused were there and the food and/or the tiffin that were supplied to the accused from time to time must be recorded. The matter should be viewed from another angle. The diet register is also a piece of evidence that the accused were supplied with diets by the suppliers. The prisoners cannot be denied of their food and drinks and other amenities as available to the citizens. A citizen, after he is arrested, can be kept confined, but he has to be supplied with the means of his survival, food, drinks, bedding, etc. The prisoners cannot be treated like cattles, as cattles confined in a small place without providing them any sufficient place to sleep or to sit. The basic human rights of all the citizens of this country should not be allowed to be dealt with in such a barbarian manner. The law nowhere has conferred such a power upon the State and/or the police authorities to deal with the accused persons in such a fashion.

9. The State should immediately take steps to direct each and every police station within the State to maintain compulsorily a lock-up register and diet register which should be made open for inspection to higher authorities, otherwise there is every chance of making abuse of power.

10. The facts of this case indicate that the police authorities have failed to satisfy the Court about their bona fides, in the matter. The possibility of killing Dulal by beating cannot be ruled out on the basis of the post-mortem report. It was surprising that inspite of the post-mortem report, the District Police Authorities did not take any step to investigate to find out the truth or otherwise. The Director General and Inspector General of police had tried to escape his responsibility by saying that the disciplinary proceedings for negligence on the part of the police officials by not providing timely medical assistance and for not providing materials to verify the allegation that the deceased Dulal was arrested on a date other than 17-10-1994. So, the police authorities have also created a doubt about the conduct of erring police officials.

11. It is stated that the matter has already been referred to the State Human Rights Commission and the Commission has found that it was a case of custodial death which resulted from beating, which in our view, supports the view expressed in the post-mortem report. It is within the scope of this writ application and in view of the determination made by the State Human Rights Commission, we propose not to pass any order imposing punishment and/or any penal measure excepting determining the question what is the relief the widows of the deceased would get in the admitted facts and circumstances of the case.

12. The case of the police authorities was correct that after arrest while he was brought to the police station in the jeep, Dulal died as he attempted to escape by

jumping out from the jeep and sustained injuries. This is not the entire fact. It is an admitted position that the police party did not notice any injury on his head or on the body, and on the contrary, found that he was hale and hearty, and that was the reason he was straight way put into the lock-up and that it is the case of the police authorities that after some time. Dulal complained of some pain in the head, he was taken to the primary health centre. The primary health centre certificate is highly suspicious and unreliable. Even assuming that it is a reliable piece of document, this document shows that he has recorded the statement of the accused that the accused had fell down from the jeep and somebody on behalf of the Medical Officer of the primary health centre recommended for transfer to the District Hospital for better treatment. It is not understood what is meant by better treatment. The certificate does not show what was the type of illness or injury which required better treatment. The certificate, if it has been given by a Medical Officer, such a Medical Officer is guilty of gross dereliction of duty and has done something which is contrary to medical ethics. It is his duty to point out what was his own finding regarding the injury or the illness of the accused for which he was directing transfer for better treatment. This shows that better treatment is required, but better treatment for what, that is not indicated. It is a case where no Court on earth could rely on such a piece of chit issued by the primary health centre, if at all. Then the fact is that the accused Dulal was taken to the Sadar Hospital by Jeep. There is no whisper that he was ill and required medical treatment. The post-mortem report certified that there was severe injury in the middle of the head, but, the police authorities remained significantly silent. It is not a case that the police officials were all blind and could not see with their eyes. If there was severe head injury and the injury in the middle head, such an injury could not take place in a bid to escape from a running jeep. In that event, there would have been some other injuries on some other parts of the body and the injuries at the back of the head or on the side or on the front of the head. But the injury was just in the middle of the head, for which, according to the post-mortem report, Dulal died.

13. Further, the post-mortem report indicates that such an injury could only be caused by a very hard and blunt substance. The most important question is what is the duty and responsibility of the police officers after the person is being arrested and taken into the custody? Can it be said that the police after arrest had no responsibility and/or liability to protect the bodies of the accused person? The answer is, no. When a man is taken into custody, it is of paramount duty of the police officials to protect his body. If he is arrested alive, it is the duty of the police officials to release him, if he is released alive. It was not a simple case of suicide committed by a person voluntarily or involuntarily. The police authorities have a duty of care to the arrested accused. The person having lawful custody of another, is bound to take due care and caution so that he may not escape. Escape may be by breaking the lockup and/or by putting an end to his life. The police is under a duty to safeguard a man from his own act of self-destruction. When a man is in police custody, he is practically caged and there he should not

be allowed to self-destruction. There is a duty on the person having custody of another to take all reasonable steps to avoid acts of omission which he could reasonably foresee, would be likely to harm the person on whom he has responsibility. While an accused is arrested and taken in police jeep, it is the bounden duty on the part of the arresting party to see that he cannot escape by jumping from the police jeep. There were several police officials in the jeep and it is not understood how he could jump out from the jeep when the jeep was in the running condition. It has not been established that Dulal was insane. In this connection, it is profitable to refer to the observation of Lord Denning MR in *Hyde v. Tameside Area Health Authority*, (1981) Times, 16th April, 1981, CA, wherein the principle of *volenti non fit injuria* was considered. The observations were as follows :

But it is still unlawful. It is contrary to ecclesiastical law, which was, and is still, part of the general law of England: see *Mackonochie v. Lord Penzance* (1881) 6 App Cas 424 per Lord Blackburn. The suicide's body was not buried in the church-yard with Christian rites. You will remember the gravediggers' scene in *Hamlet Act v. i. I*: "Is she to be buried in Christian burial that wilfully seeks her own salvation?" I know this all sounds very out of date, but it has a useful lesson for us in modern times. I feel it is most unfitting that the personal representatives of a suicide should be able to claim damages in respect of his death. At any rate, when he succeeds in killing himself. And I do not see why he should be in any better position when he does not succeed. By his act, in self-inflicting this grievous injury, he has made himself a burden on the whole community. Our hospital services and our social welfare services have done, and will do, all they can to help him and his family in the grievous injury that he has inflicted on himself and on them. But I see no justification whatever in his being awarded, in addition, the huge sum of ? 200,000, because he failed in his attempt. Such a sum will have to be raised, in the long run, by society itself, a sum which it cannot well afford. The policy of law should be to discourage these actions. I would disallow them altogether, at the outset, rather than burden the community with them. Especially when, as this experience shows, they all fail in the end. At any rate, all failed before the trial judges until this one, and this one now falls before us.

14. In *Kirkham v. Chief Constable of Greater Manchester police Station*, reported in (1990) 3 All ER 246, the question of suicide by a prisoner at a remand centre when the prisoner had suicidal tendencies, was considered. In that case, the prisoner was an alcoholic with suicidal tendencies. After a suicide attempt, he was admitted to hospital, but was allowed to discharge himself on the next day. The day after following a domestic argument, he was arrested on the charge of criminal offence. The plaintiff, namely the widow of the deceased prisoner, told the police that the deceased had recently tried to commit suicide. At his appearance before the Magistrate the next day, the police objected to bail and he was remanded to his custody for his own protection. However, the procedure for informing the prison authorities of the prisoner's suicidal tendencies by

completing the form of exceptional risk prisoners stating that the prisoners had suicidal tendencies giving the relevant details and handing that form to the Magistrate's Court goaler for transmission to the prison authorities, if the prisoner was remanded in custody was not carried out in case of the deceased. At the remand centre the deceased was treated like a normal prisoner and placed in a cell along, where he committed suicide by hanging. The widow brought an action against the Chief Constable claiming damages for negligence by the police in failing to pass on to the remand centre information relating to the deceased's suicidal tendencies. It was held by the Court below that when the police took the deceased into custody they assumed certain responsibilities towards him, in particular, the responsibility to pass on information which might affect his well being when he was transferred from their custody to the prison authorities and that assumption of responsibility impose on the police a duty to speak. By failing to complete the form for exceptionally risky prisoners and thereby pass on to the remand centre information relating to the deceased's suicidal tendencies, the police had been in breach of that duty, and it was further held that having regard to the change in public attitude to suicide as evidenced by the abolition of the Crime of Suicide by Suicide Act, 1961, the widow's claim was not an affront to the public conscience, nor would it shake the minor citizens. In that case, again on the basis of the evidence, it was accepted that the deceased would have worked fairly consistently. Nevertheless, it was regarded ? 30 a week, or ? 1000 a year, making ? 5,00 in all, and this finding made by the Court below, was not interfered with by the Court of Appeal.

15. Therefore, in our view, when a prisoner is in lawful custody of another, whether that be voluntarily or usually in the case of hospital or involuntarily as when a prisoner is detained by the police or by the prison authorities, but the position is that there is a duty on the person having custody of another person to take all reasonable steps to avoid acts of omissions which he could reasonably foresees would be likely to harm the person for whom he is responsible. Even assuming that the arrest was made and the accused was taken in a jeep, it was the duty on the part of the police authorities to see that the accused could not escape from the jeep by jumping or otherwise and accordingly even assuming that the case of the police authorities was correct, in that event the police authorities have to take reasonable steps to avoid actual omission which they could reasonably foresee which is likely to harm the person for whom he is responsible.

16. But, in the instant case, there was a gross negligence even assuming the case of the police authorities was correct in not detecting severe injury in the middle of the head and in that case, it was not recorded in the records of the police that he has been brought in the lock-up with severe injuries. He was not given any medical assistance; on the contrary, he was taken to a primary health centre and the primary health centre's role is very alarming and suspicious, who simply recommended transfer to the Sadar Hospital for better treatment. Even assuming that he was injured, the police authorities were fully responsible for not

making available to the accused timely medical assistance. Every person has a right to get medical assistance timely and effectively while he was in police custody and by not making available all this medical assistance, if, according to the police authorities, he was arrested alive, there was gross dereliction of duty. In this case, according to the finding made by the Human Rights Commission, the police authorities are guilty of killing him in police custody and accordingly, in the limited scope of this writ application, the widows of the deceased accused should be compensated for gross negligence and overt acts that have been committed by the police authorities. Public policy demands that the police authorities who are guilty of such gross negligence and responsibility for death in police custody, should be asked to pay due and proper compensation. The widows have been helpless because of such death. Accordingly, the State should pay compensation of Rs. 1 lakh in total, to both the widows, as because of the negligence or otherwise on the part of the police officials, they have been made widows and became helpless. Unless this course of action is taken as a matter of public policy, people's confidence on the judicial system of this country would be completely nugatory. If the right under Article 21 of the Constitution is violated, the same could not be taken by the courts so lightly. The affidavits filed by the police authorities including the officer-in-charge of the police station, the Superintendent of Police and the Director General of Police could not be relied upon by this Court as the same is contrary to their own records and that it is admitted that the disciplinary proceeding has been initiated. The disciplinary proceeding is for the purpose of maintaining discipline in the police administration. But, by simply maintaining discipline in the police administration, the widows who have a right to compensation, could not be denied and deprived for such loss.

17. Further, the State Government is also directed to cause an enquiry to find out who is the person who has issued certificate from the primary health centre and take action against the said Medical Officer of that primary health centre in accordance with the law so that in the future, they do not issue such a misleading note. It also appears to us that correct things have not been recorded in the said ticket. Further, the State Government should also investigate and take steps why on the basis of the post-mortem report, steps were not taken by the authorities concerned.

18. The Supreme Court in the case of *Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi*, held that the Court can intervene with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner, but it declines to interfere where lesser matters are alone involved.

19. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, the Supreme Court have held that right to live with human dignity, free from exploitation, enshrined in Article 21, derives its life breath from directive principles of State Policy and particularly clauses (e), (f) of Article 39, and

Articles 41 and 42. Therefore, it must include protection of health and protection against abuse and that there is a right to live with basic human dignity. It is needless to point out that every citizen has a right against torture, cruel, unusual and degraded treatment.

20. In *Raymond v. Honey* (1983) 1 AC 1 and in *Leech v. Parkhurst Prison Deputy Government* (1988) 2 WLR 270, it was held that a person who by virtue of any enactment detained in prison or elsewhere, retains all his rights as citizen excepting those taken away expressly or by implication.

21. In *Chameli Singh and others etc. Vs. State of U.P. and another*, the Supreme Court inter alia held that in an organised society, the right to live as human being is not ensured by meeting only animal needs of man. It assures only when he is assured of all facilities to develop himself and is freed from restriction which inhibits his growth. Right to life guaranteed in a civilized society implies right to food and right to decent environment, medical care and shelter. These are said to be the basic human rights known to any civilized society.

22. Accordingly, a person who has been arrested by the police and had been kept confined, retains all his fundamental rights as the same had not been curtailed and taken away by any law. When a man is arrested and kept in the lock up or in the jail custody, his freedom of movement is taken away and he is kept as a captive and while he was in the custody of the police or in the jail, he is entitled to all the basic human rights as is enjoyed by other citizens including right to medical treatment. Article 21 guarantees protection of life and this right to life means right to live with human dignity. Torture of the persons in the custody of police has become a regular feature in this country. It is one thing to use third degree method for the purpose of extracting confession and/or for getting information. But everything has got its own limit. But this third-degree method which is not permissible, cannot be used in such a manner which cause death to a prisoner. It is a duty on the part of the police to maintain law and order and they are the custodian of law. The police is not a servant of anyone excepting that they are the servant of law. A law enforcing authority cannot be allowed to take law in its own hand and to kill a person in police custody. In the instant case, the Human Rights Commission has enquired into the matter during the pendency of this case before us and found that the accused was killed in custody and issued certain directions including payment of Rs. 25000/- as ad interim compensation. In the instant case, we are sorry to place on record that even the Director General and Inspector General of Police has simply relied upon the statements and records prepared by the Officer-in-Charge of the police station and that on that basis affirmed an affidavit before this Court. It is very unfortunate that in the matter like this they have not performed their duties as required. When the complaint is before the head of the police administration of the State, it was his duty to enquire and after the enquiry, to make statement before this Court taking its fullest responsibility. Mere drawing up of a disciplinary proceeding against the erring officer will not serve the purpose. We have no

hesitation in holding that this Court was sought to be misled from the very beginning by filing affidavits which could not be relied on as the same were full of contradictions. It is very unfortunate that the post-mortem report which clearly suggested that the death was due to hitting the head with some hard substance. Under such circumstances, it was surprising that the police administration of this State remained significantly silent. Having regard to all this, we have no option but to direct payment of compensation to next of kin of the deceased Dulal.

23. In the result, the writ application succeeds, and the State is directed to pay a compensation of Rs. 1 lakh to be divided equally to both the widows in all, within two months from today. The endeavour of Mr. Bhanja who had initiated the proceedings on the basis of a letter written to this Court, is highly appreciated and the same is placed on record.

24. It may be mentioned that the Human Rights Commission had granted interim compensation of Rs. 25000/- to be paid to the next of the kin of the deceased Dulal Gharai. The sum directed by us, is to be paid in addition to the sum awarded by the Human Rights Commission and we make it clear that the order passed by us shall not in any way affect the power of the Human Rights Commission to proceed with the matter and deal with the matter as the commission may think fit and proper.

[Liberty to mention.]

Asok Kumar Chakravarty, J.

25. I agree. Later. Let plain copies of the relevant ordering portion of the this judgment countersigned by A. R. (Court) be given to the learned counsel for the parties.