
(2011) 03 SC CK 0021

In the Supreme Court Of India

Case No : Criminal Appeal No. 1511 of 2003

Mehboob Batcha and Others

APPELLANT

Vs

State rep. by Supdt. of Police

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 22(1)
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 2 Crimes 84 : (2011) 2 GLH 201 : (2011) 3 JT 541 : (2011) 2 NCC 76 : (2011) 1 OLR 1068 : (2011) 2 PLJR 81 : (2011) 2 RCR(Criminal) 599 : (2011) 4 SCALE 20 : (2011) 7 SCC 45 : (2011) 3 SCC(Cri) 70 : (2011) 3 SCR 1091 : (2011) 2 UC 841 : (2011) 2 UJ

Hon'ble Judges : Markandey Katju, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : S. Shunmu Gavelayutham, K.K. Mani, Abhishek Krishna and Mayur R. Shah, for the Appellant; R. Sunmugasundaram and Promila, S. Thananjayan, for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, J.

Bane hain ahal-e-hawas muddai bhi munsif bhi Kise vakeel karein kisse munsifi chaahen -- Faiz Ahmed Faiz 1. If ever there was a case which cried out for death penalty it is this one, but it is deeply regrettable that not only was no such penalty imposed but not even a charge u/s 302 IPC was framed against the accused by the Courts below.

2. Heard learned Counsel for the parties.

3. The facts in detail have been stated in the impugned judgment of the High Court as well as of the trial court and hence we are not repeating the same here, except where necessary.

4. The Appellants are policemen who wrongfully confined one Nandagopal in

police custody in Police Station Annamalai Nagar on suspicion of theft from 30.5.1992 till 2.6.1992 and beat him to death there with lathis, and also gang raped his wife Padmini in a barbaric manner. The accused also confined several other persons (who were witnesses) and beat them in the police station with lathis.

5. Both the trial Court and the High Court have found the Appellants guilty and we see no reason to disagree with their verdict. To prove the charges the prosecution examined as many as 37 witnesses, and they have proved the guilt of the accused beyond reasonable doubt.

6. PW1 Padmini has given her evidence in great detail and we see no reason to disbelieve the same. We have read her evidence which discloses the inhuman and savage manner in which the accused, who were police personnel, treated Nandagopal and Padmini. We may quote just parts of her testimony which are as follows:

...on Sunday at about 1.00 p.m. two policemen came in an auto to my house. They are A3, A6 and A8. All of them beat me by lathis on my buttocks. A3 caught hold of my leg and pulled me saying get into the auto. I ran outside. Two autos came and in one auto Subramaniam and Nandagopal were sitting with handcuffs jointly. Unable to bear pain I sat by their side. The auto went to Annamalai Nagar police station and they asked me to go inside and I went inside. A6 beat me up. I was surrounded by 4, 5 persons who were beating me. At that time my jacket (blouse) was torn. Some one tore off my jacket and I do not remember as to who tore off that jacket. They said `you will not bear any more and go and sit" I sat in the corner where the Head constable was sitting earlier. Some time afterwards two women police came there. Thinking that I would be let off, I stated to them that I took oleander seeds, for that the women police gave me water mixed with tamarind and soap and asked me to drink it. That night myself and the women police were lying down in the room where the Sub Inspector of Police was sitting and in the early morning the women police went out. My husband's sister's daughter by name Priya gave coffee. I could talk anything. I ate idly. My husband told me why you are coming here, I am being tortured by them. I told him that they would not do anything and they would let you free. At that time a policeman came and told `what are you talking to her", and saying so he kicked him and pushed him down. A6, beat my husband and kept him in the lock up. Subramani, Kolanchi and Subramaniam were also in the lock up. Then I was given good meals and my husband was given waste food. Therefore I gave my food to Nandagopal. For that A1 said you should take that food and be good and why did you give it him, by saying so he beat me by lathi. In the evening all of them jointly discussed with themselves saying that each one of them should give Rs. 50/- for giving a party. One police man asked for what purpose you are giving a party and one police man whispered some thing in his ear. On hearing that, he asked were you not born with your sisters, and saying so he left that place. On Monday at about 8.00 pm

night, Nandagopal was brought out from the lock up. A6 told that he should see some one has to remove my saree. He called the accused Kolanchi from the lock up and asked him to remove my saree. He was holding my palla, but I was holding it tightly without leaving it. The said Kolanchi told that he should not pull it. Immediately the first accused beat him with a lathi. Then after beating him, he asked him to get to the side of the open court yard. Immediately A3 came to remove my saree. A3 removed the entire saree of mine. At that time I was wearing petty coat and jacket. A1, A3, A6, A8 and A10 removed my jacket and petty coat and made me nude. They asked me to run through the court yard and beat me and I fell down. All the five accused person one by one embarrassed me and kissed me. Then I fell down. At that time one said `your private part is big in size, cannot you bear this pain". I cried and asked him to stop beating. At that time some one came there in connection with a case. They said not to say this to anyone outside. I wrapped the saree over the body and sat. At that time two women police came there. I stated to them what had happened. They said that no one will beat you hereafter, and I went to lie down along with them in a room. In the early morning on Tuesday one Senthil came and brought coffee. Senthil is the son of my husband"s sister. On that evening my husband was taken outside and brought to the police station along with Rani, Dandapani. Rani is the younger sister of Nandagopal. Dandapani is the husband of Rani. When Dandapani was asked about the tape recorder, he showed a bill of a shop where he purchased it. For that the police said `why are you telling a lie". Yesterday we have removed the saree of the wife of Nandagopal and saw, and it would be proper if we remove the saree of your wife. At that time there were bleeding injuries on the back, leg and shoulder of Nandagopal and blood was oozing out in strips. Police stated like that. My husband sustained injury on account of beatings by the police A1, A3, A6, A8 and A10 beat my husband. Then the police asked Rani and Dandapani to go to their house. On Tuesday night two women police came to the police station. They were talking with each other as to whether any clothes have been brought for staying in the night. Along with them one male police came and asked whether they had seen Tamil picture `Sembaruthi". I asked them not to leave me alone and asked them to take me along with them. They said they would not do anything, by saying so those two women police went out. I cannot identify those police properly and I do not remember their names. On Tuesday at about 10.30 pm my husband Nandagopal was brought to the open court yard from the lock up. Myself and Nandagopal were brought to a room opposite to the open court yard. My husband was kept in a standing position on the wall and beaten up by them. A6 Dhass pulled out my saree. A10 removed my jacket and petty coat and made me to become nude and I was beaten and pushed down. My leg had stuck into a bench and I could not remove it. At that time the 2nd accused Sub-Inspector of police came to Annamalai Nagar police station. He said that he would go first. At that time he used rubber loop at the genital organ and committed rape on me. A2, A3, A6, A8 and A10 also raped me forcibly. All of them have used rubber loop. All of them raped me in the presence of my husband. At that time my husband Nandagopal requested them not to do harm

to my wife, and leave her. At that time A6 beat Nandagopal with lathi on his genital part. He fell down. He asked water by gesture. At that time after wrapping the saree over my body I took water from the pot. At that time the said five police men surrounded me and said if you want to give water to Nandagopal, you should give a kiss to everyone. Then I gave kisses to all the five. When I went to take water to my husband, they threw it away. That fell down. With an intention to spoil me again, they pulled me and I said I cannot come and leave me, by saying so I sat down. When A6 came and tried to force me, I fell on his leg and bit. On account of the sexual intercourse, I sustained bleeding injuries on the breast and genital organ and then I fell unconscious. When I woke up after regaining consciousness, the clothes were wrapped halfly. I said I wanted to see my husband. I was brought outside saying that my husband was sent to court. One of the policemen asked me to get into the van. I was kept at Chidambaram police station. They offered me idli and coffee. I ate it. One lady police was with me. All the other policemen went out with lathis. The woman police who was with me stated that there was students' agitation and some one was done to death at Annamalai Nagar Police Station. I wept and then I was left out. I asked the auto man at Mariamman temple to take me in the auto. He asked me whether I am the wife of Nandagopal, I said yes. He said that Nandagopal was done to death by the police and asked me not to go there. Then I went to court in the auto. This occurrence was talked in court. Then I went to Tahsildar's office immediately. I stated what had happened there. The Officers have gone to take action and they asked me to be here. I was sitting there. I went to Annamalai Nagar police station in a Jeep. There was a crowd there. I cried saying that not only I was raped by five persons but they also assaulted my husband and done him to death. One of the police men who raped me was standing there. I beat him with a chappal. He is A10. R.D.O. was there. He asked me what had happened and I said what had happened. I fell down unconscious. Then I was taken to the hospital. At about 1.00 pm one male doctor examined me. Then I came to the police station at Annamalai Nagar and gave my statement. That was recorded by them. Ex.P.1 is the statement typed by R.D.O. and obtained my signature therein. Then I went to the house of my mother in law. Nandagopal was lying dead. I was weeping. At that time Balakrishnan, Jankirani and politicians came there. I stated to them what had happened. Balakrishnan is the District Secretary of Communist Party, Janki Rani is the President of All Indian Madhar Sangam at Chidambaram. Janki Rani is the wife of Balakrishnan. I gave a petition to the R.D.O. to send me to the hospital that is Ex.P.2. I was admitted in the hospital at about 11.00 pm in the night. On the next day at about 7 or 7.30 am I was examined by a lady doctor. After coming from the hospital, on Thursday evening my husband was buried. On 5.6.1992 I sent a petition to the District Superintendent of Police. After I came to my house, a police officer came to my house. I have stated to him what had happened....

7. Padmini also stated:

...The two police asked me to come to the rest room. Then at the same time

three police without any uniform came inside. Then I cried in front of the lock up where my husband was kept inside saying that are calling me, but no one to help me. My husband was brought from the lock to the open court yard with handcuff. I cried to the police by kneeling down. At that time Subramaniam asked them not to do anything to my sister and not to beat my friend. Then they removed the jacket and saree and made me to become nude in the open yard and squeezed my breast and bit and the old aged police hit against my private part with a stick saying that it is very big and I have to see how long it would go....

...Five police men came smelling of Brandy in their mouth. My husband was beaten while he was taken from the lock up and myself and my husband were kept in a room where the rice bags were kept. I was made to become nude. My husband cried to the police with handcuff to release him. The police kicked my husband on his chest. You would be alive only tonight and if you want you can enjoy. By saying so they hit him with gun. At that time Sub-Inspector stated that others can do only if I say because I am the officer here and so I will do first and other can afterwards, and by saying so he raped me. I raised a noise saying I am having much pain and asked him to leave me and the other police men were beating my husband. My husband asked them to remove the handcuff put on him. They did not do so. After finishing the work, Sub Inspector went away and asked others to do the same and he would see whether anybody is coming and asked them to finish the work. I was asked to lie facing up, one of them was holding my leg and another one was holding the hand and another one was lying on me and had intercourse with me. Like that all the five persons spoiled me....

8. We see no reason to disbelieve Padmini's evidence. Ordinarily no self respecting woman would come forward in Court to falsely make such a humiliating statement against her honour.

9. The learned Counsel for the accused referred to some discrepancies in her evidence, but it is well settled that minor discrepancies cannot demolish the veracity of the prosecution case. In our opinion there is no major discrepancy in the prosecution case, which is supported by the evidence of a large number of witnesses, including injured witnesses, apart from the testimony of Padmini, who identified the accused in the identification parade held on 13.8.1992 in Central Jail, Cuddalore. Although A10 was not identified by her, the High Court has given good reasons for holding him guilty too, and we agree with the same.

10. The Medical Officer who examined Padmini found multiple nail scratches on her breasts. She complained of severe pain in her private parts. There were multiple abrasions on her vagina and cervix with discharge of foul smelling fluids. The chemical analysis of her vaginal smear showed plenty of pus cells and epithelial cells. The doctors also examined Subramaniam and Chidambaranathan who were beaten by the accused policemen with lathis.

11. We have held in Satya Narain Tiwari @ Jolly & Anr. vs. State of U.P., JT 2010(12) SC 154 and in Sukhdev Singh v. State of Punjab, SLP (Criminal) No.

8917 of 2010 decided on 12.11.2010 that crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric, and hence they call for harsh punishment.

12. The horrendous manner in which Padmini was treated by policemen was shocking and atrocious, and calls for no mercy.

13. The post-mortem report of Nandagopal shows the following injuries:

I. A rope like ligature mark centre of neck encircling obliquely upwards. M Right to left neck with knot like mark on right neck. (Size about "1/2 in width O Rope mark). Middle lateral aspect. Underlying skin dry parchment in colour.

II. An abrasion 1 x 1 cm left cheek.

III. An abrasion 3 x 1 cm right hip anterior.

IV. An abrasion 2 x 1 cm left leg middle anterior.

V. An abrasion 3 x 1 cm right leg middle anterior.

VI. An abrasion 2 x 1 cm left arm shoulder posterior lower.

VII. An abrasion 2 x 1 cm right arm shoulder posterior lower.

VIII. An abrasion 2 x 1 cm left elbow antero-medical.

IX. An abrasion 2 x 1 cm right elbow posterior lower.

X. An abrasion 2 x 1 cm right scrotum lower antero- lateral. No underneath haematoma injuries are ante-mortem in nature.

XI. Tongue bitten in between the teeth partially protruded outside.

The post-mortem certificate contains the final opinion of the doctor that Nandagopal died on asphyxial death due to atypical hanging about 10 to 24 hours prior to post- mortem.

14. The above injuries show the horrible manner in which Nandagopal was beaten and killed in police custody. In her evidence Padmini stated that on the evening of Sunday, "Four policemen beat my husband with sticks. They kicked my husband with boots on his chest." She also stated "At that time there were bleeding injuries on back leg and shoulder (of Nandagopal) and blood was oozing out and found in strip form". Even when she was being raped by the policemen Nandagopal was beaten.

15. We are surprised that the accused were not charged u/s 302 IPC and instead the Courts below treated the death of Nandagopal as suicide. In fact they should have been charged under that provision and awarded death sentence, as murder by policemen in police custody is in our opinion in the category of rarest of rare cases deserving death sentence, but surprisingly no charge u/s 302 IPC was framed against any of the accused. We are constrained to say that both the trial

Court and High Court have failed in their duty in this connection.

16. The entire incident took place within the premises of Annamalai Nagar police station and the accused deserve no mercy.

17. In this appeal the Appellant No. 1 has been given the sentence of 3 years rigorous imprisonment and a fine, while the other Appellants have been given sentence of 10 years rigorous imprisonment with a fine.

18. In the normal course, we could have issued notice of enhancement of sentence, but as no charge u/s 302 IPC was framed, we cannot straightaway record conviction under that provision and enhance the punishment.

19. For the reasons given above this appeal is dismissed.

20. Before parting with this case, we once again reiterate that custodial violence in police custody is in violation of this Court's directive in D.K. Basu vs. State of West Bengal 1997(1) SCC 416 and we give a warning to all policemen in the country that this will not be tolerated. The graphic description of the barbaric conduct of the accused in this case shocks our conscience. Policemen must learn how to behave as public servants in a democratic country, and not as oppressors of the people.

21. In D.K. Basu's case this Court observed:

...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 the 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.

In spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or 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 anarchism. 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? These questions touch the spinal cord of human rights" jurisprudence. The answer, indeed, has to be an emphatic `No'....

(emphasis supplied)

22. Let a copy of this order be sent to Home Secretary and Director General of Police of all States and Union Territories, who shall circulate the same to all police officers up to the level of S.H.O. with a directive that they must follow the directions given by this Court in D.K. Basu's case (supra), and that custodial violence shall entail harsh punishment.