
(1984) 12 RAJ CK 0018
In the Rajasthan High Court

Mohan Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 161, 169, 173, 176, 482

Penal Code, 1860 (IPC) — Section 302, 379

Citation : (1985) CriLJ 1918 : (1985) RLW 159 : (1985) 1 WLN 399

Hon'ble Judges : V.S. Dave, J;G.M. Lodha, J

Bench : Division Bench

Judgement

V.S. Dave, J.—This case has come up on a complaint dt. Aug. 27, 1984 received by post from one Mohanlal son of Onkar, by caste Mali, resident of Ramsar, District Ajmer addressed to my learned brother Hon"ble G. M. Lodha, J. wherein the allegation of mass rape in police custody against Sundari Devi wife of the complainant was reported. Several documents, were tagged with this complaint. On receipt of this complaint my learned brother issued notices to the Director-General of Police, Rajasthan and Superintendent of Police, Ajmer and S. R. O. Ram Ratan Police Line, Ajmer to appear before this Court and explain the situation. This application was registered as writ petition under Article 226 of the Constitution.

2. After the notices were served the State filed a reply and the S.R.O. put in appearance through Shri K. N. Sharma Advocate. Shri Jagdeep Dhankhar was asked to assist the complainant and this Court ex gratia on legal aid side. The entire record of the police station was sent for and placed before us by the Government Advocate. In their reply respondents 1 and 2 admit the fact that the death of Sunderi Devi took place while in police custody and that an enquiry was also conducted u/s 176, Cr. P.C. by the Additional District Magistrate who filed a complaint u/s 302, IPC on which a F.I.R. No. 39/84 was registered at police station Nasirabad and investigation was handed over to C.I.D. (G.B.) It is further said in the reply that after investigation a final report was submitted which has

been accepted by the Munsiff and Judicial Magistrate 1st Class, Nasirabad vide his order, dt. Aug. 27, 1984, With the reply the State Government has also placed before us the statements of Mohan Lal and his son Laxman recorded u/s 161, Cr. P.C. as well as recorded by the Additional District Magistrate. The Government Advocate has also placed before us the entire case diary of the investigation of the original case in which Sunderi Devi was arrested, i.e. case No. 43/84 of police station Nasirabad Sadar.

3. We have perused the reply filed by the State along with the Annexure 5 as well as the police diary of case No. 43/84 in which Mst. Sundari was arrested. Her arrest memo which is at page 50 of the police diary discloses that at the time when she was arrested she complained of some pain in her breast, besides this there is no mention of any other injury on her person. She was subjected to post-mortem examination which had been conducted by a Medical Board consisting of four doctors. This Medical Board found 23 external injuries on her person which are as under:

1. Contusion-7 X 7 cms on left zygomatic and maxillary regions.
2. Contusion-6 X 6 cms on right temporal and zygomatic area.
3. Contusion 26 X 24 cms on left buttock in diffuse form.
4. Contusion 38 X 23 cms on right buttock and back of right thigh upper third.
5. Contusion 6X2 cms over front of right thigh on its middle third.
6. Contusion 6 X 1 1/2 cms over outer side of right thigh lower third.
7. Contusion-9 X 3 cms over antero lateral aspect of left thigh lower third.
8. Abrasion 1X1 cm over right knee.
9. Abraded contusion-7 X 2 cms over right knee.
10. Contusion 10X3 cms over outer side of right leg middle third.
11. Contusion-11 X 4 cms on front of left thigh middle third.
12. Contusion-11 X 4 cms over outer side of left thigh lower half.
13. Contusion 8X2 cms over outer side of left leg just below knee.
14. Contusion-7 1/2 X 3 cms over antero-medial aspect of left thigh middle third.
15. Abraded contusion-5 X 1 cm over upper part of right scapula.
16. Contusion-9 X 2 cms over middle of right scapula.
17. Contusion-8 X 1 cms on middle of right scapula.
18. Contusion-7 X 1 cms over lower right scapula.
19. Contusion-5 X 1 cms over middle of back on right side.

20. Diffuse contusion-14 X 10 cms on left scapula.
21. Contusion-12 X 6 cms over lower left thorax posterior.
22. Contusion-8 X 5 cms over lower left thorace lumber regions.
23. Abraded contusion-2 X 1 1/2 cms over right elbow.

All these injuries were found to be ante mortem and caused by blunt objects. This post-mortem report also suggests that she was pregnant at the time when she died. The injuries mentioned above disclose that size of the injuries was ranging from the dimension of 1 X 1 cm to 38 X 25 cms. At least two of the injuries which were 7X7 cms and 6X6 cms were on the zygomatic region and right temporal region which could be visible even from the distance. The viscera and the parts of the kidney and other internal parts were preserved by the Doctor and were sent for analysis and histopathological examination and this Board of Doctors also opined that the duration of the injuries was within 24 hours and the death could be caused as result of cumulative effect of all the injuries. It was further mentioned that the shock is possible because of ante mortem injuries which were caused by blunt weapon. The lungs showed the changes of pulmonary cedema and partially outhlytic changes which indicate that she had some disease of which she has complaint and which finds place in her arrest memo as well. All the witnesses have stated that at the time when she was arrested and taken inside the police station she had no injuries on her person. The statement of her husband and son also is that she was taken inside police station and they were made to stand outside and later on informed that she is serious and then ultimately died. When the unnatural death was reported to the Addl. District Magistrate he had enquired into the whole case and had come to the conclusion that this was a case where a report should be lodged at the police station for investigation. The Addl. District Magistrate categorically stated in his report that during the course of inquiry when he recorded the statement of Ram Ratan, S.H.O., Police Station Nasirabad Sadar, Smt. Janki Devi police constable No. 900, Shri Mohan Lal, husband of deceased Mst. Sunderi Devi and Laxman, son of deceased, he came to the conclusion that Sundari was arrested at 2.50 p.m. on May 23, 1984 in connection with case No. 43/84 for offence u/s 302/379, IPC of police station Nasirabad and she collapsed in the hospital during the course of investigation at about 4 p.m. on the same day. Since all the injuries were antemortem in nature he sent this report on which a case was registered and the final report as mentioned above has been given by the investigating officer which has been accepted by the Munsiff and Judicial Magistrate, Nasirabad.

4. Since the entire matter is before us and we have perused the whole record of the investigation of the case No. 43/84, of the case registered on a report from Addl. District Magistrate and also the reply of the State and the final report we are of the opinion that the learned Magistrate did not apply his mind at all to the facts and circumstances of the case when a report u/s 169, Cr. P.C. is forwarded to the Magistrate u/s 173, Cr. P.C. he has to apply his mind and see if the case is

worth taking cognizance or not. In case he is satisfied on record that the particular case is not fit for taking cognizance he can accept the final report, but in case he does not agree with it he is to either send the case for further investigation or to take cognizance on the existing material. A perusal of the entire record in this case clearly exhibits the callous application of the mind by the Magistrate and we feel that it is essential to give effect to the provisions of law governing taking cognizance and further to prevent such an abuse of the powers. We find it expedient that we should exercise our powers u/s 482, Cr. P.C. for securing the ends of justice.

5. Accordingly we quash the order, dt. Aug. 27, 1984 passed by the learned Munsiff and Judicial Magistrate, Nasirabad accepting the final report and instead direct him to take the cognizance of the offence against the accused Ram Ratan, S.H.O., P. S. Nasirabad, for offence u/s 302, IPC and proceed in accordance with law. The learned Magistrate may further take cognizance against any other accused, if he finds any prima facie evidence. Even against Ram Ratan he may also find out if any other offence is prima facie made out and take cognizance of the same in addition to Section 302, I.P.C.

6. Before parting with this order, we are constrained to observe that the police investigation agency has acted in a very superficial perfunctory manner. By ignoring the statement recorded by the Additional District Magistrate and the speaking documents, and recommending final report, it has exhibited being in favour of accused who is also police officer, We cannot resist the temptation of observing that the entire proceedings create an impression that the heinous offence against weaker sex the lonely lady in police lock-up, is sought to be hushed up by police officers to save police officer, who all have tried to tamper the unfortunate son and husband of deceased Sunderi and other material evidence. A Judicial Magistrate with a judicial conscious should have applied his judicial mind with much more care and caution, since the facts disclosed undisputedly that 23 injuries were caused to the lonely woman in police lock-up. As the arrest memo did not disclose a single injury and the postmortem report was clear that they were all ante mortem, the Judicial Magistrate should not have accepted the final report by one line mechanical order, betraying judicial approach. We must as a word of caution observe! that whenever such serious cases of atrocities on weaker sex or weaker section in police custody come to limelight in judicial courts, the judicial officer should take extra precaution of close judicial scrutiny for discharging constitutional mandate of granting protection to them. In the instant case, the Judicial Magistrate miserably failed to discharge his judicial duty of such judicial scrutiny and judicial responsibility which is to be lamented.

7. Since we have directed the learned Magistrate to take cognizance against the accused and proceed in accordance with law we direct both the parties, i.e., the State as well as the accused Ram Ratan who is present in the court, to appear before the learned Munsiff and Judicial Magistrate, Nasirabad on January 3, 1985.