

(1984) 05 GAU CK 0004

In the Gauhati High Court

Case No : Criminal Miscellaneous Case No. 40 of 1984 and Criminal Appeal No. 10 of 1984

Ramnath Das and Others

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 30-05-1984

Acts Referred:

Constitution of India, 1950 — Article 39

Criminal Procedure Code, 1973 (CrPC) — Section 41, 50, 51

Citation : (1985) 1 GLR 1

Hon'ble Judges : K.M. Lahiri, J

Bench : Single Bench

Advocate : S. Dab, Public Prosecutor, for the Respondent

Judgement

K. Lahiri, J.—A teen-aged girl was taken custody by the police in the afternoon and detained either in "the police lock-up" or kept somewhere at the police station throughout the night, although her relations were there. She was not a criminal but a victim of alleged kidnapping. Should an Indian girl be kept in police custody in lock-up or at the police station, particularly at night?

2. While admitting the connected Criminal Appeal I was astounded to find that Billa Sarkar, a girl aged about 17 or 18 years, allegedly a victim of kidnapping, has been arrested by A.S.I. A.K. Roy u/s 41 of the Code of Criminal Procedure in connection with Sonamura P.S. Case No. 7(5) 82 and kept at the police station throughout the night.

3. Is the station and/or the police lock-up a worthy place for an Indian girl to stay at night? Is the police station, where criminals are brought in and out, a place for keeping a girl at night? To ascertain what happened really I asked the police officer to appear before me to-day at 11-30 A.M. to explain why and under what circumstances, the young girl was kept at the police station and as to whether it was a safe place for girl to stay at night.

4. S.I. A.K. Roy of Tripura Police has appeared before me and he states Smti. Billa was a young girl, she was taken into custody by him and kept at the police station, but not in the "police lock up". She was kept somewhere in the room at the police station where police officials worked.

5. Why the girl was so taken and kept at the police station instead of keeping her somewhere else? She was not an accused of any offence. If she needed any protection it should have been provided instead of bringing her at the police Station. When the questions were put, S.I. A.K. Roy stated that he took the girl in custody and kept her at police station in accordance with the prevailing practice in Tripura.

6. However, one straight question put to him was enough to know the impact of the action. I enquired as to whether he would like to see his sister under similar circumstances at the police station spending the night in a room, where other police officials worked. He expressed his feelings in no uncertain manner. He said he could not have tolerated if his sister would have been so kept at the police station under similar conditions.

7. Now the question is whether a police station is a worthy place for Indian women and girls to be taken and kept in custody? Indeed, our women can conquer Everest and might go to outer space. They have the capabilities. Notwithstanding the strength them, the Constitution and the law protect and preserve certain safeguards for our women. There is no second opinion that the police station is a place where criminals are brought in and taken out. Police Station is a taboo for our women. It is out of bound. The people living in the society do not desire any woman taken in police custody unless under compelling circumstances, that is, when they are arrested in connection with heinous offences like murder, dacoity etc. No Indian likes his mother and sister to be taken to the police Station and kept there.

8. Should a girl be taken to the police station when she was not an accused, but was a victim of an offence? Why was she arrested u/s 51, Code of Criminal Procedure when she was a victim of the alleged offence of kidnapping? Even if she could be arrested why was it done in the afternoon and why not in the next morning? Why was it necessary to take the girl to the police station and kept there without producing her before a Magistrate? Admittedly her relations were present. There was no earthly reason for not enlarging her on P.R. Bond and to allow her to go away with her relation. It is said that she needed protection and so she was kept at the police station. Is not a police station a place meant for confinement of hardened criminals? Are not the police stations full of criminals? Are not the police stations full of criminals? In my opinion no girls, no woman should be arrested by police unless it is a must. No girl or woman should be taken to the police station on any plea or pretext, whether for the purpose of examination in connection with investigation of a case or otherwise.

9. In the society where we live, we find that it is considered to be dishonor for

any girl to go in and come out from the police station. Could the authorities who have framed the Police Manual and made the Executive Instructions meant for the police, appreciate mothers, daughters or sisters to be taken to the police station, detained for the whole night in company with the criminals. Apart from the criminals there may be "other lurking danger". It may be said that in the instant cases there was no complaint about any misbehaviour by anyone, but a girl who suffers humiliation under such situation, in order to preserve her honour and respect cannot disclose their miseries in public. I am astonished to find that it is the prevalent practice throughout the State to keep such girls and women at the police station. It must be stopped.

10. If a person is arrested in connection with case, he must be given notice u/s 50 of "the Code" informing the grounds of his arrest and his right to bail. If such a notice is given the arrest becomes lawful. In the absence thereof in all probability the arrest is unlawful.

11. In the instant case, no information was given to the girl that she was entitled to bail nor any notice u/s 50 was given to her. She was neither criminal nor a suspect but "a pure girl" who was taken into police custody for no fault of her. Her "crime" was that she was a victim of an alleged kidnapping.

12. I have heard Mr. S. Dab, learned Public Prosecutor, Tripura in this regard I feel that there should be a thorough overhauling of the Tripura Police Manual, the Executive Instructions need be issued informing all police officers that no girl within the State should be kept in police custody under similar circumstances. Ordinarily woman and girls should not be arrested unless it is a must or under compelling circumstances when they are suspected to have committed heinous offences like murder, dacoity etc. Only under exceptional circumstances, women or girls may be arrested. No girl should be arrested in the evening or in the afternoon and taken to the police station and kept there throughout the night. I am told, at the bar that there are innumerable instances of similar arrests and detention of young girls and women in Tripura. I wonder why the authorities in Tripura have not looked into the matter and done something to uphold the honour and dignity of women.

13. If the girls are required to be protected instead of arresting them adequate police pickets should be kept at the residence of the girl. Women police should be employed to deal with women. Immediately after arrest or detention of a woman, she should be granted bail or produced before a Magistrate. Such women should be handed over to Rescue Homes or "Homes". However, these are not all. I have just outlined some of the most elementary things with high hope and great expectations that the State Government would innovate means to see that in future no girl or woman is dis-honoured.

14. It seems that the State Government and particularly the police administration have failed to respond to the rights of women guaranteed under Fundamental rights and the Directive Principles enshrined in Article 39(e) and (f)

of the Constitution. It is the obligation of the State to see that women and children are given full and adequate protection. They should be given facilities to develop in a healthy manner; they should be protected against exploitation and against moral and material abandonment. Necessary protective umbrella should be provided by the State under the Directive Principles of the State Policy contained in Part-IV of the Constitution. It is the duty of the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order. The purpose of the directive principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution our Constitution seeks to fulfill the basic need of the common men and to change the structure of our society. The Directive Principles aim at making the Indian masses "free" in the positive sense. Without faithfully implementing the directive principles no State can claim that it has achieved a welfare State contemplated by the Constitution. A change is necessary and it must be done by the State.

15. I cannot blame the officer as I do not find any wrong committed by him. He has followed the prevalent practice. He has realised the danger in keeping young girls at the police station. The officer has assisted the court and his honesty and integrity shown in court is very much appreciated. I record my appreciation about the honesty of the officer for making straight forward and clear statement without mincing words.

16. I have been assured by Mr. Dab, learned Public Prosecutor that the State Government would look into the matter and do the needful immediately. So, I direct that a copy of this order be furnished to Mr. Dab, learned Public Prosecutor for doing the needful, if possible within a few weeks.

With these observations, I close the case. The Misc. Case is disposed of.