
(1996) 06 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8405 of 1994

Smt. Ratlavat Chandi

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 04-06-1996

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1996) 2 ALT 850 : (1996) 2 ALT(Cri) 711

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : D. Suresh Kumar, S.R. Sanku and N. Guru Gopal, for the Appellant;
Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—Custodial torture resulting in the death of one Ratlavat Mothya, resident of Katonigadda Tanda, Masigundlapalli Village, Midgil Mandal, Mahaboobnagar District, is complained in this Writ Petition.

2. Petitioner seeks a direction to the respondents to pay a sum of Rs. one lakh towards compensation on account of the custodial death of Ratlavat Mothya and seek a further direction to initiate proceedings u/s 302 of IPC against the officials responsible for the death of said Mothya.

3. Petitioner is the wife of late Ratlavat Mothya and is aged about 35 years. According to her, they have four minor children - three male, aged 14, 7 and 3 years respectively and one female child aged 5 years. It is stated, her late husband Mothya brought them to Mahaboobnagar town from the native place of Katonigadda Thanda for eking out their livelihood. Her husband was a rickshaw puller and the entire family was dependent on his earnings for survival.

4. It is stated that on 27-7-1990 in the night, somebody wanted her husband to carry him along with his luggage to a particular place. Her husband suspected that the luggage which the stranger was in possession, in the late night on

27-7-1990, be of theft goods, showed reluctance to take him to the place as desired by the stranger. However, the said person seems to have persuaded said Mothya, as a result of which said Molhya took that person along with him (sic. goods) in the rickshaw. It is stated, while they were going in the rickshaw, a police van came in the opposite direction, the said occupant of the rickshaw took to his heels and left the goods in the rickshaw. The police van stopped on seeing the person running and took the husband of the petitioner along with the luggage to the rural police station, Mahaboobnagar and detained him in the police custody for nearly five days. While in the custody for five days, the petitioner's husband was tortured inhumanly by the police on the ground that the said Mothya had committed theft of electrical goods, though the petitioner's husband was no way connected with the theft items. On knowing that her husband was detained in the police custody in the rural police station, Mahaboobnagar, the petitioner along with her other relatives who are also rickshaw pullers made efforts to get her husband released from police custody. After five days of detention, the police personnel of rural police Station, Mahaboobnagar, stated to have allowed the husband of the petitioner to go home with instructions to be available for further interrogation as and when the police required his presence.

5. While so, it is stated, on the basis of the particulars furnished by the husband of the petitioner the real culprit by name Chinna Venkati was apprehended on 6-8-1990 and a case was also registered against him. It is stated that the said Chinna Venkati seems to have confessed the guilt to the police during the course of interrogation and also informed the police that the petitioner's husband has no nexus with the theft.

6. The stolen goods found in the rickshaw being driven by the husband of the petitioner which was left by said Chinna Venkati was a small quantity contained in one bag. Police seems to have suspected that said Mothya has retained the remaining stolen goods and in order to make further investigation, two police constables, namely, Kurmaiah and Janardhan went to the place of the petitioner's husband around 7.00 p.m. on 7-8-1990 and dragged him to the police station by beating him publicly all the way. The beating by the police personnel in public has aroused anger in the minds of the kith and kin of late Mothya and also the rickshaw pullers who are residents of that particular locality. They went to the rural police station on the early hours of 8-8-90 and demanded the police to release the husband of the petitioner forthwith. Despite their request to various authorities available in the district headquarters, they could not get the release of late Mothya. The Assistant Sub Inspect of Police, Rural Police Station, Mahaboobnagar seems to have informed that said Mothya is taken to police station for the purpose of recording some evidence and he will be set free once the evidence is over.

7. It is alleged, the detention of the husband of the petitioner on the second occasion is from 7-8-1990 at 7.00 PM onwards. Petitioner states, not only the

Petitioner but several other rickshaw pullers and other members of his family met her husband in the police station and enquired about his health. Her husband seems to have complained to the petitioner as well as his other relatives that he is mercilessly beaten in the police station and showed the injuries also to them. Her husband seems to have pleaded to the relatives and other well-wishers to get him released from the police custody by whatever means as he is unable to bear the torture. Despite the efforts made by the petitioner, other rickshaw pullers and relatives to get her husband released from the police custody, they were unsuccessful.

8. On the morning of 11-8-1990 around 7.00 AM, the petitioner and other rickshaw pullers went to the police station, Rural, Mahaboobnagar. As they could not find said Mothya in the Police Station, they enquired about the whereabouts of her husband. The constable on duty seems to have informed the petitioner and others that her husband was taken to Civil Hospital, Mahaboobnagar, for getting him treated for his stomach-ache. On being informed, petitioner states, she along with others rushed to the Government Hospital and learnt about the death of her husband in the hospital. Petitioner complains that when enquiries made in the Civil Hospital, Mahaboobnagar, the doctors seem to have informed that the husband of the petitioner was brought to the hospital around 5.30 AM on 11-8-1990 for the treatment of insect bite.

9. The news of the death of the petitioner's husband in the hospital aroused resentment in the minds of relatives and other rickshaw pullers of that area and led to protest by this section of the people. They approached the Superintendent of Police and complained that the death is on account of the tortuous acts of the police personnel and demanded immediate initiation of action against the A.S.I. and two other constables who are suspected to be responsible for the death of the husband of the petitioner. The Superintendent of Police, Mahaboobnagar seeing to have placed the A.S.I, and two other constables under suspension. The rickshaw pullers Association moved the matter with the district administration by demonstrating against the illegal acts of the police which has resulted in the death of said Mothya. On account of the public protest against the death of the petitioner's husband, the District administration ordered magisterial enquiry. The matter was also entrusted to C.B.CI.D. The magisterial enquiry was held by the Revenue Divisional Officer, Mahaboobnagar.

10. Petitioner alleges that the death of her husband is not on account of insect bite but is on account of tortuous acts and third degree methods adopted by the police personnel of Rural Police Station, Mahaboobnagar. She further complains that on account of the death of her husband, four minor children and herself have become destitutes. Petitioner also alleges that her husband was detained in the illegal custody by the rural police, Mahaboobnagar from 7-8-1990 onwards till 11-8-1990. When the police personnel found her husband on the verge of collapse on account of their tortuous acts, they took him to the Government Hospital Mahaboobnagar in order to show that her husband died on account of

insect bite. It is averred, the police personnel have, in order to escape from the liability of brutal killing of her husband, have planted the story intelligently, by stating that the petitioner's husband died on account of insect bite.

11. The District Administration, it is alleged, in order to silence the petitioner and the public wrath, paid Rs. 10,000/- in the month of August, 1990 and also promised her to give two acres of cultivable land. Petitioner states, the District administration had failed to fulfil their promise. The Autorickshaw Association and some other public minded persons of Mahaboobnagar seem to have represented the District Administration as well as the Government to cause an enquiry into the circumstances leading to the death of late Mothya and further sought necessary punishment to the police personnel responsible for his death.

12. Failure to get appropriate justice, petitioner is before this Court under Article 226 of the Constitution of India seeking an appropriate direction including that of payment of compensation of Rs. One lakh and also initiating proceedings u/s 302 of IPC against the police personnel who are responsible for the death of her husband while he was in illegal custody from 7-8-1990 to 11-8-1990.

13. In all, there are four respondents in the Writ Petition, against whom relief is sought. Separate counters have been filed by respondents 2, 3 and 4. A separate counter is also filed by one Sri S.V. Ramana Murthy, IPS, Superintendent of police, CID, Hyderabad on behalf of the second respondent on the ground that investigation in this case has been done by C.B.C.I.D. and as such he is well acquainted with the facts of the case.

14. The sum and substance of the counters filed by all these respondents do disclose that late Mothya was in custody of rural police Station, Mahaboobnagar from 7-8-1990 to 11-8-1990. The efforts of all these respondents is only indicative of the fact that late Mothya was not tortured as alleged by the petitioner in the Writ petition. But, however, it is stated, that said Mothya was asked to stay in the police station for the purpose of further investigation. The respondents have taken a plea that on the early hours of 11-8-1990, said Mothya complained some pains on account of biting by some insect, to PC 1260 Sayeeduddin. One Solomon, woke up ASI Bichappa who was also sleeping in the Police Station and informed him about the complaint of said Mothya. The respondents claim that said Mothya was sent to Government Hospital along with PC 1127 Balakrishnaiah and PC 1322 G. Prasad. The doctors who were present attended on him and gave treatment according to the complaint as if late Mothya was suffering from pain caused on account of insect bite. Despite their efforts, late Mothya died in the hospital premises around 8.00 AM on 11-8-1990. The respondents state that they made all sincere efforts to enquire into the cause of the death of the husband of the petitioner by ordering magisterial as well as C.B.C.I.D. enquiries. They refute the allegation of the petitioner that said Mothya died on account of the tortuous acts while he was in custody of the police. All the respondents in one tone, say that it is not a custodial death and say that Mothya (never) died while he was in the hospital where he was treated on some complaint.

15. Sri Sanku, counsel for the petitioner has pleaded before this Court by contending that during investigation, on the basis of the description of the main accused given by the husband of the petitioner, the real culprit, one Chinna Venkati was apprehended by the Police personnel. When the main culprit was apprehended by the police personnel, there was no reason for the police personnel to again require the presence of the husband of the petitioner in the police station and detaining him in the police station for a period of five days from 7-8-1990 onwards to 11-8-1990. Counsel states, in the post-mortem report, it was found that there were injuries on the body of the petitioner. He further states that the version of the respondents that the husband of the petitioner died due to insect bite is falsified by the fact that the chemical report failed to disclose presence of any poisonous substance in the body of the husband of the petitioner. On the contrary, the post-mortem report found injuries viz., one abrasion and four contusions on the body of the deceased. The doctors' opinion showed that the husband of the petitioner died on account of Vasovagal shock". The professor, Forensic Medicine has indicated that the injuries mentioned in the post-mortem report have been caused by use of blunt force with sticks. Counsel, therefore, states that blunt force was used on account of which the husband of the petitioner died due to shock. Counsel further states that late Mothya has left behind his wife and four minor Children including a minor daughter and the entire family is on the roads due to death of late Mothya. It is pleaded that the dependants of late Mothya are to be compensated properly and also proceedings u/s 302 of IPC have to be initiated against the police officials who are responsible for the death of late Mothya.

16. The learned Government Pleader for Home, appearing on behalf of the respondents, on the contrary, pleads that by any stretch of imagination it cannot be held that the police officials are responsible for the death of the husband of the petitioner. On the contrary, the learned Government Pleader states that late Mothya died on account of insect bite as he was treated in the hospital for the said complaint. The Government pleader admits the fact that late Mothya was detained in Police Custody from 7-8-1990 to 11-8-1990 but however, states that said Mothya was treated well and was given freedom to talk to anybody and was also offered tea and refreshments by the police personnel as long as he was in the police custody, as disclosed in the evidence during the course of Magisterial enquiry. The Government Pleader's endeavour is to convince this Court that in the early hours of 11-8-1990, the deceased Mothya complained about the insect bite and was rushed to the Hospital around 5.30 AM. The doctors who were present at that time, treated him to the best of their ability and despite their efforts, they could not save him and said Mothya was declared dead by 8.00 AM on the same day. The learned Government Pleader states that in the circumstances, the death of late Mothya cannot be attributed to the police personnel but the death is on account of insect bite. Relying on the post-mortem report the Government Pleader submits that the experts have opined that the cause of death is "Vasovagal shock" and thereafter, the death is natural and

cannot be attributed to the acts of the police personnel.

17. In the wake of these submissions, what remains to be seen in this case is whether the death of Ratlavat Mothya is natural as pleaded by the respondents or on account of the tortuous acts by the police personnel while said Mothya was in police custody of Rural Police Station, Mahaboobnagar from 7-8-1990 to 11-8-1990?

18. During the course of hearing of the case, the Government Pleader was directed by this Court to place the Magisterial enquiry report as well as the CBCID report for the purpose of examining the rival contentions. Accordingly, the learned Government Pleader has placed certain records before this Court. This Court is primarily concerned with the reports of the CBCID as well as the magisterial enquiry report. The CBCID enquiry report discloses that the husband of the petitioner was taken in custody on 7-8-1990 by the police personnel of Rural Police Station, Mahaboobnagar and was detained in the police station upto 11-8-1990. The post-mortem report placed before me indicates that on the body of late Mothya the following injuries were found:

- (1) abrasion 1/4" x 1/4" over the chest
- (2) contusion on the back of the left thigh middle 5 cm. x 3 cm.
- (3) contusion on the back of the right thigh middle 5 cm. x 3 cm.
- (4) contusion on the back of the right leg 5 cm. x 1/2 cm.
- (5) contusion on the back of the left leg 5 cm. x 1/2 cm.

19. Dr. S. Chandrasekhar Goud and Dr. Sai Kumar who conducted autopsy over the dead body of the deceased on 11-8-1990, issued the post-mortem certificate. In the post-mortem certificate, one abrasion and four contusions as mentioned above were noticed on the body of the deceased and the viscera was sent for chemical analysis. The chemical analysts stated in the report that no poisonous substance was found in the viscera which was sent for Chemical examination, which fact is evident from the report No. 2484/T/90, dated 5-9-90. In order to sustain their efforts in this direction, the respondents have been pleading that the husband of the petitioner, in the early hours of 11-8-1990, complained of insect bite while he was sleeping in the police station and woke up one constable and the constable in-turn woke up the A.S.I. and thereupon, the ASI sent the husband of the petitioner to Government Hospital by deputing two constables along with the husband of the petitioner. In the light of the chemical analysis report dated 5-9-1990 which has indicated that no poisonous substance is found in the viscera, the stand of the respondents that basing on the complaint of the husband of the petitioner that he was bitten by an insect and on that ground alone, he was taken to hospital is falsified. What could be the cause for the death of the husband of the petitioner is to be gathered from the other surrounding circumstances which are placed before this Court.

20 The petitioner has been pleading that her husband was kept in illegal custody for nearly five days from 7-8-1990 to 11-8-1990 and was subjected to tortuous acts by the police. She also stated that as and when she and her relatives went to the police station, her husband was complaining about the tortuous acts meted to him by the police and was weeping before the petitioner and other relatives to get him released by whatever manner. The post-mortem report indicates that as many as one abrasion and four contusions were found on the body of the deceased. The expert report from the Forensic Department dated 28-8-1991 indicates injuries mentioned in the post mortem report have been caused by use of blunt force with sticks. The post-mortem report finding the injuries to the dimensions as indicated above and the forensic expert's opinion that these injuries are caused on account of the use of blunt force with sticks, I do not think, there can be any other view that could be taken that the one to the effect that the husband of the petitioner was beaten mercilessly by police personnel of the rural police station, Mahaboobnagar while he was in custody, as a result of which he died. The expert opinion which says that the deceased died on account of "Vasovagal shock" this shock could be attributable to the tortuous acts which are natural in the circumstances when a person is beaten mercilessly by the police by using third degree methods.

21. There is no dispute as to detaining the husband of the petitioner for nearly five days from 7-8-1990 to 11-8-1990 in the police custody of Rural Police Station, Mahaboobnagar. If it is to be believed that the husband of the petitioner was treated like a son-in-law in the police station, the respondents have not explained as to how the injuries are found on the body of the deceased which fact is evident from the post-mortem report. The only probable conclusion, in the absence of any proper explanation on the question of injuries that could be drawn is that the husband of the petitioner was ill-treated by using third degree methods while he was in police custody. As is seen, the main culprit one Chinna Venkati, on the basis of the description given by the deceased was apprehended on 6-8-1990 by the police. When the main accused is apprehended, there was no reason for the respondents to take the petitioner's husband in custody and detain him from 7-8-1990 to 11-8-1990. It is seen that there were representations by the petitioner to various district authorities to free the petitioner's husband from police custody, yet, the respondents have not acted. However, a belated attempt is made to explain that the Inspector of Police was on deputation from 8-8-1990 to 10-8-1990, the ASI who was in-charge of the police station could not set the husband of the petitioner free as he had no authority to do so in the absence of any instructions for the higher authorities.

22. As is evident from the above discussion, I do not think that the version of the respondents that the petitioner's husband died on account of insect bite resulting in "Vasovagal shock" could be accepted. On the contrary, I am inclined to hold, on the basis of the material placed before this Court, that the death of late Ratlavat Mothya is on account of the tortuous acts meted out to him by the police personnel of Rural Police Station, Mahaboobnagar while he was in police

custody from 7-8-1990 to 11-8-1990.

23. It is unfortunate that neither the Magisterial enquiry nor the CB CID enquiry have made efforts (no efforts are made) to ascertain the persons responsible for the injuries which were found on the body of late Mothya. On the contrary, the combined efforts of these two authorities are intended only to say that the death of the husband of the petitioner is not in the custody of the police but is in the hospital only. The finding that the death of late Mothya cannot be held to be a "lock-up death while in police custody, I am of the view that both the enquiry authorities are trying to trace the meaning of "Lock-up death". The illegal detention of said Mothya for five days in the Rural Police Station, Mahaboobnagar and on account of the tortuous acts by the police personnel of the said Police Station, the husband of the petitioner had to be shifted to Government Hospital for treatment. By the time he was taken to hospital, it was too late to remedy the damage already caused to the body of late Mothya as a result of which he died in the hospital around 8.00 AM on 11-8-1990. Therefore, I am inclined to hold that this is nothing but a case of custodial death on account of the tortuous acts by the police personnel meted out to the petitioner's husband while he was in illegal custody for five days in Rural Police Station, Mahaboobnagar.

24. Having held that the death of late Ratlavat Mothya is on account of the custodial torture, what could be the appropriate relief in the set of circumstances, this court can grant to the petitioner?

25. Petitioner is a widow, aged about 35 years, and she got four minor children - three male and one female. Before the Magisterial enquiry, it has been stated that not only the husband of the petitioner but her in-laws are also eking out their livelihood by pulling rickshaws in Mahaboobnagar town. The petitioner and the minor children were dependent entirely on the income of the deceased.

26. Article 21 of the Constitution of India guarantees right to lead a meaningful life. On account of the death of the husband of the petitioner, in the circumstances, the livelihood of the dependents of late Mothya is taken away. In other words, the right guaranteed under Article 21 of the Constitution for leading a meaningful life is taken away on account of death of Mothya due to the tortuous acts of the police personnel of rural police station, Mahaboobnagar. Courts have time and again disapproved the third degree methods adopted by the police personnel while a person is detained in their custody. Courts have also expressed displeasure and condemned the tortuous acts of the police. Courts have even granted reasonable compensation to the dependents in appropriate cases, while fixing vicarious liability on the State for the misdeeds of its employees and have further directed the State to pay the compensation. Courts have permitted the State to take appropriate action against the officials responsible for such acts including that of dismissal from service while following the rule of natural justice.

27. In Nazeer Saheb and Ors. v. State of Andhra Pradesh rep. by its Nazeer

Saheb and Another Vs. The State of Andhra Pradesh and Others, this Court while referring to various decisions of the Supreme Court, has directed the Government of Andhra Pradesh to pay a compensation of Rs. one lakh including costs of Rs. 10,000/- and also directed the Government of Andhra Pradesh to take action against the police personnel who are responsible for the death of one Basheer Ahmed in that case by holding necessary enquiry and also further directed to recover the amount of compensation that is to be paid to the petitioners therein from the police personnel who are found to be responsible for the death of Basheer Ahmed. I am not persuaded to take a different view than the view taken by me while deciding the case cited (1) supra. I am therefore, inclined to hold that the petitioner is entitled for an amount of Rs. one lakh towards compensation from the first respondent being vicariously liable for the acts of its employees. Accordingly, the first respondent is directed to pay an amount of Rs. one lakh to the petitioner within a period of two months from the date of receipt of a copy of this order. The said amount of Rs. one lakh shall be apportioned in equal shares to all the five dependents of the deceased late Mothya including the petitioner being his wife. The third respondent shall open an account in the name of the minors, namely, (1) R. Sankar (2) R. Ravi (3) Bujji and (4) R. Raju, in any nationalised bank according to the choice of the petitioner and keep the minors share in fixed deposit. On attaining the age of majority, the minors are entitled to withdraw the said amounts without any condition. The petitioner being the natural mother and guardian of the minor children, is permitted to withdraw the periodical interest on the fixed deposits and use the same for the welfare of the minors. Petitioner is also permitted to withdraw the money standing in the names of three minor sons only in the event the petitioner desires to purchase any agricultural lands or other property for a permanent source of livelihood to the family, she shall file a representation before the third respondent stating the facts and seek permission for such withdrawal. The District Collector, Mahaboobnagar on satisfying with regard to the request of the petitioner to be genuine, permit the petitioner to withdraw the moneys lying in the name of three minor sons. As far as the claim of the daughter is concerned, on her attaining the age of majority, she is entitled to withdraw the same without any condition. This arrangement is made to safeguard the interests of the minor children as well as the family as a whole.

28. The husband of the petitioner died in the circumstances, as discussed above, on 11-8-1990. We are in the year 1996. As is evident, the family members of the deceased are dependent solely on his income for their survival. This Court is satisfied that the husband of the petitioner died on account of the tortuous acts of the police personnel of rural police station, Mahaboobnagar, as a result of which the livelihood of the petitioner and her minor children is taken away. The petitioner having failed to get reasonable relief from the District administration, has approached this Court by invoking extraordinary jurisdiction under Article 226 of the Constitution. Therefore, in the circumstances, I am inclined to hold that the petitioner is also entitled for costs of Rs. 10,000/-. The first respondent,

shall bear the costs and is directed to pay Rs. 10,000/- towards costs over and above the compensation, amount of Rs. one lakh as directed above. This amount of Rs. 10,000/- shall be paid to the petitioner directly within a period of two months from the costs, the petitioner is entitled to retain her share of Rs. 20,000/-.

29. Though there is widespread resentment among the public, media and other forums against the tortuous acts of the police personnel while dealing with the detenus, there seems to be no improvement in the behaviour of the police personnel. Day in and day out, we hear about the custodial deaths on account of third degree methods being adopted by the police personnel against a detenu. Can we claim that we are civilised persons ? Law does not assist the guilty. The guilty has to be punished within the parameters of law. But the nature of punishment and the quantum of punishment are to be determined by Courts. It is not open to the Police personnel to take law into their hands and torture a person by adopting third degree methods. It is high, time that the Government constitute a committee for suggesting ways and means to bring about changes in the present trends prevailing in the police stations.

30. In order to unearth the mystery in this case, the first respondent shall cause necessary enquiries as to who are the police personnel of Rural Police Station, Mahaboobnagar, responsible for the injuries found on the body of the deceased Mothya as is evident from the post mortem report and take appropriate action against such personnel including that of recovery of the compensation amount to be paid to the petitioner as directed above. The first respondent shall be at liberty to impose necessary punishment on such police personnel who are found responsible, including taking of penal action as well as dismissal from service, according to law.

31. Before parting with this case, I must say, quite often, what is seen is when a complaint is received on the acts of police high-handedness, the police personnel who are responsible for such high-handedness are transferred from one place to another. Mere transfer of a police personnel is not a solution. Sincerity demands that the guilty must be punished according to law otherwise, mere transfer would look as an eye-wash.

32. In the result, the Writ Petition is allowed with costs as indicated above.