

(2000) 09 KAR CK 0078

In the Karnataka High Court

Case No : Writ Petition No. 16066 of 1994

Smt. Suguna and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Evidence Act, 1872 — Section 114 B

Citation : (2000) CriLJ 4408 : (2000) 4 KCCR 2585

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : T.N. Raghupathy, for the Appellant; S. Udayashankar, Government Advocate, for the Respondent

Judgement

H.L. Dattu, J.—This is a custodial violence and death while in police custody. The Apex Court time and again being concerned and pained by police tortures and lockup deaths has observed in the case of *State of Andhra Pradesh v. Challa Ramakrishna Reddy* as under :

Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. A prisoner, be he a convict or under-trial or detenu, does not cease to be a human being. Even when lodged in jail, he continues to "enjoy all his fundamental rights, including the right to life guaranteed to him under the Constitution, on being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights.

2. The Supreme Court in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, was pleased to observe (Para 30) :

It is axiomatic that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are

permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under-trials or other prisoners in custody, except according to procedure established by law. There is great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore, his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrong doer is accountable and the State is responsible, if the person in custody of the police is deprived of his life except according to the procedure established by law.

3. In *Kewal Pati (Smt) Vs. State of U.P. and Others*, the Apex Court has stated (Para 2 of Cri LJ):

...a convict and was serving his sentence yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law. Therefore, he was entitled to protection.

4. Keeping these statutory principles in view, the Apex Court in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, has suggested the Courts, attitude in such cases. The Court has observed :

The Courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape, so that the victim of the crime has the satisfaction that ultimately the majesty of the law has prevailed.

5. In *D.K. Basu Vs. State of West Bengal*, , the presumption that the Courts should draw in such cases are (Para 28 of Cri LJ) :

It needs no emphasis to say that when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime, his kith and kin become frustrated and contempt for law develops. It was considering these aspects that the law commission in its 113th Report recommended the insertion of Section 114B in the Indian Evidence Act. The Law Commission recommended in its 113th Report that in prosecution of a police officer for an alleged offence of having caused bodily injury to a person, if there was evidence that the injury was caused during the period when the person was in the custody of the police, the Court may presume that the injury was caused by the police officer having the custody of that person during that period. The Commission further recommended that the Court, while considering the question of presumption, should have regard to all relevant circumstances including the period of custody, statement

made by the victim, medical evidence and the evidence which the Magistrate may have recorded.

6. In spite of these observations by Apex Court, the police authorities continue to be insensitive to a very sensitive issue and seem to exhibit "could care less" attitude and this case is one such example.

7. First petitioner is the wife, second petitioner is the daughter and the third petitioner is the mother of the deceased Devasagai, who died on 7-7-1992 in a Government Hospital, after he was admitted there by the police authorities. In this petition filed under Article 226 of the Constitution, the petitioners request this Court to direct an independent investigating agency to investigate into the circumstances leading to the mysterious death of Devasagai, and to take action against the police officers responsible for causing his death and lastly, to direct the State Government and the Jail authorities of Belgaum Central Jail to pay to them compensation for the death of Devasagai.

8. Facts in brief are :

First petitioner's husband was an accused in a criminal case in S.C. No. 107/1989 and he was acquitted of the charges on 1-7-1992. There was one more criminal case filed against him by the Uppar Police and in respect of that case, he was in judicial custody as under-trial prisoner. He was lodged in Central Jail, Bangalore. The respondent police authorities, it appears, for administrative reasons had transferred him from Bangalore to Belgaum Central Prison and was being brought to Bangalore to attend the case. Petitioners allege that the deceased was hale and healthy and did not suffer from any ailments and in Belgaum Central Prison, he was not given proper protection and he died under mysterious circumstances while he was in judicial custody. They suspect the foul play and they are of the view that the deceased Devasagai was tortured, brutally beaten and thereby suffered grave injuries in the police custody which resulted in his death in the Government Hospital.

9. Respondents have filed their objection statement. In that, they assert that in the early hours of 4-7-1992, there was an attempted jail break and a bid to escape from the jail by some of the under-trial prisoners and convicts. It appears, there was difference of opinion among themselves, whether to escape or not and that resulted in a quarrel among themselves. It is further stated that in order to prevent jail break, rioting, and attempt to escape, the jail authorities had to resort to mild lathi charge to push them back into their prison cells and barracks, which resulted in commotion and stampede. In that melee, it appears, 62 prisoners had received injuries and out of them 49 needed medical attention and therefore, they were taken to Central Prison Hospital around 10.00 a.m. and there, three Medical Officers of the prison had attended on the injured and deceased Devasagai was one among those injured prisoners. It is further stated that the medical Officers of the hospital after due investigation were of the opinion that 5 of the injured persons, including deceased Devasagai, required

further medical investigation and treatment and therefore, they were shifted to District Hospital, Belgaum, and there he died after 3 days, i.e. on 7-7-1992 at 10.40 a.m., due to injuries sustained by him, inspite of best medical attention. They justify their action and resist the relief sought in the petition by stating sustaining injuries which ultimately resulted in the death of Devasagai was solely due to his illegal action of conspiracy, rioting and attempt to escape from the Central Prison, Belgaum and it is not due to negligence on the part of the police authorities". They further state that "the cause of death of Devasagai was solely due to his own illegal and riotous action and not due to negligence or want of care on the part of the respondents. Mr. Devasagai and his illegal action in rioting was the cause of his death. No one else could be blamed or held responsible. The stampede which took place was due to his own colleagues, who were under-trials along with him and their attempt to escape. It was an illegal outbreak of violence, wherein Devasagai was an active participant. If it is permissible, it could be said that Mr. Devasagai caused death on to himself by his own rebellious riotous action. Even after sustaining injuries, the respondents have provided all possible medical facilities and inspite of it, he died as per the medical evidence by sustaining severe and fatal injuries as a result of the stampede and therefore, petitioners are not entitled to any relief sought in the writ petition".

10. This Court, while entertaining the petition, byway of an interim direction, had directed the Inspector General of Prisons, Government of Karnataka- second respondent herein, to investigate and report regarding the circumstances, leading to the death of the husband of the first petitioner. Pursuant to the said direction, the Addl. Director General of Police (prisons) has filed his report dated 30-8-1994 before this Court and in that opines that the deceased Devasagai, could have sustained fatal injuries in the stampede as a result of commotion and melee that followed soon after the police took action on the striking prisoners in the early hours of 4-7-1992 and even opines which was not even called for, that the petitioners are not entitled for any compensation.

11. The primary question which requires to be considered and decided is whether the death of the first petitioner's husband was due to police torture and third degree methods adopted by them, while he was in their custody. The other incidental question is whether petitioners are entitled to any compensation and if so, how much?

12. The apathy and extremely casual attitude adopted by the Police Officers is writ large in this case. The respondents do not produce the report of Superintendent of Belgaum Central Jail, the report of the Magisterial enquiry, the statements recorded in the course of enquiry by the Investigating Officer and the Inspector General of Prisons. Their callous attitude is demonstrated before this Court, when they refuse to produce the relevant diaries, prison records and other relevant documents, inspite of my repeated requests and directions. In view of this, the only inference that I can draw is that the respondent - police authorities are trying to avoid responsibility and hide their illegal actions, when deceased

Devasagai was in their custody. To decide the issues in the petition, the only material available before me is the statement of objections filed by respondents, the report of Additional Director General of Police (Prisons) and the case diary maintained in the District Hospital at Belgaum.

13. The story of the respondent Police Officers seems to be that after the rioting prisoners were chased away from the central yard of the prison, they found Devasagai lying on the ground in front of the Central Kitchen, from where he was taken to prison hospital for treatment of injuries sustained by him. The approximate time could have been 9.30 a.m. on 4-7-1992. The Medical Officer, who had examined the injured Devasagai, around 10.00 a.m. had recorded the following injuries :

Patient was lying in front of the kitchen.

Does not give any details.

On Examination :

Semiconscious, groans, moves all limbs. Has multiple injuries viz. Suspected fracture left fore arm lower.

Multiple contusions over both arms, back gluteal regions.

Multiple abrasions over both feet.

Pulse : 74 MM Hg. B.P. 104/70 MM Pupils : Tentral particular equally reacting to light.

CVI] RII] NAD (Nothing Abnormal defect) PI]

Multiple contusions : Lacerated fracture left forearm.

Adv : T. Nupenal 1-1-1 T. Septron 2-0-2 Sling to left forearm. Inj. Anti tetanus 0.5 ml I.M.

Patient has incontinence of faeces and urine.

Restless shifted District Hospital, Request for admission and investigations. Patient died at Civil Hospital. Belgaum, at about 10.40 a.m.

14. I have taken the above extract from the report of Additional Director General of Police (Prisons), since the respondents have failed to produce the case sheet maintained by the Prison Hospital, at Belgaum.

15. The injured Devasagai was admitted to the District Hospital at 5 p.m. on 4-7-1992 by one Sri Koujalagi, who was working as Asst. Sub-Inspector, in the District Prison. In the case sheet, it is stated that "patient involved in the quarrelling amongst each other at Central Jail at about 4 p.m. today". However, in the report filed by an high ranking officer before this Court, it is stated that injured Devasagai was admitted to the District Hospital at 11 a.m. This is obviously a deliberate false statement made to protect the interest of his

subordinate Police Officers. I will advert to this aspect of the matter a little later. The Doctors, who examined him in the District Hospital at 5 p.m. on 4-7-1992, record the following injuries on the body of Devasagai :

Case seen by Dr. Javali :-

Patient brought with history of quarrelling in the prison today at 4 p.m. on examination patient deeply comatose, signs of Neurogenic shock present.

Pulse : Feeble, tachypneic, B.P. not recordable.

Pupils : Normal size reacting to light.

R.S. : Air entry normal on both sides.

P.A. : Soft, there is a brand mark on the right hypochondrium, probably hit by the wooden rod (?)

Case referred to Dr. Shetter on duty physician immediately for opinion.

Sd/- (Dr. Javali)

Case seen by Doddamani, Ortho Surgeon:

History of assault today, sustained injury and left forearm wrist and hand, on examination patient is in shock.

Pulse : Tachycardis.

B.P. : 70 mm systolic.

Injuries : Swelling, deformity, tenderness, lower third left radius, Crepitus left hand over dorsum, wrist movements restricted, abrasion middle part of left leg - 1 cm.

Tenderness C2, C3 Spine, Rs. CVS.NAD., PA. Soft.

Diagnosis : Fracture both bones left forearm, lower one third, fracture metacarpals (left) with shock.

Advised X-ray: Left hand and forearm.

Case seen by Duty P.G. Medical C Unit:

History noted :

Patient is unconscious, response to painful stimuli patient is in shock.

On examination :

Pulse radial not felt, Brachial 96 per minute week, B.P. not recordable.

R.S. Air entry normal, no ronchi, creps.

CVS. S1, S2 normal, no gallops, no murmurs.

P.A. soft abdomen, liver and spleen not palpable, bowel sounds normal.

Case seen by Dr. Doddannanavar :

Thanks for referral, patient is semiconscious, response to painful stimuli, eye balls central in position moves right to left, no spontaneous movements of limbs.

Plantars-up going

Pulse - 100 per minute feeble.

B.P. 130/80

C.V.S. & R.S. normal

To rule out head injury or fat embolism with cerebral edema

E.C.G. normal

Referred to Neuro Surgeon

4-7-1992 7.35 p.m.

Patient is semiconscious.

Pulse - left radial present, unequal.

C.V.S. hard sounds normal, tachycardia.

R.S. - occasional ronchi present.

P.A. soft.

C.N.S. Semiconscious, babinski - up going.

8.15 p.m. 4-7-1992.

History of assault to Today.

On Examination :

Patient is semiconscious, response to painful stimuli.

Pulse - 80 per minute.

B.P. - 120/72 No pedal edema.

C.N.S. - quadri plegia present.

C.V.S. & R.S. P.A. - normal.

Impression-be ruled out.

central cord compression to

Advised - X-ray skull A.P. and lateral.

Take opinion of Neuro Surgeon.

15. The Doctors, who had examined the injured Devasagai in the prison hospital around 10.00 a.m. specifically notice and record that the patient had injuries to both the upper arms, gluteal region and feet. Patient is semiconscious, moves all limbs and has suspected fracture on left forearm lower. It is significant to note here that they do not mention of injury to the neck or tenderness in the neck region and infact they state that the patient was moving all his limbs. But when he was admitted to the District Hospital on the same day at 5 p.m., several Doctors, who had examined him, observe that the patient is unconscious, non-cooperative, pulse feeble, B.P. not recordable. Apart from stating the external injuries on the body, they further observe that patient is in neurogenic shock and deeply comatose. They also note the brand mark on the right hypochondrium and observe that the injury probably must have been caused by being hit by wooden rod. Patient had tenderness C2C3 spine, no spontaneous movement of limbs, planters were up going etc. These injuries are suggestive of spinal chord injury which were not present when the patient was examined by Doctors at 10 a.m. in the Prison Hospital. These are clear medical evidence suggestive of that the wounds recorded at 10.00 a.m. on 4-7-1992 were not fatal but the wounds recorded on examination of the injured Devasagai at 5.00 p.m. on the same day could prove to be fatal.

16. The undisputed facts are that the injured Devasagai was in police custody between 10.00 a.m. till he was admitted to the District Hospital. According to the Doctors, who examined the injured Devasagai at 5.00 p.m. on 4-7-1992, there were several injuries on the body of Devasagai, which could prove to be fatal. Therefore, the burden is on the respondent - police authorities, to explain, how those fatal injuries were caused on the body of Devasagai, when he was in their custody. The respondents have miserably failed to offer any explanation much less proper explanation. In view of this, the only inference that can be drawn is that the deceased Devasagai must have been inflicted with grievous injuries by the police personnel, when he was in their custody between 10.00 a.m. and 5.00 p.m. on 4-7-1992, which was the cause for his death on 7-7-1992 at 10.40 a.m.

17. The Surgeons, who conducted the post mortem have opined that the cause of death is as a result of coma due to compression (injury) of brain stem and spinal cord (upper cervical) as a result of sub-luxation of second cervical vertebra. At this stage, a reference may be made to the injuries found on the dead body of Devasagai during post mortem.

Injuries : Posterior slab with dressing seen on the left forearm below the elbow, covering the wrist and dorsum of hand.

External Injuries Fractures etc : Benzoin seal on the dorsum of left foot and right lower 1/3 of leg.

1. Multiple contusions each measuring 3" x 1/2", extending from left shoulder joint to wrist joint, contusion present on the lateral aspect, bluish black in colour, dorsum of left hand swollen, fracture of lower 1/3rd of radius and III metacarpal

bone present.

2. Contusion on the ventral surface of proximal 1/3rd of skull intact, meninges congested, c/s of brain - parochial hemorrhages (ante mortem) present in cerebrum, cerebellum and brain stem.

Neck : Base of skull and atlas bone (C-1).

Thorax were in normal position. C-2 was sublimated posteriorly by 5 mm including its odontoid process, which was intact. The ligaments between C1 and C2, including those of odontoid process and CI were torn. Inter vertebral disc between C1 & C2 was also sublimated with C2.

Brainstem and Spinal cord with its meninges : The meninges corresponding to brain stem were congested, extending upto the cord corresponding to C3 vertebra. Hemorrhage spots present over meninges corresponding to C2 vertebra. Hemorrhage areas (ante mortem) were present over anterior surface of brain stem and upper cervical spinal cord.

18. A cursory reading of the report shows that there were multiple contusions on the dead body measuring 3" x W extending from left shoulder joint to wrist joints. Such uniform and regular and each measuring the same could not have found on the dead body of the person, if the injuries were caused during stampede and in my opinion, they must have been deliberately inflicted, while the injured was in police custody. An incomplete dislocation of spinal cord and compression of brain stem can happen, because of motor vehicle accidents, falls, diving accidents, gunshot wounds and hitting by a hard object and not necessarily during stampede (Camp Bells's operative orthopaedics Ninth Edition). To suit their convenience and evil designs, the investigating officer requests the Surgeons, who conducted the postmortem on the dead body of the deceased to give opinion as to whether the compression at brain stem and spinal cord as a result of sub-luxation of second cervical vertebra could be caused due to stampede by their letter dated 11-7-1992. To their query, the surgeon informs them "this type of death and injury take place because of sudden twisting of the neck. We hereby opine that this type of injury might happen during stampede, if the deceased had sustained sudden twisting injury of the neck during stampede". This opinion of the Surgeons, the officer who has filed his report before this Court takes into consideration to come to his conclusion that the death must have taken place because of injuries sustained during stampede, without even verifying the other external injuries noticed in the post-mortem report and without even confronting the Surgeons with the other injuries noticed in the report. I cannot blame the Surgeons and I can only blame the officer who has filed this report before this Court for the reason, they have answered to the query of the investigating officer without reference to their post-mortem report. The officer who was asked to file appropriate report for the cause of death of Devasagai, ? should have been a little more responsible and sensitive to the issue instead of exhibiting his ignorance in conducting an enquiry in matters of

this nature and giving much importance and attention to the ties of brotherhood. In my opinion, he has made a desperate attempt to avoid responsibility of his-colleagues and subordinate police officers for acts committed while deceased Devasagai was in their custody. He has not investigated the cause of death of Devasagai while he was in police custody as directed by this Court. The enquiry he has made, in my view, is only a farce of an enquiry and just to hood wink this Court. This was not what this Court expected from very senior police officer when it entrusted a onerous responsibility of submitting a report regarding the circumstances leading to the death of Devasagai. Basing on such unfair report, the respondents have filed their objection statement justifying their action. It is difficult to accept it. Therefore, in my opinion, on an appreciation of the available material on record, the only inference that can be drawn is that the petitioner's husband died while he was in police custody because of torture and injury caused by police authority by their brutal beating, may be with a wooden rod.

19. Late Devasagai, while he was alive, was an auto driver. He was the sole bread earner in the family. Now he has left behind his wife, mother and a minor daughter. Nobody is there to take care of them. They require financial assistance to live like human beings in this myriad society. So, in my opinion, their request for grant of compensation because of the untimely death of the bread earner of the family requires to be granted since the death has taken place when he was in police custody,. apart from directing the State Government to appoint an investigating agency to hold an appropriate enquiry to fix the responsibility of the police personnel for causing brutal injuries on the body of the deceased while he was in their custody between the dates 4-7-1992 and 7-7-1992.

20. In the result, petition is allowed. Since the State Government is responsible in public law for the death of Devasagai, they are obliged to pay compensation to the petitioners which is quantified at Rs. 3 lakhs only and that amount shall be paid by the State Government to the petitioners after they are identified by their learned Counsel Sri T. N. Raghupathy. This Court also directs the learned Counsel to make a deposit of Rs. 2,50,000/- in the name of Kumary Jacklin, who is the daughter of the first petitioner till she attains majority and make use of the money only for the purpose of her education and marriage. The balance amount, they are at liberty to make use of it for their day today living.

21. With these observations and directions, writ petition is disposed off.