

(2023) 01 BOM CK 0074

In the Bombay High Court

Case No : Criminal Writ Petition No.1647 Of 2019

Sunita

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 226
Indian Penal Code, 1860 — Section 34, 143, 297, 302
Code Of Criminal Procedure, 1973 — Section 161, 176(1)(a)

Citation : (2023) 01 BOM CK 0074

Hon'ble Judges : Vibha Kankanwadi, J;Abhay S. Waghware, J

Bench : Division Bench

Advocate : S.R. Kedar, A.M. Phule, M.S. Bhosale

Final Decision : Partly Allowed

Judgement

Vibha Kankanwadi, J

1 The petitioner is the unfortunate mother of a 23 years old young person, who died for alleged police atrocities, more particularly present respondent Nos.4 and 5. Hence, she has filed the present writ petition for the directions to respondent Nos.1 to 3 and more particularly respondent Nos.4 and 5 to pay amount of compensation of Rs.40,00,000/- to her jointly and severally and also seeks further directions to recover the said amount from respondent Nos.4 and 5. She has also prayed for the disciplinary action against respondent Nos.4 and 5.

2 It will not be out of place to mention here itself that deceased Pradip Kalyan Kute was married to one Sunanda, however, from the death certificate issued by Songiri Grampanchayat, Tq. Bhoom, Dist. Osmanabad, of which true copy has been produced at Exh.'A', Sunanda expired on

3 The factual matrix giving rise to the present petition are that the petitioner, her son Pradip and his wife Sunita were the sugarcane harvesters and labours. For the crushing season of 2018-2019 they had gone to Babanraoji Shinde Sugar

and Allied Industries, Turk Pimpri, Tq. Barshi, Dist. Solapur. Pradip was the owner of Tractor and Trolley, so also, he was the driver. In pursuant to agreement executed with the Sugar Industries, deceased Pradip was transporting sugarcane from his tractor on 04.11.2018. He was along with petitioner, wife Sunanda and cousin brother Bhimrao Kute. When their tractor was proceeding from Narkhed area, they were proceeding from Police Station Out Post of village Manegaon, Tq. Madha, Dist. Solapur. It was around 3.30 p.m. and their tractor was intercepted by Police Head Constable Mr. Kumbhar and Mr. Kshirsagar i.e. respondent Nos.4 and 5 and two other persons and they started assaulting Pradip on the count that as to why he has played tape recorder in the tractor. He was severely beaten though the other persons tried to rescue, as a result of which Pradip expired on the spot. His marriage with Sunanda was performed about 4 months prior to the said date. Police had taken Pradip in vehicle to Madha Hospital, where he was declared dead.

4 The petitioner further contends that the incident has been witnessed by Sunanda, one Abhijeet Nagnath Parde, Chandrakant Mane, the petitioner herself and Bhimrao Manik Kute. The petitioner has then lodged report against respondent Nos.4 and 5 on 05.11.2018, as a result of which the said offence was registered under Section 302 read with Section 34 of the Indian Penal Code vide Crime No.218/2018 with Madha Police Station, Dist. Solapur. Prior to that the postmortem, inquest panchnama, spot panchnama were executed. In all 43 injury marks were noted in the Postmortem Report and the cause of death is "head injury with compression of neck with injury to both lungs". After the completion of the investigation charge sheet is also filed.

5 The petitioner further contends that Pradip died due to unnatural death and it happened due to illegal detention by respondent Nos.4 and 5 and they had assaulted him which has to be categorized under custodial death. The petitioner being the mother and also the wife had suffered mental agony. There is huge loss to the family. It has affected their human rights as well as the human rights of the deceased and, therefore, the petitioner deserves to be compensated.

6 Learned Advocate appearing for the petitioner has taken us through the First Information Report lodged by the petitioner and the statements of the witnesses, spot panchnama, inquest panchnama and the postmortem report, which shows about 43 surface wounds in column No.17 and it also shows internal corresponding injuries, which has led to the conclusion regarding probable cause of death, as aforesaid. He has also taken us through the statements of witnesses under Section 161 of the Code of Criminal Procedure. Not only the relatives have supported but the police staff at the Police Station. The statements would also disclose the immediate reaction on the part of the petitioner and the family members. Statement of witness Chandrakant Mane who is resident of village Manegaon, Tq. Madha, Dist. Solapur would show that he was standing near Manegaon Out Post when he found that a tractor filled with sugarcane was going towards sugar factory. In the tractor, songs were played on tape recorder by

keeping the sound at the maximum level i.e. on speaker. He found that respondent Nos.4 and 5 came from the Out Post. The tractor driver stopped the tractor and also the tape. PHC Mr. Kumbhar was holding a stick which was 3-4 feet long. When the driver was still at the steering, PHC Mr. Kumbhar started assaulting him with the stick on his legs, back and neck. PHC Mr. Kshirsagar was assaulting him with hand. The two ladies sitting in the trolley were asking the Police persons as to what offence has been committed by the driver and why they are assaulting him. At that time, both the Head Constables dragged tractor driver from the tractor. He had fainted by that time. The mother and wife of the driver got down from tractor trolley. Both the police officers took the tractor driver in Police Out Post room towards western side. The driver was not able to walk on his own. The ladies were raising voice. However, afterwards the two police officers with the other persons made the tractor driver sit in a Swift car and took him to hospital in Manegaon. Similar statement under Section 161 of the Code of Criminal Procedure has also been given by witness Madan Bharat Parde, Abhijeet Nagnath Parde, Dnyandeo Jadhav, Rama Limba Mane, Ankush Chandrasen Darade. All these persons are resident of village Manegaon. Learned Advocate for the petitioner has then pointed out report of the learned Judicial Magistrate First Class, Madha as per Section 176(1)(a) of the Code of Criminal Procedure. He has conducted a thorough inquiry and has concluded that the death of deceased Pradip occurred when he was in the custody of constables and the death is homicidal. The said report is dated 17.04.2019. On the basis of the said evidence learned Advocate appearing for the petitioner prayed that the petitioner being the mother, who was solely depending on deceased Pradip, needs to be compensated.

7 Learned APP has taken us through the affidavit-in-reply by Siddharth Dagdu Kadam, Police Inspector, C.I.D., Solapur, who had conducted the investigation and in fact he has produced the copy of the report under Section 176(1)(a) of the Code of Criminal Procedure given by learned Judicial Magistrate First Class, Madha, Dist. Solapur. He has categorically stated that in the investigation it has been revealed that respondent Nos.4 and 5 are responsible for the death of deceased Pradip.

8 Learned Advocate appearing for respondent Nos.4 and 5 has taken us through the affidavit-in-reply on behalf of them filed by respondent No.4 Dashrath Vishwanath Kumbhar. It has been admitted that Pradip was transporting sugarcane on 04.11.2018. He was stopped by respondent Nos.4 and 5 and he was asked as to why he has tuned tape in high volume. However, they have denied that they had taken him in custody and beaten him, as a result of which he expired. There was no motive for them to kill Pradip. Deceased had some brain disease and as a result of which he has expired. Deceased had become dizzy and, therefore, he was taken to hospital where he was declared dead. No external injury was found on the person of deceased as the panchnama was done in presence of Judicial Magistrate First Class, Madha. Statement of Medical Officer Dr. Arti Bhandari would clarify that deceased was having brain disease

and she had not noted any external injury. So also, the Deputy District Medical Officer, Pandharpur has also stated that there was no external injury. Statement of API Mr. Dattatraya Nikam would show that relatives of the deceased forcibly taken the dead body in their custody and on the stretcher they had taken the body from Civil Hospital to Police Station. Therefore, possibility of getting those injuries at that point of time cannot be ruled out. The death was natural or not is a disputed fact but since there was no external injury but the Postmortem Report says that there were 43 external injuries is a doubtful circumstance. Now, the trial is in progress and they would face the trial. It cannot be held that they are responsible for the death. First Information Report lodged by ASI Mr. Maruti Nivrutti Londhe of Madha Police Station against one Sitaram Manve and others vide Crime No.222/2018 with Madha Police Station, Solapur (Rural) under Section 143, 297 of the Indian Penal Code is also pointed out, in view of the fact that the accused persons named therein had obstructed the official work by making unlawful assembly. Learned Advocate for respondent Nos.4 and 5 has therefore pointed out that as it cannot be concluded that death of Pradip occurred in the custody of respondent Nos.4 and 5 and they are responsible for the said death, they cannot be asked to compensate the petitioner.

9 The first and the foremost fact that is required to be considered in the light of the objection taken by respondent Nos.4 and 5 that their trial is still pending and their guilt is yet to be established. We would like to rely on Deputy Commissioner, Dharwad District, Dharwad and others vs. Shivakka (2) and others [(2011) 12 SCC 419, wherein it was held that though the departmental proceedings having been initiated against erring police officers involved in beating deceased in custody, the fact is that deceased died in custody and criminal case pending. The High Court entertaining writ to award compensation was held to be maintainable. In this case as well as in D.K. Basu vs. State of West Bengal [(1997) 1 SCC 416] and Ajab Singh and another vs. State of Uttar Pradesh and others [(2000) 3 SCC 521] it was held that the High Court under its writ jurisdiction under Section 226 of the Constitution of India can entertain such petitions, rather they are to protect the rights inherent in Article 21 of the Constitution of India. In D.K. Basu (supra) it has been observed that -

“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. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the fundamental rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.”

It is further observed that the custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. Though police have powers to control the actions of the people and the crime; yet, it is not unfettered under the guise of exercise of the said power they cannot torture or deal with a citizen in inhuman manner. The State is the protector of the life of its citizens if it's employee undertakes torturous act under the guise of power, then it has to compensate such citizen or legal representative of such citizen. Hon'ble Supreme Court in D.K. Basu (supra) went on to issue guidelines/requirements to be followed in all the cases of arrest and detention and in fact now most of those guidelines are forming part of the Code of Criminal Procedure after its amendments. Therefore, it is now required to be seen as to whether death of Pradip in the present case amounted to custodial death or not.

10 We would definitely like to straight away rely on the report of the inquiry made by learned Judicial Magistrate First Class under Section 176(1)(a) of the Code of Criminal Procedure. The said provision has been made to make inquiry in respect of custodial deaths. From the report it can be seen that during the inquiry into the cause of death of Pradip evidence has been recorded and the said evidence has been assessed. The Postmortem Report after noting down the injuries in clear manner suggests the probable cause of death as - "head injury with compression of neck with injury to both lungs", therefore, the medical officer has categorized the death as 'homicidal in nature'. In all 43 injuries were noted as surface wounds and there were corresponding internal injuries to the scalp in the form of hemorrhage. Here, the entire charge sheet is also produced which contains statements of those eye witnesses, which were recorded under Section 161 of the Code of Criminal Procedure. All of them are consistent enough in saying that Pradip was driving tractor, in which the petitioner, Pradip's wife and Bhimrao - his cousin brother were travelling. The vehicle was intercepted by respondent Nos.4 and 5 on the ground that he was playing song in tape recorder through speaker, it's voice was loud. Petitioner is also the eye witness and in their say respondent Nos.4 and 5 have admitted that they had intercepted the tractor driven by Pradip. The eye witnesses have stated that Pradip was assaulted by respondent Nos.4 and 5 and this fact is supported by the Postmortem Report. No doubt, in the First Information Report the informant has not stated that Pradip was taken inside the Out Post, but other eye witnesses have specifically stated about the same. Those eye witnesses not only in their statement under Section 161 of the Code of Criminal Procedure were saying so but even before the Magistrate in the inquiry that was conducted under Section 176(1)(a) of the Code of Criminal Procedure have stated the same fact. Important point to be noted is that the petitioner, her deceased son or other persons travelling from the tractor were not even knowing respondent Nos.4 and 5, therefore, question of implicating them does not arise. The witnesses are consistent enough in saying that the assault was by kicks and fist blows as well as stick. They have also stated that Pradip felt giddiness and still he was dragged to Police Station. The other witnesses appears to have not gone inside the Police

Station Out Post to see what is happening but they had heard the loud voice of the ladies. Respondent Nos.4 and 5 now want to rely on the statement of Medical Officer Dr. Priti Bhandari, which was recorded under Section 161 of the Code of Criminal Procedure that after death of Pradip when she made inquiry with his mother as to whether there was any disease to the deceased, she told that he suffers from some disease of brain and the documents are at her village. She has then stated that she had not find any injury or marks of assault on the deceased. Similar observation is also made by Dr. Nandkumar Gholve, who was the Medical Officer to Sub District Hospital, Pandharpur and was posted at Rural Hospital, Madha. It is to be noted that since beginning when Pradip was taken to hospital, others had accompanied the family and under such circumstance, there was no question of infliction of injuries at a later point of time as the Postmortem Report suggests 43 external injuries. Even it is specifically stated in the Postmortem Report that those injuries are ante-mortem, age of all injuries is same, they were fresh and within 24 hours. Therefore, that evidence is sufficient to arrive at a conclusion that those injuries were inflicted by respondent Nos.4 and 5. Those injuries were inflicted when Pradip was sitting on tractor, then he was taken inside the Out Post and, therefore, it amounts to custodial death. For custodial death it need not be the injuries which are inflicted in a Police Station or an Out Post. In custodial death the injuries should have been inflicted when the person was in any way in the custody of the police officer and, therefore, we take the inquiry report given by learned Magistrate as the strong piece of evidence to support the contention of the petitioner that death of Pradip was a custodial death, which is one of the heinous crimes. We would also like to say that there was no reason for respondent Nos.4 and 5 to intercept the tractor driven by Pradip, even if they were having some objection regarding the sound they could have told the same to Pradip in a dignified manner. When there was no reason for interception and then no reason for police atrocities, there is violation of fundamental rights of the deceased. Therefore, grant of compensation in a proceedings under Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21 of the Constitution of India is an exercise of the Courts under the public law jurisdiction for penalizing the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. These are the observations from D.K. Basu (supra).

11 Having considered the fact of establishment of custodial death of Pradip at the hands of respondent No.4 and 5 we would proceed to determine the compensation.

12 In the present matter deceased Pradip was aged 23. He was married about four months only prior to his death. In many cases we have found that some lump sum amount has been fixed by Hon'ble Supreme Court, however, the best mode to quantify the amount of compensation would be equivalent to the procedure for arriving at an amount of compensation to be paid in motor vehicle accident cases. We would be guided by the decision in Magma General Insurance

Company Limited vs. Nanu Ram Alias Chuhru Ram and others, (2018) 18 SCC 130. Herein also no documentary evidence/proof has been adduced regarding the earning of deceased Pradip and, therefore, in absence of any evidence and taking into consideration the minimum wages amount of Rs.6,000/- is taken as his income per month. Further, in view of Magma General Insurance Co. Ltd. (supra) amount of Rs.2,400/- per month i.e. 40% of the income is added towards future prospectus. Taking into consideration the two persons would be depending on his income i.e. mother and his wife and he himself, the deduction towards personal expenditure would be 1/3rd i.e. Rs.2,800/- per month. Therefore, the dependency on the deceased of his wife and mother would be Rs.5,600/- per month (i.e. 2/3rd of Rs.8,400/- per month). Further, in view of Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121, just multiplier would be 18 and, therefore, the loss of future income would be Rs.12,09,600/- (Rs.5,600/- per month x 12 x 18). Here, it is to be noted that in view of the death certificate of wife of Pradip showing that she expired on 21.06.2020, we cannot allow more amounts and towards loss of love and affection amount of Rs.50,000/- can be allowed. Further, amount of Rs.15,000/- would be added towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of filial consortium can be awarded. However, we would also like to add amount of Rs.2,00,000/- towards the police atrocities i.e. violation of fundamental rights. Though the basic amount is also for the police atrocities; yet, we would like to say that the said amount of Rs.13,29,600/- was only towards loss of income and dependency. The additional amount is towards harassment and the atrocities plus violation of fundamental rights of not only the deceased but also that of the petitioner and the wife of the deceased.

Thus, the petitioner would be entitled to get compensation of Rs.15,29,600/- (Rupees Fifteen Lac Twenty Nine Thousand and Six Hundred only). Though the petitioner has claimed amount of Rs.40,00,000/-, it is on higher side.

13 For the aforesaid reasons, we proceed to pass following order.

ORDER

1 Writ petition stands partly allowed.

2 Respondent Nos.1 to 5 should pay amount of Rs.15,29,600/- (Rupees Fifteen Lac Twenty Nine Thousand and Six Hundred only) in respect of death of Pradip to the petitioner.

3 Initially the amount is to be deposited by the State within a period of two months from the date of this Judgment. If the said amount is not deposited within the said period, that amount to carry interest @ 6% per annum from the date of the order till actual realisation of the entire amount.

4 It will be open to the State to recover the amount, so paid to the petitioner from respondent Nos.4 and 5, as they have been revealed to be the persons

responsible for the death of Pradip.

5 After the amount is deposited, out of the said amount, amount of Rs.10,00,000/- (Rupees Ten Lacs only) be invested in the name of petitioner, in any Nationalized Bank of her choice, for a period of five years.

6 Liberty is given to petitioner to withdraw the quarterly interest.

7 After the period of maturity the concerned Bank to make payment of the entire matured amount directly to the petitioner without reference to this Court.

8 We make it clear that some observations regarding the evidence made by this Court may not be binding on the Trial Court, as the trial has to go and be decided on the merits.