

Dayaram Chandramohan Kanswal Vs. the Inspector of Police, Kapurbawdi Police Station and Another

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Court : Mumbai

Decided On : Mar-26-1997

Reported in : 1998BomCR(Cri)95; 1997CriLJ2713

Judge : A.V. Savant & S.S. Parkar, JJ.

Acts : [Constitution of India](#) - Articles 226 and 227; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201, 302, 306 and 498-A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 113-A, 174 and 176; [Dowry Prohibition Act, 1961](#); [Coroners' Act, 1871](#); Statement of Objects and Reasons of the Criminal Law (Amendment) Act, 1983;

Appeal No. : Criminal Writ Petition No. 122 of 1996

Appellant : Dayaram Chandramohan Kanswal

Respondent : The Inspector of Police, Kapurbawdi Police Station and Another

Advocate for Def. : V.T. Tulpule, Adv.

Advocate for Pet/Ap. : S.V. Kotwal, Adv.

Judgement :

ORDER

A.V. Savant, J.

1. Heard both the learned Counsel.

2. The petition is by an unfortunate father whose daughter deceased Mangaleshwari was married to Bhagwati Prasad Samwal at Ulhasnagar, Thane. It is stated in the petition that the marriage had put great financial strain on the petitioner and had virtually crippled him financially, since the petitioner was required to provide several items in lieu of dowry. It is alleged that a room at Manpada in Thane was also required to be purchased for the son-in-law Bhagwati Prasad and the petitioner had to spend Rs. 56,000/- for the room. Despite this, whenever the poor girl Mangaleshwari visited her parents, she was complaining of harassment and cruelty and demand of additional items such as sewing machine etc. Mangaleshwari was being taunted saying that if Bhagwati Prasad had married some other girl, he would have got more than Rs. 3,00,000/--as dowry.

3. In the morning of 6th July, 1996 when the petitioner visited his daughter's house viz. the room at Manpada at about 8.30 a.m., he was informed that his daughter had committed suicide. The petitioner made several complaints to the Police Officer incharge of Kapurbawdi Police Station, Thane alleging foul play in his daughter's death. However, there was no response. Complaint was first made by the petitioner on 6th July, 1996. Again on 11th July, 1996 the petitioner addressed an application to the Senior Inspector of Police, incharge of Kapurbawdi Police Station alleging that his son-in-law used to harass his wife Mangaleshwari and this was clearly a case of murder of Mangaleshwari. However, the police preferred to initially register a case of

only accidental death and later on found it convenient to treat it as a suicidal one. Again a complaint was made by the petitioner on 23rd July, 1996 categorically stating that his daughter was strangled by the son-in-law and his sister Sulochanadevi Nautiyat. The copy of this complaint dated 23rd July 1996 is annexed to this petition at Exh. A. Even after this, what was registered vide C.R. 211 of 1996 was the crime under sections 302, 201 read with section 34 of I.P.C. No crime was registered under section 498A read with section 306 of I.P.C.

4. What was worse and shocking is that the inquest panchanama of the body of the deceased Mangaleshwari was conducted in grave violation of the mandatory provisions of section 174 of the Code of Criminal Procedure, 1973. Section 174 of the Code of Criminal Procedure dealing with the duties of the police to enquire and report on suicide and other suspicious deaths casts some obligations upon the Police Officer to immediately give information to the nearest Executive Magistrate empowered to hold inquests. Sub-section (3) of section 174 of the Code of Criminal Procedure specifically deals with a death of a woman within 7 years of her marriage, which may be either suicidal or homicidal. Section 176 of the Code makes it obligatory on the nearest Executive Magistrate empowered to hold inquests to hold enquiry into the cause of death either instead of, or in addition to, the investigation held by the Police Officer. This is mandatory where the case is of the nature referred to in Clause (i) or Clause (ii) of sub-section (3) of section 174. In so far as they are relevant for our purpose the said provisions read as under:

174. Police to enquire and report on suicide etc.

(1)-----

(2)-----

(3) When--

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii)---

(iv)---

(v)---

(4)-----'

Section 176 of the Code of Criminal Procedure reads as under :---

176. Inquiry by Magistrate into cause of death :--- (1) When any person dies while in the custody of the police or when the case is of the nature referred to in Clause (i) or Clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered, may hold an inquiry into the cause of death of either instead of, or in addition to, the investigation held by the Police Officer; and if he does so, he shall have all the powers in concluding it which he would have in holding an inquiry into an offence.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case;

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

Explanation: In this section, the expression 'relative' means parents, children, brothers, sisters and spouse.'

5. It was in this background that the present petition was filed by the poor father alleging that the Police Officers had acted surreptitiously to help accused No. 1 Bhagwati Prasad. Inquest panchanama was carried out hurriedly in violation of the provisions of sections 174 and 176 of the Code of Criminal Procedure. No Executive Magistrate was either informed or called at the time of making of the inquest panchanama. In spite of several requests from the date of incident i.e. 6th July 1996 no offence was registered till as late as on 23rd July, 1996 till which date, virtually, no investigation was made and accused were left free to destroy the evidence. Despite being specifically told of a case of murder, the response was only to register the offences as accidental death (registered as ADR No. 58 of 1990) under section 174 of the Code of Criminal Procedure. Even after 11th July, 1996 when a specific complaint was made about the demand of dowry and harassment of the poor girl, no offence was registered either under section 498A or section 306 of I.P.C. It was only after the repeated assertion in writing on 23rd July 1996 that F.I.R. was registered vide C.R. No. 211 of 1996 for the offences punishable under sections 302 and 201 of I.P.C. read with section 34 of I.P.C. Even at this stage, no offence under section 498A read with section 306 of I.P.C. was registered. Some of the grounds which we have set out, have been specifically raised in para 8 of the petition.

6. Rule was issued by us on 24th February, 1997 and was made returnable early in view of the urgency of the matter and grave prejudice caused to the petitioner and to the cause of justice.

7. An affidavit in reply was initially filed by the concerned P.S.I -P.J. Jadhav. He categorically stated that despite specific complaint of the petitioner on 6th July, 1996 all that was registered by the concerned Sub-Inspector Dabhade on 6th July, 1996 was ADR No. 58 of 1996 under section 174 of the Code of Criminal Procedure. It appears that Sub Inspector More was earlier in charge of the investigation and had recorded the statement of certain persons including that of the petitioner and his wife on 6th July 1996. On 11th July, 1996, the petitioner had made a specific complaint that his son-in-law and his sister were demanding gifts from the deceased and were harassing her. The petitioner had alleged that they had committed a murder of his daughter Mangaleshwari. Despite this complaint, all that was done by P.S.I. More was to hand over the investigation to P.S.I. Jadhav. Jadhav claims to have recorded the statements of number of persons from 13th to 18th July, 1996. It appears that Shri V.C. Marathe, Asstt. Commissioner of Police was supervising the over all investigation into the crime. He passed an order as late as on 22nd July 1996 directing that the crime be registered under sections 302 and 201 read with section 34 of I.P.C. It was pursuant to this that the statement of the petitioner was again recorded on 23rd July 1996 (Ex. A page 13) where the petitioner again reiterated his case that his daughter Mangaleshwari was strangulated to death by Bhagwati Prasad and his sister Sulochanadevi. As indicated earlier, despite this no offence has been registered under section 498A read with section 306 of I.P.C.

8. In reply to the contention raised in grounds C and D of the petition alleging failure to comply with the mandatory provisions of sections 174 and 176 of Code of Criminal Procedure, P.S.I. Jadhav has stated in para 12 of his affidavit dated 21st February, 1996 that despite the mandatory provisions contained in section 174, there was no such practice followed by the Police Officers in Bombay or in Thane. Since we were not happy with this affidavit, we enquired with the learned Public Prosecutor Shri Tulpule, who stated before us on 14th March, 1997, that the Principal Secretary, Home Department, Government of Maharashtra would personally file an affidavit in this Court by Tuesday the 18th March, 1997 pointing out the practice that was followed in Bombay and Thane in connection with the mandatory provisions of sections 174 and 176 of the Code of Criminal Procedure. We, therefore, passed a brief order on 14th March, 1997 expressing our disapproval of the affidavit made by P.S.I. Jadhav and directing the Principal Secretary, Home Department to personally file an affidavit by 18th March, 1997 We referred to the decision of the Supreme Court in Shri Bhagwant Singh v.

Commissioner of Police, Delhi : 1983CriLJ1081 where dealing with the increase in number of dowry deaths, the Supreme Court expressed its concern over the faulty investigation that was carried out in the facts of the case before it. We then referred to the suggestions made by the Supreme Court in paras 18 and 21 of its judgment. We find it convenient to reproduce them since they are apposite here.

18. We believe it would be appropriate to make a few further observations at this stage. It is impossible to escape the conclusion that, in a case such as this, the death of a young wife must be attributed either to the commission of a crime or to the fact that, mentally tortured by the suffocating circumstances surrounding her, she committed suicide. Young women of education, intelligence and character do not set fire to themselves to welcome the embrace of death unless provoked and compelled to that desperate step by the intolerance of their misery, it is pertinent to note that such cases evidence a deep-seated malady in our social order. The greed for dowry, and indeed the dowry system as an institution, calls for the severest condemnation. It is evident that legislative measures such as the Dowry Prohibition Act have not met with the success for which they were designed. Perhaps, legislation in itself cannot succeed in stamping out such an evil and the solution must ultimately be found in the conscience and will of the social community and in its active expression through legal and constitutional methods.'

21. Another suggestion which has found favour with us is the need to extend the application of the [Coroners' Act, 1871](#) to other cities besides those where it operates already. The application of the Coroners' Act will make possible an immediate inquiry into the death of the victim, whether it has been caused by accident, homicide, suicide or suddenly by means unknown. It contains provisions which are entirely salutary for the purpose of such inquiry, and we have little doubt that an inquiry under that enactment would be more meaningful and effective and complete in the kind of case before us. We are aware that the Cr.P.C. 1973 contains, in sections 174 and 175. provision for a police inquiry pursuant to an information that a person has committed suicide or has been killed by another or by an animal or by machinery or by an accidently has died under circumstances raising reasonable suspicion that some other person has committed an offence. In such a case the Police Officer makes an investigation and submits a report to the District Magistrate or the Sub-Divisional Magistrate and thereafter the District Magistrate or Sub-Divisional Magistrate or other Executive Magistrate empowered in that behalf is required to hold an inquest. The Police Officer making an investigation is entitled to summon two or more persons for the purpose of the investigation and any other person who appears to be acquainted with the facts of the case to attend and answer truly all questions other than questions the answer to which would have a tenancy to incriminate him. We think that in the category of cases we have in mind the more appropriate and affective procedure would be that contemplated by the Cornors' Act, which ensures that the inquiry into the death is held by a person of independent standing and enjoying judicial powers, with a status and jurisdiction commensurate with the necessities of such cases and the assistance of an appropriate machinery.'

9. In our order dated 14th March, 1997 we also referred to the Statement of Objects And Reasons of the Criminal Law (Amendment) Act, 1983 as a result of which section 498A was inserted in I.P.C. and sections 174 and 176 of the Code of Criminal Procedure also stood amended and new section 113A was inserted in the Evidence Act. Since we have already referred to these aspects in details in our order dated 14th March, 1997 we do not wish to repeat the same here.

10. However, despite the assurance given to us that the Principal Secretary would personally file the affidavit explaining the practice followed to comply with the mandatory provisions of sections 174 and 176 of the Code, in Bombay and Thane, the affidavit of Shri V.H. Sakhalkar, Secretary (Appeals and Security) Home Department, Government of Maharashtra, was filed wherein there is a categoric admission that the statement made by P.S.I. Jadhav in his affidavit needs to be investigated and reasons for not following the provisions have to be ascertained. It is relevant to reproduce para 3 of the affidavit of Shri Sakhalkar which reads as under :

3. I have read the averment made by P.J. Jadhav, Police Inspector attachedto Kapurbawdi Police Station,

Thane in his affidavit duly affirmed on 21-2-97. I have also gone through the said affidavit and the statement made in paragraph 12 of the said affidavit, more particularly regarding the remarks 'There is no such practice being followed by the Police Officers of sending report to Executive Magistrate in Bombay or in Thane.' I say that the matter needs to be investigated and reasons for not following the provisions have to be ascertained. I state that the State Government will direct all the subordinate Police Officers in the State to strictly adhere to all the provisions of Criminal Procedure Code in general and more particularly provisions of section 174 of Criminal Procedure Code.'

11. Thus, there is no denial of the fact that there is a failure to comply with the mandatory provisions of sections 174 and 176 of the Code of Criminal Procedure. Admittedly this is a case where a woman had died in suspicious circumstances. Even if it were treated to be a case of suicide by a woman within seven years of her marriage, and not a case of death of a woman within seven years of the marriage, in suspicious circumstances that the some other person had committed an offence in relation to such a woman, the provisions of section 176 of the Code of Criminal Procedure were clearly attracted since either of the two situations would be governed by Clause (i) or Clause (ii) of sub-section (3) of section 174 of the Code. Since it transpired during the course of hearing before us, that P.S.I. Jadhav was acting under instructions of the concerned Asstt. Commissioner of Police, even in the matter of registering the offence disclosed in the repeated written complaints made by the father, we thought it necessary to direct the concerned Asstt. Commissioner of Police to file an affidavit in this Court. Accordingly Shri V.C. Marathe, the concerned Asstt. Commissioner of Police has made an affidavit on 21st March, 1997. Unfortunately, his affidavit contains so many mistakes and inaccurate statements that we are distressed at the manner in which the Asstt. Commissioner of Police has chosen to make an affidavit and what is worse to swear it without having read it and corrected the obvious mistakes. It is difficult to appreciate how the senior Police Officer could gloss over so many mistakes in a short affidavit of hardly 4 pages.

12. Be that as it may, Shri Marathe categorically states that initially C.R. No. 211 of 1996 registered at Kapurbawdi Police Station was in respect of the suicidal death; later on he did entertain a suspicion that it was not a suicidal death. After the post mortem, the doubt was confirmed when the petitioner made a repeated complaint on 11th July, 1996. Nevertheless no crime was registered either under section 498A or 306 or 302 till as late as on 22nd July, 1996. It is difficult to appreciate this conduct on the part of Shri Marathe. We may quote some portions in the affidavit of Shri Marathe to illustrate the manner in which the affidavit has been made. ... Then thereafter, after the post-mortem, on the next day, that the first doubt had already sipped in our mind and superstitious investigation by orally contacting the people about anybody has a knowledge was in fact carried out and the doubt was confirmed on 11-7-1996 when an application in the nature of complaint came to be filed with the Police Station. Therefore, thereafter officially the case was handed over for further investigation to P.I. Jadhav, who was the incharge of the crime after due deliberation and investigation, the papers were all along produced before me and at various stages, I have given the directions for the further satisfactory progress. On 19-7-1996 after completion of the investigation of the Accidental death, now under C.R. No. 211 of 1996, a letter was received by me addressed to the learned Public Prosecutor for the opinion as for the charges from P.I. Jadhav. As per the Rule such letters have to be routed through my office and its natural course, I received the same, either for further directing the Public Prosecutor, or I felt it necessary, or give my opinion, without sending it for the opinion to the Public Prosecutor.'

We have quoted the above portion as it is inclusive of mistakes.

13. In our view, the petitioner has every justification to feel aggrieved about the manner in which the police have carried out the investigation. It is discrepant in more than one ways and we may only illustrate a few aspects.

(i) Despite the mandatory provisions of sections 174 and 176 of the Code of Criminal Procedure, no information was given to the nearest Executive Magistrate, though admittedly it was a case of a death of a woman within seven years of marriage and no less than the petitioner, father of the deceased, had alleged

harassment and case of dowry death.

ii) The P.S.I. and even the concerned Secretary, Home Department have categorically admitted that there is no practice in Bombay or Thane to comply with the mandatory provisions of sections 174 and 176 of the Code of Criminal Procedure and the Secretary to Government, Home Department has only stated that the matter 'needs to be investigated and the reasons for not following the provisions have to be ascertained.

iii) The repeated statements of the petitioner recorded on 6th and 11th July, 1996 clearly pointed out an accusing finger towards Bhagwati Prasad the son-in-law and his sister Sulochanadevi and made out a case of dowry death. However, the police were content with initially registering a case of accidental death vide ADR No. 58 of 1996 on 6th July, 1996 and it was as late as on 23rd July, 1996 after the Asstt. Commissioner of Police passed an order on 22nd July, 1996 that the offences under sections 302, 201 read with section 34 of I.P.C. were registered.

iv) Despite the categoric averment made by the petitioner repeatedly and elaborately in the statement of 11th July, 1996 and 23rd July, 1996 (Ex. A page 13), no offences under section 498A read with section 306 of I.P.C. have been registered for reasons best known to the Asstt. Commissioner of Police. Though we do not want to make any observations on merits of either the investigation or a possible trial, it is not unusual in such a case that the person who is acquitted of the offence punishable under section 302 may be found guilty of offences punishable under section 498A read with section 306 of I.P.C. These are matters which have to be left to be decided at the trial provided there is a proper investigation into the offences which have been repeatedly alleged.

v) The affidavits filed before us leave no doubt in our mind that the investigation is not only not satisfactory but is clearly faulty. The petitioner is justified in making the allegation that the Police Officers wanted to oblige the accused whosoever the accused may be. We are not indicating anything on the merits of the investigation which we are inclined to order to be held by an independent agency namely by D.C.P. Crime Branch, Thane.

14. In view of the above, we make the rule absolute in terms of prayer (a). We, therefore, direct that the investigation into the death of the petitioner's daughter Mangaleshwari which is now the subject matter of C.R. No. 1-211/96 of Kapurbawdi Police Station, Thane, will stand transferred to the Deputy Commissioner of Police, Crime Branch, Thane who will be the overall incharge of the investigation and will personally supervise the investigation. Having regard to the delay so far caused, we further direct the D.C.P. Crime Branch -Thane to complete the investigation as expeditiously as possible and file the charge sheet in accordance with law.

15. We are told that the charge-sheet for the offences punishable under sections 302, 201 read with section 34 of I.P.C. has been filed in the Court of II J.M.F.C., Thane which is the subject matter of Case No. 427 of 1996. Needless to say that in view of the directions given above, the learned Magistrate will stay further proceedings in the said case and await result of the investigation which we have directed. On completion of the investigation, D.C.P. Crime Branch, Thane is directed to take necessary steps in accordance with law in the appropriate Court.

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