

Siddhu and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jul-19-2002

Reported in : 2002CriLJ4546

Judge : S.R. Singh and ;R.K. Dash, JJ.

Acts : Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act - Sections 3; Evidence Act - Sections 106; [Constitution of India](#) - Articles 21 and 226; Code of Criminal Procedure (CrPC) - Sections 156(3); Indian Penal Code (IPC) - Sections 201, 302, 323, 342, 363, 366, 384, 504 and 506

Appeal No. : Crl. M.W.P. No. 1754 of 1999

Appellant : Siddhu and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : R.K. Asthana, Adv. and ;A.K. Banerjee, A.G.A.

Advocate for Pet/Ap. : R.K. Jain, ;Shree Prakash Singh and ;V.N. Vishwakarama, Adv.

Disposition : Petition allowed

Judgement :

R.K. Dash, J.

1. Murahoo alias Manendra (hereinafter referred to as 'the deceased'), a young and able bodied man aged twenty seven years met tragic death while in police custody of Golhaura police station in 1998. Petitioners No. 1 and 2 are the father and mother and petitioner No. 3 is the widow of the deceased.

2. The case of the petitioners is that deceased, the sole bread winner of the family was taken to the police station on 14-10-1998, kept in lock up and was done to death by the police officials. The case of respondents-police officers including Superintendent of Police, Siddharthnagar is that the deceased, while in police lock-up, committed suicide.

3. The facts adumbrated in the pleading of the parties may be stated thus :

An F.I.R. was lodged on 10-10-1998 by one Jugul Kishore Tiwari alleging that his daughter was enticed away by the deceased and two others. On the basis of the said report police registered case crime No. 91 of 1998, under Sections 363/366, I.P.C. and the deceased, it is alleged, was arrested on 14-10-1998 at 4 p.m. from the medicine shop of Jugul Kishore Tiwari by a constable. He was taken to the police station and kept in the lock up for three days, mercilessly beaten, as a consequence he breathed his last. The police took the dead body for post mortem examination and could manage to obtain a report that the deceased died as a result of hanging and thereafter cremated it. Uncle of the deceased moved the Court under Section 156(3) Cr.P.C. and pursuant to the direction of the court, first information report under Sections 302/384/342/323/201/504/506, I.P.C. read with Section 3 of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act was registered against the police personnel who committed murder.

4. It is alleged that petitioner No. 1, father of the deceased is an old and blind man- and has no independent source of income to support the family. He is a landless person belonging to the scheduled castes and the whole family was depending upon the deceased, who was a labour. By filing the present writ petition the petitioners have prayed for a direction to conduct an enquiry by a sitting or retired District Judge and to pay them adequate compensation.

5. The case of the respondents-police officers, on the other hand, is that in the kidnapping case, the deceased being one of the accused came to the police station on 16-10-1998 along with informant, confessed his guilt and thereupon, he was taken to custody and lodged in the lock-up of the police station where he committed suicide by hanging. Immediately the higher authorities as well as the district administration were informed. The dead body was sent for post mortem examination and thereafter it was handed over to family members of the deceased. They have denied the petitioners' allegation that they physically tortured and caused the death of the deceased. They have however, admitted that on the direction issued by the Magistrate in exercise of power under Section 156(3) Cr.P.C. a case has been registered against some police personnel, the investigation of which has been transferred to CBCID. Since the deceased committed suicide by hanging, it is asserted, the petitioners are not entitled to any compensation.

6. From the factual matrix as narrated above, it stands admitted that the deceased met his Maker while in police custody, Petitioners' specific case is that the deceased was kept confined in the police lock up for three days where he was brutally tortured, as a consequence he breathed his last. The case of the contesting respondents-police officers is that the deceased being accused in a kidnapping case was arrested, put behind the lock up of the police station where he committed suicide. This plea, of the respondents as to the cause of death of the deceased cannot be accepted as true. Lock up room which is otherwise called as 'thana hazat' is a part of the police station. When a person suspected of commission of an offence is arrested and kept in the police custody till he is produced in the Court, the lock up room is kept under guard by the police. Besides, in view of nature of work all the times, some officers remain on duty in the police station. Therefore, it raises a question mark how the deceased in presence of the police officers and the guard committed suicide by hanging. It may be noted, no specific plead has been taken by the respondent police officers, whether the deceased hanged himself with the help of a rope, napkin or any other material. Moreover, nothing is borne out from their pleadings as to how the material used for hanging could be made available to the deceased when he was in the lock-up. Preparation preceding to hanging and accomplishment of the act

must have taken some time. So, if at all the deceased committed suicide by hanging the guard as well as the police officers present in the police station could have rushed to save the life of the deceased. Nothing has been whispered by the respondents in their counter-affidavit as to if any attempt was made in that regard. In view of such facts and circumstances, we would hold that the plea taken by the respondent-police officers that the deceased committed suicide is too big a pill to be swallowed and it militates against, their plea of innocence. If a person while in a police custody received some injury or died an unnatural death, it is for the police to prove how he received injury or how he died. Statement of the injured that he was physically tortured by the police cannot be thrown out on the ground that the same was not corroborated by any independent witness. No outsider can be expected to be present in the police station when such incident happened. Similarly if a person while in the police custody died an unnatural death and there were anti mortem injuries on his person, it is for the police to explain how he received the injuries which resulted in his death. This view of ours is based on Section 106 of the Evidence Act, which provides that when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him. Besides the aforesaid statutory provision the Supreme Court in the case of Sebastian M. Hongray v. Union of India AIR 1984 SC 571 ruled that the burden is obviously on the respondents to make good the positive stand taken by them in response to the notice issued by the Court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control and command of the detaining authority.

7. Respondents police officers in support of their case that deceased committed suicide, have relied upon the copy of the post mortem report. Annexure CA-2 to the counter affidavit. The said report being not legible, we could not ascertain if the deceased had any anti mortem injury, besides the cause of death. Moreover, presumption of correctness is not attached to the report to support the stand taken by the respondents. Added thereto, it is not borne out from the pleadings of the contesting respondent-police officers that any near relative of the deceased was called to be present either at the time of inquest or post mortem examination. Moreover, since the death of the deceased occurred in police lock-up, in all fairness the police should have requisitioned the services of executive Magistrate

or any other responsible officer and in their presence, inquest as well as post mortem examination should have been conducted. All these circumstances persuade us to hold that the police officers and the autopsy doctor were hand in gloves and the latter in order to save the police officers from criminal prosecution fabricated the report.

8. From the pleadings of the parties and the circumstances narrated above, it is deducible that the deceased was brutally tortured by the police while in the lock-up of the police station and on account of such inhuman treatment he lost his life. True it is, he was arrested by the police in a cognizable offence registered under Sections 363/366, I.P.C. and was put behind bar in the police station, but while doing so, the concerned police officer failed to comply with the directions of the Supreme Court as laid down in *D.K. Basu v. State of West Bengal* 1997 Cri LJ 743 : AIR 1997 SC 610. In paragraph 36 of the Court held that the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one, witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest. The arrestee shall also be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. An entry must be made in diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has to be informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is. The Court also directed that copies of all the documents including the memo of arrest should be sent to the Illaqa Magistrate for his record.

9. Had the police in the present case followed the above directions, there would have been no scope for the petitioners to complain that the deceased was arrested on 14-10-1998 and detained in the police station till 16-10-1998 when he died while in lock up. If at all the deceased was arrested on 16-10-1998 as pleaded by the respondents-police officers, necessary records of the police station

should have been produced before us for our scrutiny. We, therefore, find no ground to reject the stand taken by the petitioners that the deceased was arrested and kept in the police lock up for three days.

10. Information to the police and their power to investigate are provided in Chapter XII of the Code of Criminal Procedure. Arrest of a person involved in a cognizable offence is a step to further investigation, but it is not always necessary to arrest him without being satisfied that the information so received is credible one or reasonable suspicion exists about his involvement in the offence. In this context it is worthwhile to refer to the decision of the Apex Court in *Joginder Kumar v. State of U.P.* (1994) 4 SCC 260 : AIR 1999 SC 1349 where the Court held that no arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another.... No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying person his liberty is a serious matter.'

11. Three persons including the deceased were arraigned as accused in case crime No. 91 of 1998 under Sections 363/366, I.P.C. Counter affidavit of the respondents police officers is silent as to if the deceased was the main accused or he was the abettor. Further nothing is available on record as to what necessitated the police to arrest the deceased and whether there was any material before them for their satisfaction that the deceased was involved in the incident. To our mind, it appears that the police did not act in the manner as provided under law in the matter of arrest of the deceased and with some oblique motive they arrested and confined him in the lock-up for three days.

12. The police, more particularly of this State, have earned ill repute by their action and behaviour to general public. A person wronged, feels hesitant to go to police station to lodge complaint. His grievance is not heeded to and police do not extend helping hand to redress his suffering. Similarly, a person suspected of commission of an offence on being arrested when taken to police station, he is treated ruthlessly as if he is an unwanted element in the society and has no right to live in

the country. The police by their action have lost their credibility. They are looked down upon by the society on account of their miss-deed. There are many instances where the police by misusing their 'Wardi' have committed heinous crimes like murder and rape inside the police station. Bhagalpur Blinding case and Maya Tyagi case are shameful incidents of police atrocities.

13. Torture by one human being to the other casts a stigma on the civilised society. It not only creates bodily pain, but also affects the dignity and honour of person. Custodial death and torture by the police are on the rise. If such types of crime are not checked and brought to a halt, India one of the largest democratic countries in the world may not have moral to advocate to uphold the fundamental rights of the citizen. Any form of torture or inhuman treatment by the police either in course of investigation or otherwise is prohibited by Article 21 of the Constitution. The police being custodian of law, is to protect law and not to abduct it. So if by misusing their 'Wardi' they deprecate the liberties guaranteed by the Constitution, they should be dealt with a heavy hand otherwise, it would encourage others to disobey the law. There are in-stances where innocent persons having suffered at the hands of the police ransacked the police station, assaulted the police personnel in order to take revenge of their illegal acts. Therefore, if the abuse of power by the police is not checked and long arm of law fails to apprehend them and their belief is reinforced that no harm can be caused to them by any authority, the people will lose faith in prevailing law as well as enforcing machinery.

14. In the case on hand, as discussed earlier, it was the police personnel present at the relevant time in the police station mercilessly tortured and eliminated the deceased while he was in lock up. For deprivation of life of the deceased at the hands of the police, State is liable to pay compensation to the petitioners on the principle that the state is responsible for the tortious acts of its employees. Instead of asking the petitioners to enforce their rights through ordinary process of the Court, this Court has ample power under Article 226 of the Constitution to award them compensation for death of the deceased in police lock-up.

15. Now the question arises to the quantum of compensation which would be just and proper in the facts and circumstances of the case. Human life is precious. Loss sustained by the blind father, old mother and the wife, the petitioners herein; cannot be compensated. The parents, at their old, age, lost their young and able bodied son who was maintaining them from his days income as a labourer. The widow petitioner No. 3 at young age lost her husband. Can any amount of compensation that we may determine, fill up the loss sustained by them or give them solace? Our answer to this is an emphatic. 'No'.

16. So taking an overall view of the facts and circumstances of the case, we direct the State respondent No. 1 to pay a compensation of Rs. 2,50,000/- (Rs. 1,50,000) to petitioners Nos. 1 and 2 Rs. 100,000/- to petitioner No. 3) within one month hence. The aforesaid amount may be recovered by the State from the concerned police officers responsible for the death of the deceased in the police lock-up.

17. We, are, however, not inclined to issue any direction to initiate any enquiry by any sitting or retired District Judge since a case of murder has been registered and investigation taken up by the GBCID.

18. With the above observations and directions, the writ petition stands allowed.

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