

State Vs. Ranbir Singh

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Court : Delhi

Decided On : Jan-15-2010

Reported in : 166(2010)DLT427

Judge : Sanjay Kishan Kaul and; Ajit Bharihoke, JJ.

Acts : [Evidence Act, 1872](#) - Sections 106; Indian Penal Code (IPC) - Sections 120B, 300, 302, 304 and 380; Code of Criminal Procedure (CrPC) - Sections 176 and 313; [Constitution of India](#) - Articles 20(3) and 22

Appeal No. : Crl. A. No. 176 of 1995

Appellant : State

Respondent : Ranbir Singh

Advocate for Def. : K.B. Andley, Sr. Adv. and ; M.L. Yadav, Adv.

Advocate for Pet/Ap. : Ashiesh Kumar, Adv

Disposition : Appeal allowed

Judgement :

Sanjay Kishan Kaul, J..

1. Custodial death is a manifestation of acts when protectors of law become perpetrators of crime.

2. 'The police must obey the law while enforcing the law.' said Earl Warren. We are faced with a case where the allegation against the respondent is of causing death of a person in custody though the Trial Court has acquitted the respondent giving him the benefit of doubt.

3. Dayal Singh, deceased, was picked up on 19.09.1986 at 5.30 A.M. from his residence at Govindpuri by SI Ranbir Singh in pursuance to registration of FIR No. 365/1986 under Section 380 of IPC at PS Srinivaspuri for theft of a VCR, some cassettes and sarees etc from the house of Ms. Sumati Jain, r/o 3, Friends Colony, New Delhi. The complaint was made by Ms. Sudha Sunderam, sister of Sumati Jain. Smt. Sumati Jain in her statement did not cast doubt on any of her past or present servants. The deceased/Dayal Singh was an ex-employee who had worked as Chowkidar in the house of Smt. Sumati Jain and his services had been terminated on 15.09.1986, i.e. the alleged date of theft. The suspicion thus came on the deceased and the respondent was entrusted with investigation.

4. The case of the prosecution is that the deceased was brought to PS Srinivaspuri after being picked up from his jhuggi on 19.09.1986 by the respondent where his arrest was recorded. The deceased is alleged to have been tortured and beaten badly whereafter he died on 20.09.1986 while still in the custody of the respondent, Const. Shiv Kumar Tyagi and Const. Mukhtiar Hussain. The deceased was taken to AIIMS where he was declared brought dead at 12.30 A.M. on 20.09.1986. 5. The body of the deceased was sent for post mortem, which was conducted by PW-19/Dr.R.K.Sharma who opined that the cause of death was coma as a result of head injury which was ante-mortem in nature and likely to be caused by application of blunt force. These injuries were sufficient in the ordinary course of nature to cause death. The SDM conducted the inquest proceedings under Section 176 of Cr.P.C. and reported the cause of death in police custody due to torture on 20.09.1986. The FIR No. 17/1987 under Section 302 r/w Section 120B of IPC was registered on 14.09.1987 in pursuance to Home Secretary, Delhi Administration reporting the cause of death of the deceased in police custody pursuant to the inquest proceedings conducted by the SDM.

6. The prosecution claims that the deceased was subjected to such severe beatings that on one occasion he had even lost his consciousness in the presence of another domestic servant of Ms. Sumati Jain. The deceased was taken to Govindpuri in the gypsy of Ms. Sumati Jain driven by her driver PW-12/Kamta Pandey. The police thereafter took him to the servant quarter of B-12, Maharani Bagh where PW-4/Vaisakh Singh (brother-in-law of the deceased) was living with his wife, PW-5/Smt. Kamla, so as to carry out the search of the stolen goods. It is thereafter that the deceased was taken to AIIMS where he was declared brought dead.

7. Sanction was accorded by the competent authority for prosecution of the respondent under Section 304 of IPC. However, charges were framed under Section 302 of IPC to which the respondent pleaded not guilty and claimed trial.

8. The prosecution examined 24 witnesses in support of its case.

9. PW-1/HC Narinder Singh described the deceased as a weak person who appeared to be sick though there was no injury on him when he was brought to the police station.

10. The material witness on the health condition of the deceased is PW-4/Vaisakh Singh who stated that the deceased was working as a security guard-cum-chowkidar with the Jains at their residence in Friends Colony. It has come on record that the deceased had earlier been suffering from TB but had fully recovered from the same and was leading a normal life for a period of two years prior to the incident. The respondent came to the house of PW-4/Vaisakh Singh to carry out search of the stolen goods which was permitted. On enquiry, he was informed that the deceased was in a good medical condition, keeping fine and could be visited the next day in the police station. However, on the next morning he was informed that the deceased was in a serious condition and when they visited the police station they were informed that the deceased had passed away.

11. In respect of as to what transpired at the police station, PW-7/Sanjiv Kumar and PW-11/S.R.Tewatia turned hostile. The deceased and the respondent were both in the vehicle driven by PW-12/Kamta Pandey who was the driver with Jains.

PW-12/Kamta Pandey deposed that when they proceeded from Maharani Bagh to Ashram, they halted for refreshments on the way. Thereafter they went to AIIMS. He has further deposed that there was no speed breaker on the way from Govindpuri to Maharani Bagh to Ashram to AIIMS nor did he feel any necessity to apply emergency brakes. In cross examination, he admitted that near the railway crossing at Okhla as soon as he crossed the railway level crossing, there was a speed breaker but his speed was quite slow.

12. PW-13/Zile Singh, another help of Ms. Sumati Jain, has given an eye witness account of the incident. The deceased, PW-13/Zile Singh and a sweeper were taken in the room at 9.30 A.M. where SI Sukhi Ram was sitting. Respondent asked PW-13/Zile Singh to remove his wrist watch and started beating him with a danda on his hands and thereafter he was asked to lie down on the ground and two policemen started beating him. Raj Kumar and a chowkidar also helped the police by holding his legs. He was put on an iron bench and 6 policemen put roller on his thighs. This torture is stated to have continued day and night and on the next day, one APP known as Sharma also joined in the beating. PW-13/Zile Singh has stated that he was beaten again on 16th night when his head was struck against the wall many times apart from being slapped on his face causing injury(s) in his eye and other parts of his body. Sharma is alleged to have also threatened to fetch PW-13/Zile Singh's wife and molest her in front of him. It is only on 17th evening that they went to his residence in a Maruti gypsy driven by PW-12/Kamta Pandey. Respondent informed PW-13/Zile Singh that he would not be beaten hereinafter and he was given Iodex to apply on his body and also new clothes and hot water to have bath. PW-13/Zile Singh was released on the condition that he would not get himself medically examined on the same day.

13. Another important witness is PW-16/ACP Ranbir Singh, who was the SHO of PS Srinivaspuri in September, 1986. He has deposed that on registration of the FIR, investigation was entrusted to the respondent. PW-16/ACP Ranbir Singh talked to two employees of Ms. Sumati Jain, who had been apprehended by the respondent, which included the deceased Dayal Singh and told the respondent to be polite with Dayal Singh as he was weak and suspected patient of TB. The witness has also deposed that he was in the interrogation room when the

respondent came and once again respondent was advised to be careful with the deceased/Dayal Singh. In the night intervening 19-20 September at around 1.30 A.M. the respondent woke him up and told him that Dayal Singh/deceased had complained of some chest pain and he was removed to AIIMS. It is after this that PW-16/ACP Ranbir Singh sent the requisition to the SDM for inquest proceedings. A confidential letter was sent to the DCP on the basis of which a committee was formed and the post mortem report of PW-19/Dr.R.K.Sharma was re-examined. It has, however, been deposed that when the said witness visited the hospital there was no injury on the body of the deceased.

14. PW-18/Ravi Malik is the SDM who has deposed about receiving the confidential note of the SHO with a request to constitute a board for re-examination of the post mortem report. This witness has deposed that he had opined for registration of a case against the respondent under Section 302 r/w Section 120B of IPC and also to a certain extent against Constable Shiv Kumar, Const.Mukhtiar Hussain and Mr. Sharma, APP.

15. PW-19/Dr.R.K.Sharma, whose opinion has been discussed above, conducted the post mortem on the dead body of the deceased. PW-19 has also opined that the deceased was not infective and did not have any complications except a minor one which is common in cases of TB in stages of recovery.

16. PW-17/Dr.U.C.Dhawan was confronted with the OPD card of the deceased. The last X-ray of the deceased had been done on 07.09.1986 which showed that the patient had improved and had calcified and fibrotic lesion. She has opined that the likelihood of death of the deceased due to TB was remote.

17. On the prosecution witnesses being recorded, the statement of the respondent was recorded under Section 313 of Cr.P.C. The respondent admitted that for the whole time the deceased was in his custody and stated that he was a weak person. The respondent admitted that he went in a Maruti gypsy which belonged to Ms. Sumati Jain, from police station to Govindpuri to Maharani Bagh to AIIMS. He claimed that there were speed breakers and railways crossing on the way. At the time of framing charges, the respondent pleaded innocence and claimed trial. In terms of the impugned judgment dated 17.12.1994, respondent has been

acquitted giving him the benefit of doubt.

18. Learned Counsel for the respondent/State drew our attention to the post mortem report of PW-19/Dr.R.K.Sharma where following ante mortem injuries were found:

1. Contused abrasion present on right thigh mid of size 8x6 cm. in size.
2. Contused abrasion on right chin anterior one third size 6x1 cm.
3. Contused area present in left shin anteriorely size 23 x 4 cm.
4. Contused area on right chin area size 18 x 7 cm.
5. Four contused abrasions present on left elbow area of proximal one third posterior aspect parallel to each almost perpendicular to bodyline each 3 cm. in length and 5 cm in breath. Space between each abrasion was cms.
6. Abrasion on left shin medial mallous size 3x2 cm.
7. Contusion on posterior left thigh upper 1/3rd size 6 x 1 cm.
8. Swelling on right torsal of hand on sectioning contained blood.
9. Fracture both radial and ulna distal one third.

19. The doctor has given the health condition of the deceased as under:

SKULL

There was extravassation of blood in mid frontal area. No fracture was seen in the skull. The brain was conjusted, edematous, weight of 1400 gms. Subdural haemtoma was present on right occipital lobe area 8x6 cm. Few pethichal haemorrhages were present in the brain.

CHEST

Tractha and brochi was conjusted. Left plural cavity showed andhsion in the lungs. Right lung showed caseation suggestive of Tuberclosis left lung showed caseation

with addition to plural cavity.

Rest of the organs were within normal limits. Approximate time of death was about 12 to 14 hours from the commencement of post mortem examination.

20. The said PW-19/Dr.R.K.Sharma thereafter opined that the cause of death was coma as a result of head injury which was ante mortem in nature and likely to be caused by application of blunt force and was sufficient in the ordinary course of nature to cause death. Learned Counsel for the appellant/State sought to read this testimony with that of PW-1/HC Narinder Singh who had accompanied the respondent to pick up the deceased. The witness has deposed that the deceased was a weak person and was appearing sick and that there was no injury on the person of the deceased when he was brought to the police station. The submissions of learned Counsel for the appellant/State thus is that it clearly emerges from the depositions that the deceased was injury-free when he was picked up and as per the own admission of the respondent in his statement recorded Under Section 313 of Cr.P.C, the deceased was throughout in his custody and the injuries were thus sustained during the said period and thus it was for the respondent to explain as to how the injuries were caused. In this behalf, the testimony of PW-16/ACP Ranbir Singh is also material who is the SHO of the police station and had specifically asked the respondent to be careful while interrogating the deceased for health reasons. The respondent thus had full knowledge of the physical condition of the respondent.

21. Insofar as the deceased suffering from TB is concerned and that having some connection with the death of the deceased, the post mortem report and other depositions clearly establish that the deceased was cured of TB. As per the post mortem report, he was found suffering from no disease. In fact, the contention sought to be advanced on behalf of the respondent was that due to sudden application of the brakes of the vehicle, an injury was caused as the head of the deceased struck against the rod of iron frame of the gypsy on which rexine roof was fixed. This claim is falsified by the testimony of PW-12/Kamta Pandey to the effect that in fact head of none of the occupants of the gypsy struck against the iron pipes of the frame. The approach during investigation of the respondent is

clear from the deposition of PW-13/Zile Singh who was subjected to third degree treatment. He was also in the staff of Smt. Sumati Jain, at whose house the theft had taken place.

22. Learned Counsel for the appellant/State has thus contended that as to how the injuries were caused to the deceased was within the knowledge of the respondent and the burden of proving that fact was on the respondent in view of the provisions of Section 106 of the Indian [Evidence Act, 1872](#).

23. Learned Counsel for the respondent on the other hand sought to defend the impugned judgment by contending that material witnesses had turned hostile, the deceased was a patient of TB, injury was caused in the jeep and the judgment against the said acquittal should not be interfered with in view of the observations of the Supreme Court in *State of Rajasthan v. Naresh* (5) *Ram Naresh* 2009 (4) *JCC* 2552.

24. The last aspect urged by learned Counsel for the respondent was that the sanction for prosecution of the respondent was for offences punishable under Section 304 of IPC and not under Section 302 of IPC under which the respondent was charged.

25. We would first like to deal with the last issue itself which is the nature of sanction required to prosecute a police official. In the present case, sanction was obtained. The sanction was for the act/offence committed by the respondent. There could thus be no question of the sanction being confined to a particular provision of the IPC. What is the most material aspect is that no sanction was really required in the present case since the respondent was alleged to have committed offences and such offences could not be said to be done in the course of duty. In this behalf, we may refer to the judgment *Prakash Singh Badal and Anr. v. State of Punjab and Ors.* : (2007) 1 *SCC* 1. In a recent judgment in *Dalbir Singh v. State of U.P. and Ors.* *AIR* 2009 *SC* 167, it has been observed that torture and custodial violence cannot be permitted to defy the fundamental rights under Articles 20(3) and 22 of the Constitution. In *CBI v. Dharampal Singh and Anr.* : 123 (2005) *DLT* 592, learned Single Judge of this Court has observed that every act of a policeman of beating and torturing a person is not covered by any protection nor

does it form a part of his duties. Thus, the plea has only been stated to be rejected in view of the settled legal position on this account.

26. On the merit of the case, it is really not in dispute that the deceased had no injuries when he was picked up by the police. It is, in fact, the own admission of the respondent as is apparent from the statement recorded under Section 313 of Cr.P.C. PW-I/HC Narinder Singh has also categorically stated that there was injury on the deceased when he was brought to the police station. It has, however, been stated that the deceased looked in a weak physical condition.

27. The deceased had a history of being a TB patient but had been fully cured. This fact is established by the testimony of PW-4/Vaisakh Singh (brother-in-law of the deceased). Not only that, the medical evidence and the testimony of PW-19/Dr.R.K.Sharma, shows that when the post mortem on the dead body of the deceased was conducted, the deceased was found not infective and did not have any complications except a minor one which is common in cases of TB in stages of recovery. PW-17/Dr. U.C. Dhawan, on the basis of the OPD card of the deceased, opined that likelihood of the deceased dying on account of TB was very remote. The cause of death, as opined by PW-19/Dr.R.K.Sharma, is coma as a result of head injury which was ante-mortem in nature inflicted by application of a blunt force and sufficient in the ordinary course of nature to cause death.

28. The respondent has admitted that the deceased was throughout in his custody. The deceased was without injuries when his custody was taken over by the respondent. Injuries on the dead body of the deceased have been found in the post mortem report, which has been proved by PW-19/Dr.R.K.Sharma. It was thus for the respondent to explain how so many injuries could have been caused, details of which have been set out in para 18 above.

29. It is the case of the respondent that the deceased died because of hitting his head in the gypsy against the angle iron. The gypsy was driven by PW-12/Kamta Pandey, who though was declared hostile, part of his testimony can be segregated from the remaining. He has categorically stated that there was no question of applying brakes as he did not cross any speed brakes or level crossings and was not driving fast. He was also categoric that head of no one struck against the angle

iron during the journey.

30. The case diary recorded by the respondent thus becomes material and this case diary has been proved as Ex PW16/B. There was some controversy during the course of hearing about whether a particular aspect had been put to the respondent in his statement under Section 313 of Cr.P.C. We recorded an additional statement of the respondent under Section 313 Cr.P.C. as follows:

Question: It is in evidence against you that Case Diary Ex PW16/B was recorded by you on 20.09.1986 wherein you have noted that the deceased felt unwell, you stopped the gypsy and went to fetch water and that when you came back you found that the deceased had toppled over from the seat onto the floor of the gypsy and the other police constables were trying to put the deceased back on the seat. The said constables informed that despite their best efforts, the deceased fell down head forward on to the floor and had become unconscious. What have you to say?

Ans: I have seen the case diary Ex PW16/B. It has been recorded in my hand and signed by me. I have correctly written the facts in the case diary.

31. The aforesaid shows that as per the respondent, the deceased felt unwell, the gypsy was stopped and the respondent went to fetch water and when he came back, the deceased had toppled over from the seat onto the floor of the gypsy and the other police officials were trying to put the deceased back to the seat whereafter he became unconscious. This fact is recorded in the case diary Ex PW16/B in the own hand of the respondent and the respondent has admitted to the same. The story of the iron rod hitting the head of the deceased is clearly make-belief and an endeavour by the respondent to cover up the injuries sustained by the deceased on account of beatings given to him during custodial interrogation.

32. We may also notice that insofar as the medical condition of the deceased is concerned, it has been stated that he was a person of weak physique. PW-16/ACP Rajbir Singh, SHO of the local police station at the time of incident, has deposed that he had asked the respondent to handle the deceased with care

because he was a man of weak physique. Thus, if a picture is sought to be portrayed of the deceased dying because of weak health, that was a fact not unknown to the respondent. Not only that, it was specifically brought to his notice by PW-16. PW-I/HC Narinder Singh has also deposed to the general weak condition of the deceased.

33. It is no doubt true that some of the ocular witnesses have turned hostile, but the treatment meted out to the suspects during interrogation is available from the testimony of PW-13/Zile Singh who was also working with Ms. Sumati Jain. PW-13/Zile Singh was subjected to third degree treatment where he was beaten by two policemen while his legs were held. The beating continued through day and night and rollers were rolled on his thighs. His head was struck against the wall. A threat was held out to him that his wife would be molested in front of him. Ultimately, he was let off since he was not responsible but under a threat that he should not say anything about the treatment meted out to him.

34. In our considered view, once the deceased was without physical injuries, his health condition albeit not very strong, was known to the respondent and the respondent had been asked specifically to be careful, the various injuries appearing on the body including head injuries at the time of post mortem clearly point out towards only one fact alone i.e. the deceased was subjected to third degree treatment during interrogation, causing considerable physical injuries on his body which he could not withstand and died as a consequence of injuries, more specifically the head injury. The respondent has not been able to show as to how and from where such injuries could have been caused and the story of the head being struck with an iron rod in the jeep is completely belied apart from the fact that it does not explain the other injuries. PW-12/Kamta Pandey has deposed that there was no rod or pipe with which head of the passenger could strike nor was any such brakes applied by which the head could have struck anything causing the injury. The respondent in his statement under Section 313 of Cr.P.C. has, in fact, stated that the deceased died because of his illness.

35. We are thus clearly of the view that the impugned judgment giving the benefit of doubt to the respondent cannot be sustained on such clear and unequivocal

evidence on record. The evidence adduced clearly establishes the guilt of the respondent. No doubt, even if there is slight doubt, the benefit must go to the accused but the acquittal of a guilty person would amount to great miscarriage of justice which is no less than the conviction of an innocent person. The responsibility lay much more on the respondent being an officer of the police and not a layman. Lord Scarman had thus said 'the difference between a police State and a State where the police are efficient, but democratically controlled, is a mighty thin one.' The police has to work efficiently but we are not a police State where the respondent as a police officer has liberty to use any method in an endeavour to extract a confession.

36. The next question for determination is what offence the respondent has committed? The respondent was charged for the offence of culpable homicide amounting to murder punishable under Section 302 IPC. From the evidence discussed above, it is apparent that the deceased died because of third degree measures resorted to by the respondent to extract confession/information about the crime from the deceased. As per the post mortem report and the testimony of Dr. R.K. Sharma, PW19, the deceased had suffered 9 injuries, most of them being contusions and abrasions on non vital parts of the body. As per the opinion of Dr. R.K. Sharma, the deceased died as a result of coma caused because of the head injury. The doctor did not find any fracture of the skull. From the nature of injuries suffered by the deceased, it is difficult to infer whether the respondent had any intention to cause death of the deceased or to cause such bodily injury as was likely to cause his death. However, it is apparent that the respondent unwillingly gave the vital blow on the head of the deceased or perhaps he struck the head of the deceased against some hard surface which unfortunately resulted in the death of Dayal Singh even if he had no intention to cause the death, or cause any bodily injuries resulting in his death. In view thereof and in the background of the aforesaid facts, we find the respondent guilty for causing the death of the deceased Dayal Singh. However, the case of the respondent does not fall within the definition of murder as defined under Section 300 IPC. Thus we find that the respondent guilty of culpable homicide not amounting to murder punishable under Section 304 Part 1 of the IPC.

37. The result of the above discussion is that the impugned judgment of acquittal is set aside and the respondent is convicted for the offence of culpable homicide not amounting to murder under Section 304 Part 1 IPC. As regards the sentence, the respondent is 63 years old. It is submitted that he is not maintaining good health and is suffering from Parkinson's disease. Though old age and physical condition of the respondent are mitigating factors, yet, we cannot lose sight of the fact that the respondent was a police officer and it was his duty to ensure physical well-being of the deceased while he was in custody. Yet the respondent, in violation of law, resorted to illegal means of third degree in his endeavour to extract a confession which, in our considered view, is a serious offence and needs to be tackled with a firm hand. Taking into consideration the above referred factors and overall facts and circumstances of the case, we are of the view that a sentence of imprisonment for a period of 10 years shall meet the ends of justice.

38. We accordingly sentence the respondent to undergo RI for a period of 10 years and also to pay a fine of Rs. 55,000/-out of which an amount of Rs. 50,000/-be paid to the closest relative of the deceased and in default of payment of fine, he shall undergo RI for further period of six months.

39. The appellant be taken into custody and sent to jail to undergo the sentence imposed.

40. The appeal is accordingly allowed leaving the parties to bear their own costs.

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