

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CrI.) NO. 193 OF 2006

Dalbir Singh

...Petitioner

Vs.

State of U.P. and Ors.

...Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Alleging that because of custodial torture and diabolic acts of the police officials of Noida Police, Somvir Singh @ Sonu aged 17 ½ years lost his life. He was studying in 9th standard. After dis-continuing his education he was helping his father, the petitioner, in his agricultural activities.

2. The petitioner had described the factual scenario to be thus:

The deceased was called by his friend one Kunwar Pal resident of Sikri PS Khurja and at relevant time residing at Telia ghat Khurja, PS Khurja, distt. Bulandshahar at about 6 p.m. on 1st of September, 2006. He told Sonu that five persons want to purchase some property. Since he wanted to show them the land, he requested Sonu to go along with him. They took him in the car. Since Sonu did not return till 9 PM, the petitioner and his son who came from Faridabad started looking around for him and at about 3.45 AM the petitioner saw that the said Kunwar Pal came out from a lane. On enquiry about the whereabouts of Sonu, the petitioner was informed that Sonu had been taken by the Police officials of Sector 20 Noida Police Station and he gave the telephone number of one Pradeep constable and asked the petitioner to contact him. The petitioner immediately contacted on the given number and the said constable told him that if he wanted to see Sonu, he had to come to Sector 31 Police Station at 10 AM. They were not given any further information. On trying to call up the number again to get further details, there was no response from the telephone or it was switched off. At about 9 A.M., the petitioner and his son reached Sector 31 Police Station to look for the said constable Pradeep and were informed that he was not on regular posting and that he used to visit the place occasionally. The petitioner thereafter left Sector 20 and also called up the house and to

the utter shock and surprise was informed that the police officers from PS Phurja Dehat had come and informed the family that Sonu had committed suicide in Sector 20 lock up. It is only then that the family realized that said five persons were policemen in plain clothes. On reaching Sector 20 the petitioner was informed that the dead body was lying in the mortuary and would be sent for post mortem. The petitioner and his son were taken to Sector 94 Noida where they saw the dead body of Sonu lying on a stretcher. The body was covered with injuries, black marks and abrasions all over. It was clear that he had been badly beaten up. Blood was coming out from the head.

S.S.P. R.K.S. Rathore and Additonal SSP came to the petitioner's house and tried to convince him and his family that since Sonu was involved in a case of looting, he had been arrested and he committed suicide while in police lock up by hanging himself with his shirt. The post mortem would have to be conducted. In the meantime, the news of Sonu's killing having reached the village there was public out cry as there was one more death in the hands of Noida Police and the matter appeared in the local media mainly in vernacular. The petitioner lodged First Information Report (in short the 'FIR') with the police which threatened him and also tried to pressurize him into accepting the theory of suicide. But the untimely murder

of the youngest child who was a law abiding citizen and had never been involved in any anti social or criminal activities had lost his life in the hands of the police and petitioner did not accept the statements, even at the cost of threat from the police.

To calm down the tempers of the villagers, an FIR was ultimately registered alongwith two other FIRs which have also been registered against the deceased son of the petitioner; one for alleged loot of some mobile phone, which has now been planted on the deceased and the other for attempt to suicide. The FIR dated 2.9.2006 was registered against the unknown police officers. All attempts by the petitioner to have an impartial post mortem of the body of the deceased was thwarted by the police who was insisting on the theory of the suicide by hanging with the help of shirt. The external injuries all over the body of the deceased were not explained and in fact the post mortem report itself is not accurate as compared with the photographs. The petitioner and his other family members have given a statement setting out the facts.

Pursuant to notice issued in this case, the State of U.P. has filed its response. It is pointed out that the FIR has been registered and certain police officials had been charged for commission of offences punishable under

Sections 330, 342 and 306 of the Indian Penal Code, 1860 (in short the 'IPC'). It is stated that sanction for prosecution has been given on 15.10.2008 and the charge sheet had been filed on 14.11.2008. The accused persons surrendered before learned Chief Judicial Magistrate on 14.11.2008 and their bail applications had been rejected. Cognizance of the aforesaid offences has been taken on 17.11.2008.

4. Learned counsel for the petitioner submitted that it is a clear case of custodial torture and death and by giving a colour of Section 306 IPC, an attempt is being made to protect the erring police officials. It is also stated that the compensation should be paid.

5. Learned counsel for the respondent-State on the other hand submitted that the police after investigation has not found any evidence of murder and therefore the charge sheet had been filed. If at any stage it comes to the notice of the Court that other offences are involved, certainly necessary orders can be passed by the Court.

6. Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost

global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

7. If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples’ rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens’ rights.

8. Article 21 which is one of the luminary provisions in the Constitution of India, 1950 (in short the ‘Constitution’) and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The Article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life

of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. Chapter V of the Code of Criminal Procedure, 1973 (for short the 'Code') deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is therefore difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of rule of law and administration of criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetrated by the protectors of law. Justice Brandies's observation which have become classic are in following immortal words:

“Government as the omnipotent and omnipresent teacher teaches the whole people by its example, if the Government becomes a law breaker, it breeds contempt for law, it invites every man to become a law into

himself". (in (1928) 277 U.S. 438, quoted in (1961) 367 U.S. 643 at 659).

9. The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in Raghubir Singh's case (supra) more than two decades back seems to have fallen to deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in Gauri Shanker Sharma v. State of U.P. (AIR 1990 SC 709), Bhagwan Singh and Anr. v. State of Punjab (1992 (3) SCC 249), Smt. Nilabati Behera @Lalita Behera v. State of Orissa and Ors. (AIR 1993 SC 1960), Pratul Kumar Sinha v. State of Bihar and Anr. (1994 Supp. (3) SCC 100), Kewal Pati (Smt.) v. State of U.P. and Ors. (1995 (3) SCC 600), Inder Singh v. State of Punjab and Ors. (1995(3) SCC 702), State of M.P. v. Shyamsunder Trivedi and Ors. (1995 (4) SCC 262) and by now celebrated decision in Shri

D.K. Basu v. State of West Bengal (JT 1997 (1) SC 1) seems to have caused not even any softening attitude to the inhuman approach in dealing with persons in custody.

10. Rarely in cases of police torture or custodial death, there is any direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues – and the present case is an apt illustration – as to how one after the other police witnesses feigned ignorance about the whole matter.

11. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact-situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by

this type of an unrealistic approach at times by the courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under- trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in ‘Khaki’ to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which, if it happens, will be a

sad day, for any one to reckon with.

12. In view of the fact that sanction for prosecution has been granted, charge sheet had been filed and cognizance had been taken, we feel that no further direction at present is necessary. It is needless to say that if at any point of time, evidence surfaces before the concerned Court to show that some other offences appear to have been committed, necessary orders can be passed. We are not for the present accepting the prayer for compensation because that would depend upon the issue as to whether there was custodial death. The writ petition is accordingly disposed of. We make it clear that we have not expressed any opinion on the truth or otherwise of the allegations made and which will be considered by the concerned court.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
February 3, 2009