

#32

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 20.10.2015

W.P.(CRL) 2349/2015

RABIA @ MAMTA & ANR

..... Petitioners

Through: Mr. Divya Jyoti Jaipurkar, Advocate
with Ms. Divya Sunderrajan,
Advocate

Mr. Arvind Kumar Shukla, Advocate
with Ms. Sweta Rani and Ms. Ritika,
Advocates for Ms. Shama Khatoon
and Mr. Danish Chaudhary, sister and
brother of deceased Shahnawaz
Chaudhari

versus

NCT OF DELHI & ORS

..... Respondents

Through: Ms. Richa Kapoor, ASC (Criminal)
with Mr. Rohit Kaul and Mr. Ashish
Negi, Advocates for R-1

Mr. Shailendra Babbar, SPP with Ms.
Karuna Chhatwal, Advocate with Mr.
Rajendra Singh Sagar, Additional
DCP/North East, Delhi, Inspector
Tarkeshwar Singh, SHO and SI Somil
Sharma, Police Station- Nand Nagri
for R-2 & R-3

Mr. H.S. Phoolka, Sr. Advocate with
Ms. Shilpa Dewan, Advocate for R-4

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

*“Where the mind is without fear and the head is held high;
Where knowledge is free;
Where the world has not been broken up into fragments by narrow domestic
walls;
Where words come out from the depth of truth;
Where tireless striving stretches its arms towards perfection;
Where the clear stream of reason has not lost its way into the dreary desert
sand of dead habit;
Where the mind is led forward by thee into ever-widening thought and action
—
Into that heaven of freedom, my Father, let my country awake.”*

- Rabindranath Tagore

1. There can be no higher or loftier philosophy, belief or faith than humanism.
2. President Pranab Mukherjee is stated to have expressed “apprehension whether tolerance and acceptance of dissent are on the wane?” The President of this country is stated to have recalled the teachings of Ramkrishna Paramhansa ‘*Jato Mat Tato Path*’ “as there are a number of beliefs, there are a number of ways”.
3. These are questions which have to be answered by the collective conscience of this nation.

4. The present petition prays as follows:-

- a) For a writ of mandamus or any other appropriate writ, order or direction to the respondent No.1 to form a Special Investigation Team preferably comprising of officers from another State to investigate into the incident and prosecute the offending police persons;
- b) For a writ of mandamus or any other appropriate writ, order or direction to the respondent No.2 to conduct a departmental enquiry into the incident and terminate the services of the police officers found guilty, and in the meantime suspend them;
- c) For a writ of mandamus or any other appropriate writ, order or direction to the respondents herein to pay compensation of Rs.5 crores to petitioner No.1 and her child;
- d) For any other order or direction that this Hon'ble Court may deem fit and appropriate in the interest of justice.

5. The present petition recounts a horrific tale of inhuman, reprehensible and condemnable conduct on behalf of the police entrusted with the task of protecting and upholding the rights of the citizens of Delhi.

6. On the fateful day at about 04.30 p.m. Shahnawaz Chaudhari and his wife and his wife Rabia @ Mamta (the petitioner No.1) accompanied by their 3½ month baby were on their way to Karuna Hospital at Dilshad Garden, Delhi.

7. On the way they noticed a couple quarrelling with each other and police officers present trying to intervene.

8. According to Rabia @ Mamta, since the late Shahnawaz Chaudhari was acquainted with the lady concerned, he stopped and made enquiries as to what the trouble was. The policemen are alleged to have asked him to stay out of it. Shahnawaz Chaudhari, however, insisted that since it was an ordinary matrimonial disagreement between the quarrelling couple, it would be best to let them sort it out amongst themselves. The policemen are alleged to have taken umbrage at Shahnawaz Chaudhari's persistent and purportedly uncalled for intervention as they perceived his actions to be an invasion by a busy body interloper into their domain and started roughing up Shahnawaz Chaudhari. When Shahnawaz Chaudhari objected to the treatment meted out to him, the policemen are stated to have not only rebuked and rebuffed them but also snatched the keys to the motorcycle on which the family was travelling. At this juncture, it is alleged that another

vehicle belonging to the police drove up and all the policemen who had assembled there ganged up and repeatedly kicked, punched and beat up Shahnawaz Chaudhari. Despite the entreaties in this regard by Rabia @ Mamta, the police persisted with their assault on Shahnawaz Chaudhari and even assaulted him with *dandas*. The 3½ month old child was separated from Shahnawaz Chaudhari and Rabia @ Mamta and the latter were bundled into a police vehicle. The torture and brutality intensified in the police vehicle and three policemen climbed on to the chest of Shahnawaz Chaudhari and sat on him while the fourth continued giving persistent blows on his torso. The entreaties of Shahnawaz Chaudhari and Rabia @ Mamta to the policemen to stop and desist from what they were doing, fell on deaf ears. Upon reaching Nand Nagri Police Station, Shahnawaz Chaudhari was taken inside. Rabia @ Mamta was subsequently informed that Shahnawaz Chaudhari was being taken to hospital since his health had deteriorated. Rabia @ Mamta observed that Shahnawaz Chaudhari was unconscious at that time.

9. Rabia @ Mamta was made to wait at the Police Station till 02.00 a.m. without being informed of the status of the health and well-being of Shahnawaz Chaudhari. Rabia @ Mamta was finally asked by the concerned

Metropolitan Magistrate who arrived to record her statement. Rabia @ Mamta asserts that her statement was coerced by exertion of pressure by the policemen present and on the threat that the well-being of Shahnawaz Chaudhari could be jeopardized if she were to implicate them in any manner.

Rabia @ Mamta was finally dropped off at her parents' house at 03.00 a.m.

10. Rabia @ Mamta visited GTB Hospital in search of Shahnawaz Chaudhari but to no avail. In desperation she went back to the Nand Nagri Police Station and beseeched the policemen to tell her where Shahnawaz Chaudhari was. She is stated to have spent the night outside the Nand Nagri Police Station waiting and pleading with the policemen to tell her of Shahnawaz's whereabouts.

11. At 07.00 a.m. the same morning Rabia @ Mamta went back to her parents' house and came back to Nand Nagri Police Station once again accompanied by her father (petitioner No.2). It was at this stage that they were informed that Shahnawaz Chaudhari has been declared dead on arrival by the doctor at the GTB Hospital on the previous day.

12. Rabia @ Mamta states that onlookers and passers-by have recorded videos of the incident on their mobile telephones which are a part of the report of the concerned SDM. It is further urged on her behalf that the entire

area which falls within the Nand Nagri Police Station is covered by CCTV Cameras and a perusal thereof would reveal the truth about what transpired on that fateful day.

13. What happened thereafter is the natural response of an angry and anguished public to this dastardly act. The people of the area took to the streets and the roads in Nand Nagri area were blocked by citizens. The police force which arrived in strength at the scene of the riots had to resort to a *lathi-charge* to disperse the agitated masses.

14. Thus, the life of a young man with a young wife and an infant child was extinguished.

15. We do not know whether Shahnawaz Chaudhari was a good samaritan or a busy body interloper. We do know, however, that he tried to intervene on behalf of the quarrelling couple in the presence of police officers and paid a heavy price for it.

16. The tragic incident brings to mind a couplet from Shakeel Badayuni immortalized by the voice of Begum Akhtar:-

*“...Mera Azm Itna Buland Hai
Ke Paraaye Sholon Ka Darr Nahin
Mujhe Khauf Aatish-E-Gul Se Hai,
Yeh Kahin Chaman Ko Jala Na De...”*

I must solemnly add:-

*“...Mujhe Dar Hai Aye Mere Charagar,
Ye Charag Tu Hi Bujha Na De...”*

17. Custodial deaths are anathema in a civilized society and militate against all the ideals and protections enshrined and guaranteed by the Constitution of India. Custodial deaths are a violation of basic human rights and are a convoluted manifestation of the darker side of the guardians of civil liberties. The only thought that occupies a benumbed mind is a prayer that sanity be restored. A fervent prayer springs forth from the heart of every humanist:-

*“Ishwar Allah Tero Naam
Sabko Sanmati De Bhagwaan”*

18. However, we shall overcome.

*“Bhar Lo Syahi Kalam Mein
Baaki Hai Khoon Jo Jism Mein
Phailaa Do Yakeen Logon Mein
Keh Do Ki Hum Taiyaar Hain
Dushman Ba-Khanjar Hi Sahi
Ham Par Bhi Hathiyaar Hain*

*Yaad Karo Woh Laala-O-Gul
Jo Is Watan Ki Jaan Hain*

*Budh Bhi Hain Kabir Bhi
Nanak Aur Bhagat Singh Veer Bhi
Gurudev Aur Mahaveer Bhi
Auliya Nizamuddin Peer Bhi
Gandhi Aur Azaad Hain
Keh Do Humein Sab Yaad Hain
Woh Jo Chaman Ki Shaan Hain*

*Na Thakna Hai Na Jhukna Hai
Manzil Se Pehle Nahin Rukna Hai
Chaman Par Aanch Na Aane Paye
Watan Kaa Maan Na Jaane Paye
Ye Karz Toh Ada Karna Hai
Ye Farz Toh Poora Karna Hai
Jeena Hai Toh Khul Kar Jeena Hai
Gar Marna Hai Toh Marna Hai”*

- Sifar

19. The above incident begs a question which can best be expressed in these words:-

*“...Kahan Hain Kahan Hain Muhafiz Khudi Ke
Jinhe Naaz Hai Hind Par Woh Kahan Hain
Kahan Hain Kahan Hain Kahan Hain*

.....

.....

*Zara Is Mulk Ke Rehbaron Ko Bulao
Ye Kuche Ye Galiyan Ye Mazaar Dikhaoo
Jinhe Naaz Hai Hind Par Unko Laao
Jinhe Naaz Hai Hind Par Woh Kahan Hain
Kahan Hain Kahan Hain Kahan Hain.”*

- Sahir Ludhianvi

20. Deaths in police custody are a recurring phenomena and have assumed alarming proportions. An original research paper conducted an analysis on custodial deaths in New Delhi over a period of 13 years from 1999 to 2011. The observations of this study were based on a total of 15 cases over the said period. The study reveals that the victims did not belong to any one community. The study further goes on to state that as per the 2011 NHRC report there were 14,231 custody related deaths in India during the period of 2001 to 2010. It was concluded that a majority of these deaths were a direct consequence of torture in custody. The study went on to lament that despite these high figures only a few studies have been done on this subject in India.

21. It is observed that custodial violence is a dark reality in our democratic country governed by “the rule of law”. In a democratic society, there is no gainsaying that the police have the predominant role of protecting the rights of citizens as enshrined in the Constitution. But it is equally well known that they systematically violate their powers and employ torture as a part of their investigation process. The poor, the deprived classes, women and political activists are the worst victims of police highhandedness. The

police constitute a major party in the administration of criminal justice. One of the reasons why torture and custodial deaths are endemic in India on a large scale is that the police feel that they are immune from the rigours of the law and are confident that they will not be held accountable, even if the victims die in custody and even if the truth is revealed.

22. Custodial deaths are perhaps one of the worst crimes in a civilised society governed by “the rule of law”. The Hon’ble Supreme Court in **D.K. Basu v. State of W.B.** reported as (1997) 1 SCC 416, after enumerating the rights of an accused/detenué person, on the aspect of dealing with custodial deaths held that the rights inherent in Articles 21 and 22(1) of the Constitution require to be zealously and scrupulously protected. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity. It imposes a serious threat to an orderly civilised society. It is also a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. 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.

23. The quality of a nation's civilization can be largely measured by the methods it uses in enforcing criminal law. Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Efforts should be made to remove the very causes, which lead to custodial violence, so as to prevent such occurrences.

24. *Angus Deaton*, the winner of this year's Nobel in economics, has contributed immensely to the understanding of poverty, prices, nutrition and well-being in India. His work has been guided by the belief that economic progress must lead to better lives for everyone.

25. The services and protection that all citizens enjoy in other civilized society are found wanting in the largest democracy in the world.

26. Is it then enough for us to echo what is stated in the Bible according to Luke :-

“Then said Jesus ‘Father, forgive them for they know not what they do.’”

27. I beg to differ.

*“Vaishnava Jan Toh Tene Kahiye
Je Peed Paraayee Jaane Re”*

- Narsinh Mehta

28. A Division Bench of the Hon'ble Supreme Court had occasion to consider the issue of protection of human rights which have been the subject of a worldwide crusade. India is a signatory to the International Convention of Civil and Political Rights, 1966. In the said decision, Justice T.S. Thakur writing for the Bench observed that "*custodial torture is in fact violation of human dignity and degradation that destroys self-esteem of the victim and does not even spare his personality. Custodial torture, is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backwards. The Court relied upon the Report of the Royal Commission on Criminal Procedure and the Third Report of the National Police Commission in India to hold that despite recommendations for banishing torture from the investigative system, growing incidence of torture and deaths in police custody come back to haunt.*"

29. On behalf of the police an affidavit has been filed authored by Mr. Rajendra Singh Sagar, Additional DCP/North East, Delhi. The affidavit begins with the assertion "that present short reply affidavit is being filed without adverting to the contents of Writ Petition is general with leave and liberty of this Hon'ble Court to file a detailed seriatim reply if so directed by this Hon'ble Court or so required in the facts of the case subsequently. The

answering respondents No.2 and 3 are confident that based upon the submissions hereinafter, this Hon'ble Court, would be apprised with the correct facts of the issue at hand.”

30. It is stated on behalf of the police that Shahnawaz Chaudhari, the deceased, was in a drunken condition and started quarrelling with the police officials. It is admitted that Shahnawaz Chaudhari was taken in the ERV to the Police Station and on the way he showed signs of physical discomfort and was immediately rushed to GTB Hospital. It is stated that the patient was declared as brought dead by the doctors at GTB Hospital. It goes on to assert that a judicial enquiry under section 176(1A) of Cr.P.C. was conducted and the concerned Magistrate after inspecting the dead body of the deceased Shahnawaz Chaudhari in the presence of Inspector Sanjeev Kumar recorded his finding. The said judicial enquiry recorded the statements of witnesses and concluded as under:-

“In the light of the examination of witnesses and post mortem report and other documents filed it is evident, that the deceased Shanu died due to asphyxia caused by compression of neck. The internal injuries on the neck of the deceased show that force was applied by the broad object on the neck of the deceased due to which the deceased expired. The medical evidence on record clearly proves that this is

not a case of natural death and rather it is a case of homicide. The issue whether it is a case of intentional killing is beyond the scope of this enquiry and can only be ascertained once proper investigation is carried out. The DCP concerned is accordingly directed to take appropriate action for proper investigation is carried out. The DCP concerned is accordingly directed to take appropriate action for proper investigation in the matter by registration of FIR.”

31. A perusal of the report dated 06.10.2015 reveals that Shahnawaz Chaudhari died due to asphyxia caused by compression of the neck. The internal injuries on the neck of Shahnawaz Chaudhari *prima facie* demonstrate that force was applied by a broad object on his neck owing to which he was asphyxiated to death. It thus concluded that Shahnawaz Chaudhari’s death was a case of homicide.

32. It is stated on behalf of the police that in pursuance to the above said report dated 06.10.2015, an FIR under sections 302/34 IPC has been registered against “unknown persons”. It is also stated that a Special Investigating Team (SIT) comprising of ACP, Eastern Range, Inspector Rakesh Dixit and Sub-Inspectors Manish/Ved Prakash has been constituted on 17.10.2015. In this behalf it is relevant to point out that the present

petition was instituted on 13.10.2015. It is also pertinent to point out that although the said SIT was constituted on 17.10.2015, no status report with regard to the investigations conducted by them has been placed before this Court. It is also noticed that the inquest conducted by the concerned Sub Divisional Magistrate concluded as far back as on 15.09.2015 that Shahnawaz Chaudhari's death was a case of custodial death. I hasten to add that Mr. Phoolka, learned Senior Counsel appearing on behalf of DCW states that they support the case of the petitioner.

33. This Court had by way of order dated 16.10.2015, directed Mr. Rajendra Singh Sagar, Additional DCP/North East, Delhi to personally supervise the safety, security and well-being of the petitioners and afford adequate protection to them. Today it has been urged on behalf of Ms. Shama Khatoon and Mr. Danish Chaudhary, the sister and brother of Shahnawaz Chaudhari, that the police has been approaching and intimidating witnesses to the gory incident that resulted in the unfortunate demise of Shahnawaz Chaudhari and that the CCTV Cameras of the area which are a part of the evidence in the subject FIR have been removed by the official respondents.

34. The police authorities must be strictly held to the standards by which they profess their conduct to be judged.

35. In view of the aforesaid facts and circumstances and in order to instil confidence in the public as well as in the public interest the following directions are being issued for an effective and independent investigation into the subject FIR:-

- 1) The SIT shall immediately secure all evidence related to the subject FIR including the CCTV Cameras footage from the concerned area as well as the concerned Police Station.
- 2) The SIT shall obtain all contemporaneous video recordings alleged to have been made by members of the public on their mobile handsets at the time of the unfortunate incident.
- 3) The SIT shall take into their custody forthwith the Duty Roster and all other relevant documents from the concerned Police Station and clearly define the role of the police personnel who were on duty at the relevant time.
- 4) Since the subject FIR has been registered against “unknown persons”, the SIT shall forthwith investigate and ascertain the identity of the said “unknown persons”, who perpetrated the unspeakable crime.

5) The SIT shall take into custody the report of the concerned Sub Divisional Magistrate qua the inquest into the custodial death of Shahnawaz Chaudhari as well as the video recording of the post-mortem conducted on the body of Shahnawaz Chaudhari.

6) The SIT shall file a comprehensive status report before this Court with regard to the unnatural death of Shahnawaz Chaudhari and the circumstances antecedent and attendant thereto, before the next date of hearing.

36. In the event, it is determined during the ensuing investigation that police officers were complicit in the commission of the offences alleged, the Disciplinary Authority shall initiate appropriate disciplinary action against the said delinquent officers in accordance with law.

37. In this behalf, it is directed that to restore the confidence of the general public in the force, the officers found to be delinquent and complicit in Shahnawaz Chaudhari's death be suspended and/or transferred during the pendency of the enquiry/investigation. This direction is just necessary, expedient and warranted in the light of the allegations made on behalf of Ms. Shama Khatoon and Mr. Danish Chaudhari, the sister and brother of the victim Shahnawaz Chaudhari, as afore stated.

38. Renotify for further consideration on 17.11.2015.

39. At this juncture, Mr. Rajendra Singh Sagar, Additional DCP/North East, Delhi states that a status report on behalf of the SIT shall be supported by an affidavit of the DCP (Crime).

40. Directed accordingly.

41. Before parting, it would serve civilized society well to recall the words of Mahatma Gandhi:-

“Let the first act of every morning be to make the following resolve for the day:

- I shall not fear anyone on Earth.

- I shall fear only God.

- I shall not bear ill will toward anyone.

- I shall not submit to injustice from anyone.

- I shall conquer untruth by truth. And in resisting untruth, I shall put up with all suffering.”

42. A copy of this order be given *dasti* under the signature of Court Master to counsel for the parties.

SIDDHARTH MRIDUL, J

OCTOBER 20, 2015

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