

Mohan Lal Sharma

Vs

State of Uttar Pradesh

Writ Petition (Criminal) No. 641 of 1986

(CJI R. S. Pathak, M. H. Kania JJ)

11.08.1988

JUDGMENT

PATHAK, C.J. –

1. A telegram was received by this Court from the petitioners Mohan Lal Sharma stating that his son Sanjay, aged 17 years, was arrested by the Agra police on October 10, 1986 at 9 o'clock in the morning and that telegraphic information had been sent by him to the Senior Superintendent of Police and the District Magistrate, Agra at 6 o'clock in the evening on the same day but this had led to no action. He stated further that the police did not produce Sanjay before any Magistrate on October 11, 1986. He alleged that Sanjay was murdered by the police in the police lock-up, and that the lock-up was washed by the police resulting in the disappearance of material evidence. The case was registered as a writ petition in this Court and notice was issued to the State of Uttar Pradesh.

2. A counter-affidavit on behalf of the State was filed by H. K. Shukla, Sub-Inspector, Police Station Madan Mohan Gate, Agra. The counter-affidavit alleged that Chhote (another name for Sanjay) was wanted by the police in connection with two criminal cases, that he had been absconding since the registration of the cases and proceedings under Sections 82 read with Section 83 of the Code of Criminal Procedure had been instituted against him and charge-sheets in the two cases had been submitted in the court for his trial. It is said that he was arrested on October 11, 1986 at about midday at the Police Station Madan Mohan Gate, Agra. It is alleged that on arrest he was taken to the police lock-up in the police station. After some time, it is said, he asked for water for visiting the toilet. According to the counter-affidavit, the police constable on duty, Raghubir Prasad, gave him a bottle of water outside the lock-up room, and thereafter Chhote is said to have entered the lock-up toilet with the bottle. Shortly thereafter, about 3.50 p.m., Head Constable, Rajinder Singh and other employees at the police station are alleged to have heard some groans proceeding from inside the toilet, and on the door being opened Chhote was found lying in the toilet with a blood stained broken bottle in his hand, and blood oozing out from the inner portion of his right thigh. It is said that he was taken to the Emergency Department of the S. N. Medical Hospital, two hundred yards from the police lock-up, by Constable Varinder Singh, and at about 4.00 p.m. the doctor present in the Emergency Department examined him and declared him dead. A case of suicide under Section 309 IPC was registered by Head Constable Rajinder Singh at 3.55 p.m. It is admitted in the counter-affidavit that the father of the deceased Chhote made a written report to the police station regarding the death of his son, on the basis of which a case under Section 302 read with Section 342 IPC was registered at 7.00 p.m. on October 11, 1986. A post-mortem was conducted the same night on the dead body, and five ante-mortem injuries were found by the doctor, that is to say, a contusion on the front of the right elbow, abrasions on the outer aspect of the left forearm, a lacerated wound, muscle deep, on the front inner aspect of the right thigh, six inches

above the right knee, a contusion on the right side of his below the lower angle of the right scapula, and a contusion on the left upper scapula region of the back. A big vein and an artery on the right thigh were found ruptured. According to the doctor, the death was occasioned by shock and hemorrhage as a result of the injury to the thigh. The doctor, on investigation by the Investigating Officer, stated that the injury to the thigh could have been self-inflicted and could have been caused by a broken bottle.

3. The counter-affidavit further states that a Magisterial Inquiry by the City Magistrate, Shri S. P. Singh was under way into the incident under the orders of the District Magistrate. It is admitted that a telegram dated October 10, 1986 was received from the son-in-law of the petitioner, but no action was taken upon it because it was reported by the Circle Officer that no such person had been arrested on October 10, 1986. The counter-affidavit also says that it was intended to produce Chhote before a Magistrate within 24 hours but that was made impossible because of his suicide at 3.50 p.m. There is the further statement that Hardayal Verma, the Day Officer, Rajinder Singh, Head Constable and Raghubir Prasad, Constable, were suspended on account of the incident pending investigation of the case under Section 302 IPC and the completion of the Magisterial Inquiry.

4. When the case came before the court on January 13, 1987, the court decided to await completion of the Magisterial Inquiry and also directed the Senior Superintendent of Police to file a counter-affidavit. Upon that Shri H. P. Tripathi, Senior Superintendent of Police, Agra filed a counter-affidavit, which in substance follows the lines of Sub-Inspector Shukla's counter-affidavit.

5. The City Magistrate, Shri S. P. Singh, drew up his inquiry report on February 7, 1987, and a copy of it has been placed before us. We have perused the report carefully, and we regret to say that we do not find it possible to close the case on the basis of that report. There are various aspects of the case which, it appears to us, have been overlooked by the City Magistrate, and quite a few features of the evidence whose significance has not been fully appreciated. We think that the case requires also more careful investigation, the manner in which it has been pursued so far leaving much to be desired. We do not propose to comment on the Inquiry Report of the City Magistrate at this stage as we do not wish to prejudice or foreclose the scope of the fresh investigation we propose to order now. We may note that we are gravely concerned at the increasing number of deaths which are reported of persons detained in police lock-ups. In the circumstances, we direct that the case be referred immediately to the Central Bureau of Investigation for a thorough and detailed investigation by it, with a report thereafter to be submitted by it within three months from today to the Chief Secretary of the State Government for appropriate action on the report. A copy of the report will be submitted also to this Court for such follow up action as the court finds necessary.

6. The writ petition is disposed of accordingly.

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