

Court No. - 1

Case :- P.I.L. CIVIL No. - 16150 of 2020

Petitioner :- Suo-Moto Inre: Right To Decent & Dignified Last Rites/Cremation

Respondent :- State Of U.P. Thru Additional Chief Secretary, Home And Ors.

Counsel for Petitioner :- Abhinav Bhattacharya, Jaideep Narain Mathur (Ac
Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Mithal, J.

Hon'ble Rajan Roy, J.

Present:

- | | | | |
|-----|--------------------------------|-----|-------------------------------|
| (1) | Om Prakash | ... | Father of the victim |
| (2) | Rama Devi | ... | Mother of the victim |
| (3) | Satyendra | ... | Elder brother of the victim |
| (4) | Sandeep | ... | Younger brother of the victim |
| (5) | Smt. Sandhya,
W/o Satyendra | ... | Bhabhi of the victim |

Sri Ashish Jain, In-charge District Judge, Hathras and Sri S. S. Virwan, Additional District Judge, Hathras who have escorted the family of the victim from their Village Bul Garhi in district Hathras to High Court, Lucknow.

Officers present:

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|-----|---------------------------|-----|-------------------------------------|
| (1) | Sri Awanish Kumar Awasthi | ... | Additional Chief Secretary (Home) |
| (2) | Sri H. C. Awasthy | ... | Director General of Police |
| (3) | Sri Prashant Kumar | ... | ADG (Law and Order) , U.P., Lucknow |
| (4) | Sri Praveen Kumar Laxkar | ... | District Magistrate, Hathras |
| (5) | Sri Vineet Jaiswal | ... | Superintendent of Police, Hathras |

Sri J. N. Mathur, Senior Advocate alongwith Sri Abhinav Bhattacharya have appeared as *amicus curiae*. Ms. Seema Kushwaha, Advocate has appeared for the family of the victim. Ms. Aishwarya Bhati, Senior Advocate assisted by Sri Vinod Kumar Shahi, Additional Advocate General and Sri Manish Mishra, learned Standing Counsel have appeared for the State.

The State through Sri Manish Mishra, learned Standing Counsel has filed an affidavit of one Rajendra Pratap Singh, posted as Special Secretary,

Home Department on behalf of the State Government putting-forth the version of the State.

A preliminary report has been filed by the *amicus curiae*.

Both the documents are directed to be kept on record.

The Court in public interest took *suo motu* action in respect of the unfortunate incident which recently happened in a village in district Hathras, wherein allegedly a 19-year old girl was said to have been gang raped who ultimately succumbed to her injuries on 29.9.2020 while under treatment at Safdarjung Hospital in New Delhi.

The dead body of the girl after post-mortem at Delhi itself was brought to her village Bul Garhi in Hathras on 29.9.2020 itself in the dead of the night around 2.00 a.m. in an ambulance and was cremated by the police-administration between 2.30-3.00 a.m. in the intervening night of 29/30th September, 2020.

The tenor of the order dated 1.10.2020 of the Court taking cognizance of the aforesaid incident reveals that the main emphasis of the Court is regarding the hurried cremation of the dead body of the victim, in gross violation of the fundamental and human rights, at the wee hours of the night without following proper rituals and without handing over the corpse to the family of the deceased and the larger issue which this incident raises impacting such rights of other residents of the entire State of U.P.. The Court, referring to certain precedents, observed that right to dignity and fair treatment enshrined under Article 21 of the Constitution of India is not only available to a living person, but also to his/her body after his/her death.

In accordance with the directions issued by the Court, the aforementioned persons belonging to the family of the victim and the Officers of the State are present and we have taken up the matter in a regular manner in open Court but by excluding entry of all others.

Amicus curie Shri J. N. Mathur, learned Senior Counsel has tried to touch the issue of territorial jurisdiction expecting a preliminary objection in

this regard by the State. On behalf of the State it has been candidly and earnestly submitted by Ms. Aishwarya Bhati, learned Senior Counsel that considering the larger issues of public interest involved which have an impact throughout the State of U.P. and not merely the victim's family, the State does not want to raise such technicalities in a matter which has been considered to be of great public importance compelling the Court to take suo motu action. She stated that the State is not treating it as an adversarial litigation and would extend its full co-operation in the proceedings before this Court at Lucknow. Thus, this Court does not find it necessary to engage itself on this issue any further.

We allowed all the family members of the victim's family to narrate their version of the incident.

First, Om Prakash, the father of the deceased, submitted his version. He stated that he was present in Safdarjung Hospital alongwith his younger son Sandeep when his daughter was under treatment. He was informed on 29.9.2020 that she has died and her body is being taken for post-mortem. He had seen the body of her daughter before the post-mortem but thereafter the body was not handed over to him and was allegedly said to have been taken in an ambulance to the Village. He was also provided a vehicle wherein he alongwith his son and ADM travelled to their Village Hathras. They had reached the village in the mid-night, much before the arrival of the dead body. At that time, 70-80 people were present in and around his house in the village. He pleaded that he wants justice for her daughter. He had no grudge against the officials except that they refused to hand over the body of her daughter to them and they were not allowed to cremate her in accordance with the Hindu rituals. He stated that neither he nor any member of the immediate family participated in the cremation and that the administration cremated the body in the night itself despite insistence on their part to have the cremation in the morning.

The mother of the deceased lamented that she wanted to see the face of her daughter, but she was not allowed and against her wishes, the body

was cremated in the night. She broke down while narrating the entire story starting from the date of the incident when the girl was allegedly raped.

Brothers of the deceased mostly repeated the same story and submitted that the authorities acted in an highhanded manner in cremating the dead body of their deceased sister. They kept on telling that they will be allowed to see the face of the deceased and that they will bring the dead body to their home, instead, when the dead body was brought to the village, it remained in the ambulance on the road near to their house for about an hour and then was taken straight to the cremation ground. No one from the family participated in the cremation and the last rites were performed in their absence.

Smt. Sandhya, the bhabhi of the deceased was very sour and stated that the officers be-fooled the family and even some of them misbehaved with the relatives, who were present and had tried to stop the ambulance from proceeding to the cremation ground. She was quite emotional and wanted that stiff action be taken against the officers for not handing over the dead body to the family members and cremating it in an highhanded manner in the dead of the night. She said they are not interested in compensation and the loss suffered by the family is irreparable.

The District Magistrate, Hathras narrated the entire incident in his own manner and said that he had been continuously monitoring the situation. At Delhi itself, an effort was made to give a political colour to the entire episode. Some leaders of various parties had started pouring in to obstruct the carrying of the body and insisted that it should be handed over to them. The ambulance carrying the body was intercepted at many places on way. He was in regular contact with the administrative authorities of the adjoining districts and made arrangements for uninterrupted journey of the ambulance from Delhi to the village. On 30th September, 2020, the next day, the C.B.I. Court at Lucknow was to pronounce verdict against the accused in the case of demolition of Babri Masjid, therefore, the entire State was on high alert and most of the forces were deployed for the control of the situation that may erupt after pronouncement of the aforesaid judgment. Thus, looking to

the sensitivity of the matter and the intervention of political parties in consultation with the Commissioner, Aligarh; ADG, Agra; I.G., Aligarh, S.P., Aligarh and himself, a collective decision was taken to cremate the body in the night itself, as it was expected that if it is delayed and is undertaken in the morning, about 10,000 people would collect and make it a caste/political issue. The entire decision was taken in a *bona fide* manner to maintain the law and order situation and that the father of the deceased was convinced for cremation in the night. It was on his consent only that the body was cremated. He further submitted that the cremation was done with full honour and it is incorrect to suggest that the body was burnt by sprinkling kerosene. A proper pyre was laid. In the cremation, the kerosene was not used and probably, the cans which may be appearing in some of the videos were those carrying Ganges Water (Ganga Jal). He categorically stated that no one from above or Lucknow had instructed him to take such decision or had directed for carrying out the cremation at night, but in the same vein, he stated that he was not aware if some instructions had been given by the State in this regard to the senior officers, who were involved in the collective decision, i.e., the Commissioner, Aligarh; ADG, Agra and I.G., Aligarh.

The District Magistrate, however, as of now, could not satisfy us about observance of last rites while cremating the victim's body as per traditions and customs of the family.

Sri Prashant Kumar, ADG (Law and Order), Lucknow endorsing the statement of the District Magistrate, Hathras stated that it was in view of the security inputs from all sources that a *bona fide* decision was taken at the local level by the administration to cremate the body in the night. There was no extraneous reason such as to destroy the evidence, etc. in carrying out the cremation at night. He clearly stated that the district administration, Hathras did not ask for additional force. Had it been asked, same would have been provided to them to meet the situation which had arisen.

We asked Sri Kumar as to whether it was proper for anyone not directly connected with investigation to comment on any evidence relating to the offence alleged specially if the allegation is of rape or to draw

conclusions based thereon as to whether offence was committed or not, when the investigation was still pending and such person was not part of the investigation, he fairly agreed that it should not happen. We also asked him as to whether he was aware of the amendments in law relating to definition of rape w.e.f 2013 and that mere absence of semen during forensic examination, though a factor for consideration, would not by itself be conclusive as to whether rape had been committed or not, if there are other admissible evidence. He said that he was aware of the same. We put these questions to him as it is said that some officers including Sri Prashant Kumar, ADG (Law and Order) and Sri Praveen Kumar Laxkar, District Magistrate, Hathras had commented upon the report of the forensic laboratory publicly though they were not directly involved in the investigation which was still pending.

Sri Awanish Kumar Awasthi, Additional Chief Secretary (Home), on being apprised about the concern of the Court vis-a-vis the violation of the human rights in carrying out the cremation in the manner aforesaid, submitted that the State also has not denied the happening of the unfortunate incident and had not even made any effort to hush-up or to cover it, rather it was/is ready and willing to cooperate with the Court in all possible manner and it is for this reason that not only, an S.I.T. was constituted but the investigation has been handed over to the C.B.I. The State is conscious of the rights of the citizens and as per the advice or instructions of the Court is ready to bring out a policy laying down the guidelines for the cremation/burial of the dead as also with regard to payment of compensation in such unnatural and accidental deaths. We specifically asked Sri Awasthi as to why, if the decision to cremate the victim in the night was a collective one as stated by the District Magistrate, Hathras himself, only Superintendent of Police had been suspended while the District Magistrate had been allowed to continue and is still continuing at Hathras. He stated that the first report of SIT had indicted the Superintendent of Police. However, on being asked as to whether, the SIT had absolved the District Magistrate and in fact whether the role of the District Magistrate was the subject matter of SIT enquiry, he stated that it was not. He could not give any satisfactory reply in this regard, as to why the two Officers had been treated differently. We then asked him

as to whether, it is proper and/or fair to allow the District Magistrate to continue at Hathras in the facts of the present case specially as the investigation and these proceedings relating to the very incident in which he had a role to play, are pending. Sri Awasthi stated that the Government will look into this aspect of the matter and take a decision.

We expect a fair decision in this regard keeping in mind the fairness of the entire process which is under way, at the earliest.

Ms. Seema Kushwaha asked for security to the family members and for maintaining all confidentiality with regard to the investigation that is going-on and that the trial should be transferred outside Uttar Pradesh, preferably to Delhi.

Ms. Aishwarya Bhati, Senior Advocate appearing for the State submits that full and proper security is being provided to the family members and the same will continue until further orders of the Court. She further submits that the Court may pass appropriate orders for maintaining the confidentiality of the investigation and with regard to laying down the guidelines as aforesaid.

India is a country which follows the religion of humanity, where each one of us are supposed to respect each other in life and in death. However, the above facts and circumstances, as of now, *ex facie*, reveal that the decision to cremate the victim in the night without handing over the body to the family members or their consent was taken jointly by the administration at the local level and was implemented on the orders of the District Magistrate, Hathras. This action of the State Authorities, though in the name of law and order situation, is *prima facie* an infringement upon the human rights of the victim and her family. The victim was at least entitled to decent cremation in accordance with her religious customs and rituals which essentially are to be performed by her family. Cremation is one of the 'Sanskars' i.e., antim sanskar recognized as an important ritual which could not have been compromised taking shelter of law & order situation.

We do not at this stage find any good reason on behalf of the administration as to why they could not hand over the body to the family

members for some time, say for even half an hour, to enable them to perform their rituals at home and thereafter to cremate it either in the night or next day.

Admittedly, though the administration may not have categorically refused the family members to see the face of the deceased but the fact remains that it was not shown to any of them in spite of their repeated requests. Thus, the expanded fundamental right to life to live with dignity and to exist with dignity even after death as well as right to decent burial/cremation appears to have been infringed hurting the sentiments of not only the family members but of all persons and relatives assembled on the spot.

Thus, one of the crucial issues that springs up for our consideration, apart from criminality which is under investigation by the police/CBI for the purposes of trial, is whether the hasty cremation of the dead body of the victim in the odd hours of the night without revealing her face to the family members and allowing them to undertake the necessary rituals in the absence of their consent and presence would amount to the denying decent cremation in gross violation of her fundamental/human rights as enshrined under Articles 21 and 25 of the Constitution of India. If so, who is responsible for the same so as to fix their accountability and liability and how the family of the victim be compensated for it.

Thus the anxiety of the Court as of now is on two counts; firstly, whether there was any violation of fundamental rights of the deceased-victim and her family; and secondly, the larger issues involved in the context of such rights which are generally available to all residents of the State and even beyond it so that valuable constitutional rights are not compromised casually and whimsically.

Sensitivities of the people which the constitution recognizes as fundamental rights such as a right to decent burial/cremation as per traditions and customs followed by the family, have to be respected and if considerations of maintenance of law and order are pitted against such

valuable rights, the situation needs to be handled deftly and responsibly on a proper appreciation of both the aspects as such valuable rights can not be trampled or trifled casually or whimsically especially when those likely to be deprived are of the downtrodden class, uneducated and poor. The guiding principle of governance and administration, after independence, should be to 'serve' and 'protect' people and not to 'rule' and 'control' as was the case prior to independence. Government should come out with appropriate procedures as guidance for district officials to deal with such situations.

Consequently, the Court is also called upon to consider modalities so as to avoid future controversies in this regard.

We have taken note of the statements of Additional Chief Secretary (Home), Government of U.P. in this regard to lay down certain procedures as guidelines to the district officials for the future in matters involving cremation/burial of the dead in the circumstances with which we are concerned.

In view of above, we direct the Additional Chief Secretary (Home) to come out with a draft policy by the next date on both the points, referred to above, so that proper guidelines in that regard may be laid to avoid incidents of this kind in future.

The State administration is directed to ensure the safety and security of the family members of the victim so that no harm is caused to them. It is further provided that the inquiry/investigation which is being carried-on in the matter, either by the S.I.T. or by any other agency such as CBI, be kept in full confidentially and no report or post thereof is leaked out in the public.

No officer who is not directly connected with the investigation should make any statement in public regarding commission of the offence alleged or otherwise based on evidence collected as it can lead to unnecessary speculation and confusion amongst the masses, who may not be aware of niceties of law thereby fuelling emotions on both sides. The Investigating

Agency and the Courts are seized of the matter and irresponsible statements on the issue should be avoided by all.

Without in any manner intending to interfere with the right of freedom of expression, we request the media as also the political parties to air their views in a manner which does not disturb social harmony and/or infringe upon rights of the victim's family and that of the accused. No one should indulge in character assassination of the victim just as the accused should not be pronounced guilty before a fair trial. The investigating agency and the Courts should be allowed to determine these issues.

The State is said to have announced some payment of compensation to the family of the deceased which probably is not acceptable to them as one of them stated that compensation is of no use, nonetheless, we direct that the compensation so announced by the State may be offered to the family at the earliest and in case they deny or refuse to accept the same, it will be deposited with the District Magistrate concerned, who shall invest it in an interest bearing account with the Nationalized Bank to be utilized, as may be directed by the Court.

Ms. Seema Kushwaha, counsel for the family members of the victim wanted to file an affidavit on behalf of the family members. She is permitted to do so before the next date.

The matter be listed on **2.11.2020**, on which date an Officer, not below the rank of Secretary, shall remain present on behalf of the State to assist the Court, along with the ADG (Law and Order), U.P., Lucknow. Appearance of other officials on future dates is exempted, unless otherwise directed by this Court. The family members of the deceased need not appear personally as they are represented through Counsel.

The then Superintendent of Police Hathras, Sri Vikrant Vir who is now under suspension has not appeared before us today, in spite of our earlier order, instead the present Superintendent of Police, Hathras has appeared.

We would like to hear the then Superintendent of Police, Hathras Sri Vikrant Vir on the next date. The State Government shall communicate this order to him. It is open for the then Superintendent of Police, Hathras Sri Vikrant Vir and District Magistrate Sri Praveen Kumar Laxkar to file their respective affidavits containing their version in the matter.

In response to the Court's Order dated 1.10.2020, pen drives have been provided by NDTV, India TV and Times of India. Two Compact Discs (CDs) in two separate covers have been provided by Times Network, whereas Amar Ujala has provided material in black and white.

The aforesaid material is directed to be kept on record in sealed situation in safe and secure custody of the Senior Registrar.

Applications, if any, received through e-mail or any mode for intervention etc., may also be placed before the Court on the next date.

[Rajan Roy, J.] [Pankaj Mithal, J.]

Order Date :- 12.10.2020
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