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MOHAMMAD YASIN

v.

STATE (N.C.T. OF DELHI) AND ORS.

(Criminal Appeal No. 1228 of 2002)

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JULY 30, 2009

**[DALVEER BHANDARI AND DR. MUKUNDAKAM
SHARMA, JJ.]**

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Custodial death – Allegations of – Deceased a proclaimed offender; bad character and criminal involved in many cases – Held: Police and/or investigating agencies cannot torture any criminal despite his bad criminal record – On facts, injuries on deceased were simple in nature and insufficient to cause death in ordinary course of nature –

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Deceased died because of serious heart disease – Respondents did not violate directions given by Supreme Court in D.K. Basu's case as alleged – Penal Code, 1860 — s.302.

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Appellant's brother allegedly died in police custody. The deceased was a proclaimed offender, bad character and criminal involved in many cases. Appellant prayed for directions to handover investigation into death of his brother to the Central Bureau of Investigation(CBI) and for a further direction to SHO of the concerned police station, where the incident occurred, to register a case under s.302 IPC. It was contended that the directions given by the Supreme Court in D.K. Basu's case were violated by the respondents.

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Dismissing the appeal, the Court

HELD: 1. The police and/or investigating agencies cannot torture any criminal despite his bad criminal record. [Para 19] [1197-H]

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2.1. The Sub-Divisional Magistrate made a comprehensive inquiry. The Board of three Doctors, who conducted post-mortem examination of the deceased, gave clear and categorical finding that the cause of death was due to ventricular arrhythmias consequent to old compromised heart in a person having hypertrophied heart (460 grms) myocardial fibrosis and atherosclerosis of coronaries. A person having heart weight of 460 grms. myocardial fibrosis and coronary atherosclerosis has high risk of sudden death with or without provocation. Two superficial injuries were found on the dead body. The Board of Doctors examined the injuries and came to the conclusion that all injuries present over the body were simple in nature and were insufficient to cause death individually as well as collectively in ordinary course of nature. [Paras 15, 21 and 22] [1195-D; 1198-A-D]

2.2. In the instant case, the deceased was arrested at 1.30 pm and he was taken to the ESI hospital at 3.10 pm on the same day where he was declared brought dead. The distance between the place from where the accused was arrested and the ESI Hospital is about 96 kms., therefore, it seems that from the point of arrest till the ESI hospital, the deceased was travelling in the car all the time and on complaint of uneasiness he was taken to the ESI hospital. [Para 23] [1198-D-E]

2.3. In view of the report of the Board of Doctors and the Sub-Divisional Magistrate inquiry, it is difficult to reach at any other conclusion except that the appellant's brother had died because of his serious heart disease. [Para 24] [1198-G]

3. The respondents did not violate the directions given by this court in *D.K. Basu's* case. [Para 20] [1198-A]

D.K. Basu v. State of West Bengal (1997) 1 SCC 416,

A referred to.

Case Law Reference:

(1997) 1 SCC 416 referred to Para 9

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1228 of 2002.

From the Judgment & Order dated 28.9.2001 of the High
Court of Delhi at New Delhi in Criminal Writ Petition No. 917
of 1999.

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Vipin Gogia, Jaspreet Gogia for the Appellants.

P.P. Malhotra, ASG, Sadhna Sandhu, Anil Katiyar for the
Respondents.

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The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. This appeal is directed
against the judgment of the Division Bench of the Delhi High
Court passed in Criminal Writ Petition No.917 of 1999 on
E 28.9.2001.

2. The appellant Mohd. Yasin had filed a writ petition
before the Delhi High Court seeking directions to handover the
investigation to the Central Bureau of Investigation into the
death of his elder brother Yunus alias Anees who died on
F 4.8.1999 in police custody of the police station Okhla Industrial
Area, New Delhi. The appellant further prayed for a direction
to the station house officer of the police station Okhla Industrial
Area to register a case under section 302 IPC against the
delinquent officer(s).

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3. The High Court in the impugned order after perusing the
report of the Sub-Divisional Magistrate and the report of the
Board of Doctors who conducted postmortem examination of
the deceased and came to the conclusion that the death of the
H appellant's brother was caused due to cardiac arrhythmias and

the petition was disposed of.

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4. The appellant being aggrieved by the impugned judgment of the High Court has preferred this appeal.

5. Brief facts which are necessary to dispose of this appeal are recapitulated as under:

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In the intervening night at about 1.00 am on 4/5.8.1999, the appellant received a telephonic call from one Afroz who is a friend of the deceased Yunus, the elder brother of the appellant, and was told that on 4.8.1999 the police took Yunus to the police station Okhla Industrial Area and that he also accompanied Yunus to the police station. He also told that Yunus was hospitalized at the ESI Hospital. The appellant who was at Mumbai immediately came to Delhi and learnt that his brother Yunus had died while he was in police custody.

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6. It is also submitted that respondent no.5 Sub-Inspector of Police Mukesh Walia had approached Afroz, a friend of Yunus and threatened to implicate him in a false case under the Narcotic Drugs & Psychotropic Substances Act, 1985 unless he helped the police in nabbing Yunus. Under the said threat and coercion, Afroz went to the village of Yunus and thereafter the police arrested Yunus. It is also incorporated in the appeal that the inquiry was also conducted by the Sub-Divisional Magistrate, Kalkaji, South District, New Delhi under section 176 Cr.P.C. The statements of the police officials who went to arrest Yunus were recorded by the Sub-Divisional Magistrate on 5.8.1999.

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7. It is further stated in the appeal that Yunus was in good health and he died in the police custody indicating that he did not die of natural death. The postmortem examination was conducted on the body of the deceased Yunus at the All India Institute of Medical Sciences (AIIMS) on 6.8.1999 and thereafter his dead body was handed over to the appellant in the presence of other relatives of the appellant. At that time, the appellant noticed injuries on the face and head of the

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- A deceased. It is stated that the clothes of the deceased Yunus were sent to the Central Forensic Science Laboratory (CFSL), New Delhi. In the report of the CFSL, blood of group A+ was detected on the shirt of the deceased Yunus. It is pertinent to mention that the doctors opined that the cause of death of
- B Yunus was due to ventricular arrhythmias consequent to old compromised heart in a person having hypertrophied heart (460 gms.) myocardial fibrosis; atherosclerosis of coronaries and that a person having heart weight of 460 gms. myocardial fibrosis and coronary atherosclerosis has high risk of sudden
- C death with or without provocation.

8. In the instant case, the police apprehended Yunus at 1.30 pm on 4.8.1999 and he was taken to the ESI Hospital at 3.10 pm on the same day where he was declared brought dead.

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9. The appellant relied on the directions given by this court in *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 and submitted that the respondents had violated these directions. In *Basu's* case, the court observed that "the custodial death is perhaps one of the worst crime in a civilized society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. Expression of life or personal liberty in Article 21 includes right to live with human dignity and thus it would include within itself a guarantee against torture and assault by the States or by its functionaries".
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10. The instant case pertains to the custodial death. This court examines such cases with extreme care and cautions. Despite the fact that the matter has been examined by the High
- G Court, this court also issued notice to the respondents and examined the matter de novo. Pursuant to the notice of this court, T.N. Mohan, DCP (HQ) in the office of Commissioner of Police, I.P. Estate, New Delhi filed an affidavit. In the affidavit, it is mentioned that the deceased was a proclaimed offender
- H and a bad character of the police station Okhla Industrial Area,

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[DALVEER BHANDARI, J.]

Phase-I and was wanted by police in as many as nine cases, A
the details of which are as under:

1. FIR No.783/97 under Sections 407/379/411/120
IPC, PS Okhla Industrial Area.
2. FIR No.798/97 under Sections 407/379/411/120 B
IPC, PS Okhla Industrial Area.
3. FIR No.804/97 under Sections 407/379/411/120
IPC, PS Okhla Industrial Area.
4. FIR No.805/97 under Sections 407/379/411/120 C
IPC, PS Okhla Industrial Area.
5. FIR No.828/97 under Sections 407/379/411/120
IPC, PS Okhla Industrial Area.
6. FIR No.818/98 under Sections 407/379/411/120 D
IPC, PS Okhla Industrial Area.
7. FIR No.855/97 under Section 380 IPC, PS Okhla
Industrial Area.
8. FIR No.947/98 under Section 380 IPC, PS Okhla E
Industrial Area.
9. FIR No.33/99 under Sections 380/411 IPC, PS
Okhla Industrial Area.

11. It is mentioned in the counter affidavit that after F
receiving the information, it was decided to send a police party
from Delhi to the district Gurgaon for the arrest of Mohd. Yunus
@ Anees and in this connection a team was constituted and
the necessary permission to go out of Delhi was obtained from G
the Additional Deputy Commissioner of Police, South Delhi.
After taking required necessary permission, the police went to
Gurgaon. It is submitted that, apart from being involved in a
large number of criminal cases, Mohd. Yunus @ Anees was a
proclaimed offender, bad character of Bundle 'A' and a H

A desperate criminal. Mohd. Yunus was arrested at about 1.30 pm on 4.8.1999 with the help of Afroz. Mohd. Yunus struggled to set himself free and while running away he fell down and sustained two bruises. The dimensions of the injuries are as under:

B “(i) Abraded bruise of 1.4 x 1 cm over (L) side face below eye 1 cm.

(ii) Abraded bruise 3 x 2 cm over front part of chin below lip.”

C Mohd. Yunus was however, overpowered and apprehended. When the van crossed Haryana-Delhi Border, he complained of uneasiness and discomfort, therefore, he was immediately rushed to the nearest ESI Hospital where he was declared brought dead.

D 12. In the counter affidavit, it is mentioned that despite the admitted position that the deceased Mohd. Yunus had a past history of heart ailments, the appellant has deliberately suppressed this information from the court and on the contrary it was asserted that the deceased was completely hale and hearty. It is further submitted that the appellant has made a statement before the Sub-Divisional Magistrate wherein in no uncertain terms he stated as under:

F “Yunus got heart attack about eight months back and bye-pass surgery was performed. At that time, I was at Mumbai. This bye-pass surgery was arranged by Afroz. This was told to me over telephone, in Mumbai, by Afroz seven to eight months before.”

G 13. It is mentioned in the counter affidavit that directions issued by this court in *D.K. Basu* (supra) have been followed in true spirits. It is also mentioned that according to the opinion of doctors, a normal heart weighs around 240-300 grams whereas the heart of the deceased was 460 grams and had the high risk of sudden death with or without provocation. Such

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a grossly enlarged and overweight heart does not happen in a day or two but it will take at least 5 to 10 years which in itself indicates a long heart ailment which is supported both by the medical evidence as well as the categorical statement of the appellant himself. A

14. It is also stated that the distance between the place of arrest and the ESI hospital is 96 kms. One and half hour driving time is absolutely normal, therefore, the allegation that the delay of one and half hour shows that the deceased was first taken to some place where he was tortured and injuries inflicted due to which he died, is not only false but preposterous. B C

15. We have heard the learned counsel for the parties at length and perused all relevant documents in detail. Mohd. Yunus died in the police custody. The Sub-Divisional Magistrate has made a comprehensive inquiry. In the inquiry report, it is mentioned that he reached at the All India Institute of Medical Sciences (AIIMS) mortuary around 11.30 pm in the night of 4.8.1999 and inspected the dead body of the deceased Yunus @ Anees. The Station House Officer, Police Station Okhla Industrial Area was also present. Two superficial injuries were found on the dead body. According to the Board of Doctors, both the said injuries were simple in nature. D E

16. It was submitted that immediately after the incident, on 5.8.1999 at 10.00 am, the information was sent to the Chairman, National Human Rights Commission and the copies of the same were sent to the District Magistrate, Delhi and the Deputy Commissioner (South) regarding the custodial death. On the same day a Board of Doctors was constituted for the postmortem, which comprised the following doctors: F

Dr. O.P. Murti, Associate Professor, Department of Forensic Medicine and Toxicology, All India Institute of Medical Sciences (AIIMS). G

Dr. D.N. Bhardwaj, Assistant Professor, Forensic Medicine and Toxicology, All India Institute of Medical Sciences H

A (AIIMS).

Dr. Alexander Khaka, Specialist for Medicines, Safdarjung Hospital.

B 17. The statements of the relatives of the deceased were recorded. The statements of a large number of police official were also recorded. The Board of Doctors in their final report observed as under:

C "To the best of our knowledge and belief we are of considered opinion – Death in this case was due to ventricular arrhythmias consequent to old compromised heart in a person having hypertrophied heart (460 gms.) myocardial fibrosis and atherosclerosis of coronaries. A person having heart weight of 460 gms. myocardial fibrosis and coronary atherosclerosis have high risk of sudden death with or without provocation."

D 18. The Sub-Divisional Magistrate after comprehensive inquiry arrived at the following conclusion:

E "After perusal of the entire evidence on record, along with the opinion of the experts (Board of Doctors), the following points were come to the notice.

F Anees @ Yunus was a registered Bad Character of Bundle 'A' (the register which is maintained for the persons who are under constant and active surveillance) of police station P.S. Okhla Industrial Area wanted in as many as 10 cases. He was declared proclaimed offender by the court of law.

G The police team, who brought the deceased from district Gurgaon to Delhi after arresting him were quite bonafide in their action and performed lawful duties arresting the deceased. They had observed all the norms/ legal formalities before proceeding out station duty.

H The death of Anees @ Yunus had occurred in natural

course as per the report of the panel of doctors.

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The deceased was having a past history of heart ailment consequent to old compromised heart in a person having hypertrophied heart (460 grams) myocardial fibrosis atherosclerosis of coronaries.

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The admission of the deceased in ESI Hospital after he fell unconscious near Badarpur border clearly indicates the sincere efforts of the police team who got him admitted without any loss of time in the nearest possible hospital in order to save his life.

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Now the only question is, how the injuries were inflicted on the body of the deceased (Anees @ Yunus) needs explanation. In this regard the panel of doctors who had conducted the postmortem was examined separately and the police team and eye-witnesses. Afroz was also put to cross-examination about the infliction of the injuries. The cause of injuries were explained by them that the accused put resistance at the time of his arrest and in the process the injuries were inflicted which are not willingly, were not sufficient to cause death.

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In the light of above, I am of the considered opinion that Anees @ Yunus died due to heart ailment which is explained by doctors in details and categorically opined that the deceased had high risk of sudden death with or without provocation and thus a natural death. I don't find any of the police officer of the team individually or collectively responsible in the death of the deceased Anees @ Yunus and none of them is found guilty."

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19. It is indeed unfortunate that the deceased died in the police custody. We have carefully examined this case from every angle particularly from the angle of his past criminal record. The police and/or investigating agencies cannot torture any criminal despite his bad criminal record.

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A 20. In our considered view, in this case, the respondents have not violated the directions given by this court in *D.K. Basu's case* (supra).

B 21. The Board of three Doctors gave clear and categorical finding that the cause of death was due to ventricular arrhythmias consequent to old compromised heart in a person having hypertrophied heart (460 gms) myocardial fibrosis and atherosclerosis of coronaries. A person having heart weight of 460 gms. myocardial fibrosis and coronary atherosclerosis has high risk of sudden death with or without provocation.

C 22. The Board of Doctors further examined the injuries and came to the conclusion that *all injuries present over the body were antemortem, recent in duration and were caused by blunt force. All injuries were simple in nature and were insufficient to cause death individually as well as collectively in ordinary course of nature.*

D 23. In the instant case, the deceased was arrested at 1.30 pm on 4.8.1999 and he was taken to the ESI hospital at 3.10 pm on the same day where he was declared brought dead. The distance between the place from where the accused was arrested and the ESI Hospital is about 96 kms., therefore, it seems that from the point of arrest till the ESI hospital, the deceased was travelling in the car all the time and on complaint of uneasiness he was taken to the ESI hospital. We have carefully examined the matter in great detail and with extreme care.

E 24. In view of the report of the Board of Doctors and the Sub-Divisional Magistrate inquiry, it is difficult to reach at any other conclusion except that Mohd. Yunus had died because of his serious heart disease.

F 25. In the facts and circumstances of the case, no interference is called for. This appeal is accordingly dismissed.

H B.B.B.

Appeal dismissed.