



LAW COMMISSION OF INDIA

ONE HUNDRED AND THIRTEENTH REPORT

ON

INJURIES IN POLICE CUSTODY

JUSTICE K. K. MATHEW



D.O. No. F. 2(4)/85-LC
CHAIRMAN
LAW COMMISSION
GOVERNMENT OF INDIA
New Delhi-110 001.
Dated the 29th July, 1985

My dear Minister,

I am forwarding herewith the One Hundred and Thirteenth Report of the Law Commission on "Injuries in Police Custody—Suggested Section 114B, Evidence Act".

The subject was taken up by the Law Commission on its own. The need for taking up the subject is explained in paras 1.1 and 1.2 of the Report.

The Commission is indebted to Shri P. M. Bakshi, Part-time Member, and Shri S. Ramaiah, Member Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,
Sd/-
(K. K. MATHEW)

Shri A. K. Sen,
Honourable Minister of Law and Justice,
New Delhi.

Encl : 113th Report.

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CHAPTER 1

INTRODUCTORY

1.1. The Indian Evidence Act, 1872 on which a comprehensive report has already been forwarded by the Law Commission,¹ seems to need amendment in the light of certain observations made by the Supreme Court in a recent judgment.² The Supreme Court had to deal with a highly shocking incident of torture of a suspect in police custody, who died within almost six hours of his arrest by the police. A trial of the concerned police officer and his superior resulted in conviction for culpable homicide not amounting to murder. In the course of its judgment, the Supreme Court passed strictures about the treatment meted out by the police to the detained suspect and felt constrained to go to the length of suggesting an amendment in the law of evidence, in regard to the burden of proof in such cases. Geresis.

1.2. Taking note of the Supreme Court judgment, the Law Commission of India decided to take up the subject on its own and to examine whether there is need for reform of the law on the subject.

1.3. In order to facilitate a consideration of the subject, the Law Commission had prepared and circulated a Working Paper setting out the present position and the gist of the Supreme Court judgment and discussing the need for amendment. The Commission had invited views from interested persons and bodies and the public on the Working Paper.³ The Commission is grateful for all those who have, in response to the Working Paper, sent in their comments. A gist of the views expressed in these comments will be given in a later Chapter of this Report⁴.

¹Law Commission of India, 69th Report (Indian Evidence Act, 1872).

²*State of U.P. v. Ram Sagar Yadav* (Criminal Appeal No. 69 of 1975, decided 22nd January, 1985). A.I.R. 1985 S.C. 416 (March-April) : (1985) 1 Scale 108.

³Law Commission of India, Working Paper on Injuries in Police Custody : Suggested Section 114B Evidence Act (14 June 1985).

⁴Chapter 4, *infra*.

CHAPTER 2

THE PROBLEM

The facts in the Supreme Court case.

2.1. The facts of the case decided by the Supreme Court which has been mentioned above¹ lie in a very short compass. A farmer from U.P. named Brij Lal had some difference with his neighbour. The neighbour filed a complaint against Brij Lal for the offence of cattle trespass. It appears that the complaint was unfounded and false. The police officer concerned started demanding bribe from Brij Lal for hushing up the matter and persistently repeated his demand. Ultimately, in order to escape the false charge, Brij Lal offered a sum of Rs. 100 to the constable. The constable was not satisfied with this amount and Brij Lal complained to the Superintendent of Police, who forwarded the case for inquiry to the Station House Officer, Hussainganj. Enraged at the boldness of Brij Lal, the Station House Officer, Hussainganj decided to teach Brij Lal a lesson and sent two other constables to bring him to the police station. It was at 10.00 A.M. in the morning that Brij Lal was brought to the police station. By noon, he was in a critical condition and had to be taken in a state of shock to the Additional District Magistrate. Brij Lal could not even walk into the courtroom. The Additional District Magistrate went out into the varandah and found that Brij Lal had 19 injuries on his body. The Additional District Magistrate was able to record the dying declaration of Brij Lal. In the dying declaration, Brij Lal charged the Station House Officer and two police constables with having caused the injuries by beating him up while he was in police custody. Brij Lal died in the evening.

The prosecution and conviction

2.2. In due course, the Station House Officer and the two police constables were prosecuted and convicted in the Court of Session of the offence of culpable homicide not amounting to murder and sentenced to imprisonment for seven years. On appeal to the High Court, however, they were both acquitted. Presumably, the High Court did not consider the evidence on record as sufficient to prove the case against them beyond reasonable doubt. Against this judgment of the High Court of Allahabad, the State Government of U.P. appealed to the Supreme Court and it was in this appeal that the Supreme Court had to pass very stringent strictures against the police officers concerned. Allowing the appeal, the Supreme Court observed that it was ironical that a person who had complained against the police of misconduct was done to death by policemen and their superior officer. The Supreme Court also observed that the persons charged in this case had committed the more heinous offence of murder, and not merely the lesser offence of culpable homicide not amounting to murder of which the trial court had convicted them.

Observations of the Supreme Court

2.3. The observations made by the Supreme Court in its judgement stress the need for adopting a different approach where an incident involves an allegation against the police. These observations have a direct relevance to the law of evidence. The Supreme Court was anxious that the handmaids of law and order do not use their position for oppressing innocent citizens who look to them for protection. The court noted with regret that police officers, "bound by the ties of a kind of brotherhood", often prefer to remain silent in such a situation, and "when they choose to speak, they often put their own gloss upon the facts and often pervert the truth". The Court emphasised the extremely peculiar character of a situation where a police officer alone, and none else, can give evidence regarding the circumstances in which a person in police custody comes to receive injuries. This situation naturally results in paucity of evidence and probable escape of the guilty persons. It was for this reason that the Supreme Court called for a re-examination of the law of burden of proof. The Supreme Court was anxious that police officers who commit atrocities on persons in the custody of the police do not escape punishment for want of evidence. [The following observations occur towards the end of the Supreme Court judgement :—

"Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of

¹Paragraph 1.1, *supra*.

paucity or absence of evidence. Police officers alone, and non else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by the ties of a kind of brotherhood, they often prefer to remain silent in such situation and when they choose to speak, they put their own gloss upon facts and upon the truth. The result is that persons on whom atrocities are perpetrated by the "police in the *sanctum sanctorum* of the police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the legislature so that handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection. It is ironical that in the instant case, a person who complained against a policeman, for bribery, was done to death by that policeman, his two companions and his superior officer, the Station House Officer. The vigilant Magistrate, Shri R. C. Nigam, deserves a word of praise for dutifully recording the dying declaration of the victim which has come to constitute the sheet anchor of the case of the prosecution."

2.4. The observations made by the Supreme Court must be read with the facts of the case. The entire incident happened in a short span of a few hours. Nineteen injuries in all were found on the body of the victim Brij Lal. There was a positive history of an illegal and improper demand from the victim. The dying declaration also gave indication of the guilt of the police officers. In these circumstances, the fact that the High Court acquitted the accused must have deeply pained the Supreme Court which, if one may say so with respect, was not slow in taking note of the peculiar situation in which the prosecution finds itself when it desires to get a judgement of conviction against a police officer guilty of atrocities on a person in a custody.

Comment

In the very nature of things, one can rarely expect eye witnesses to such incidents, excepting police officers. As regards police officers themselves, their reluctance to give evidence disclosing all the facts was noted by the Supreme Court. The situation is of an unusual character—which is the reason why the Supreme Court thought it proper that the Government should have a second look at that part of the law of evidence which deals with the burden of proof. We proceed to examine the present law and the need for amendment.

CHAPTER 3

THE PRESENT LAW AND THE NEED FOR REFORM.

The present law

3.1. In order to facilitate a consideration of the question it is convenient to deal first with the present law. The law relating to burden of proof and connected matters is contained in a few short sections¹ of the Indian Evidence Act, 1872. It is unnecessary to go into detail, but the general principles deductible from these sections is that it is for the prosecution to prove the essential elements of the offence charged and if those essential elements are proved, it is for the accused to prove that the case falls within the general or special exceptions to criminal liability recognised by the criminal law. In certain special situations, this position does undergo modifications. For example, where a particular fact is within the special knowledge of a person, it is for him to prove it. Thus, a person charged with ticketless travel has the burden of proving that he had a ticket with him at the time of travelling. As the law stands at present, however, there is no special provision as to the burden of proof where the injuries were received by a person in police custody.

Question of amendment considered

3.2. The question to be considered is this. Is it desirable to enact a special rule for such a situation? *Prima facie*, there seems to be a need for such a provision in the light of the incidents that are reported from time to time. Some incidents might possibly go unreported also. It may be mentioned that in the context of the law of rape as contained in the Indian Penal Code, Parliament has recently enacted a special provision addressed to the situation of women who are sexually exploited by persons in whose custody or under whose charge they might have been placed for the time being. The provision became necessary in view of reported incidents of abuse of position and transgression of the law by such persons. Incidents of torture during police custody are analogous to the above mentioned situation and amount to abuse of official position, resulting in a transgression of the law. It is, therefore, a matter for serious consideration if there should not be inserted a suitable provision addressed to the problem which the Supreme Court had to deal with.

Need for amendment

3.3. It appears that the best course would be to give power to the court to draw a presumption where bodily injuries (fatal or otherwise) are caused to a person while he is in the custody of the police. The court may be given a discretion to presume that the injuries were caused by the police officer having custody of the person during the relevant period. The vesting of such a power in the court would be justified because, as regards a person in police custody, it is unlikely that any one else would have the opportunity of inflicting injuries. The presumption should, of course, be discretionary and rebuttable so that extraordinary situations can be taken care of. The formula "may presume" would be appropriate for the purpose. At the same time, it may be desirable to furnish to the court some guidelines in administering such a provision as the proposed provision would be a qualification to the general rule of burden of proof.

¹Sections 101 to 114, Indian Evidence Act, 1872.

CHAPTER 4

WORKING PAPER AND COMMENTS RECEIVED THEREON :

4.1. As already stated,¹ the Commission circulated a Working Paper on the subject, for eliciting informed public opinion. In the Working Paper, a broad outline of a provision which could be inserted in the Indian Evidence Act, 1872, as section 114B, was put forth in the following form: Proposal put forth
in the Working
Paper

“114B. (1) In a prosecution (of a police officer) for an offence constituted by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during a period when that person was in the custody of the police, the court may presume that the injury was caused by the police officer having custody of that person during that period.

(1) The court, in deciding whether or not it should draw a presumption under sub-section (1), shall have regard to all the relevant circumstances, including in particular, (a) the period of custody, (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence, (c) the evidence of any medical practitioner who might have examined the victim, and (4) evidence of any magistrate who might have recorded the victim's statement or attempted to record it”.

4.2. In its Working Paper, the Law Commission of India invited views on the above proposal. In particular, suggestions were also invited as to whether any further guidelines should be set out in the proposed statutory provision, apart from those already suggested in the outline of a provision as given in the Working Paper. Views invited

The Commission also invited suggestions as to whether the proposed provision should cover, within its scope, any legal proceeding before a court in which a question of the nature discussed above is at issue, so that the provision may apply even where the proceeding is not by way of prosecution of the police officer.

4.3. The comments² received on the Working Paper without exception agree that there is need for an amendment of the law as was suggested in the Working Paper. Some of the comments have made a few other points of legal or administrative character, which are outside the scope of this Report^{2a}. But so far as the question of inserting a specific provision of the nature put forth in the Working Paper is concerned, the comments are unanimously in favour of such a provision. General trend of
the comments

4.4. It may be mentioned that the comments (all favouring the proposal) are as under:— Analysis

- (a) State Government of Orissa.³
- (b) Three senior Police officers⁴, namely,
 - (i) the Inspector General of Police, Crime, Punjab,
 - (ii) the Deputy Inspector General of Police, C.I.D., Manipur and
 - (iii) the Director General and Inspector General of Police Karnataka. [The D.I.G. C.I.D. Manipur has, in his letter to the Commission added that the Legal cell of the Department was itself considering the question of moving the Government for such an amendment].
- (c) An Advocate from Muzaffarnagar, U.P.⁵

¹Paragraph 1.3, *supra*.

²All comments received upto 19th July, 1985 have been covered in the above analysis.
2.a. See also paragraph 4.6. *infra*.

³Law Commission File No. F 2(4)/85-L.C. (S. No. 51) letter of 12 July, 1985.

⁴Law Commission File No. F. 2(4)/85-L.C. (S. No. 38) and (S. No. 40) and (S. No. 55) letter dated 24-6-1985.

⁵Law Commission File No. F. 2(4)85-L.C. (S. No. 36).

- (d) editor of the Hindi Weekly *Samachar-Sausriti*, Kanpur (U.P.)¹;
- (e) a social worker from Kolar District, Karnataka²,
- (f) several private individuals, who have not only welcomed the proposal for amendment, but also narrated several incidents of torture by the police within their knowledge³.

Proceedings other than prosecutions 4.4. On the question whether the proposed amendment should cover legal proceedings other than prosecutions of police officers, the comments received on the Working Paper have not expressed any specific views, except the State Government of Orissa which does not favour such a widening of the proposal⁴.

Other guidelines whether needed 4.5. The comments received on the Working Paper are also silent on the question whether any further guidelines should be incorporated in the proposed statutory provision, (besides those that were already suggested in the Working Paper of the Commission) as to the principles on which the court should draw a presumption of the nature under discussion.

Additional suggestions received examination 4.6. In some of the comments received on the Working Paper, a suggestion has been made that every accused person, on arrest, should be got medically examined and injuries, if any, on his person should be noted. This point has been elaborated particularly by the Director General and Inspector General of Police, Karnataka, who has, after referring to sections 53-54 of the Code of Criminal Procedure 1973, suggested that in every case where a person arrested by the police has injuries on his person, the police must get him⁵ medically examined. He has further added that the proposed provision should apply even where the "custody" is illegal and that every person arrested or taken charge of by the police must have the right to get himself medically examined by the police and that section 53, Cr. P.C. should be amended for the purpose.

We shall revert to this point later⁶.

¹Law Commission File No. F. 2 (4) 85-L.C. (S. No. 49).

²Law Commission File No. F. 2(4)85-L.C. (S. No. 54) letter in Kannada, dated 11-7-1985.

³Law Commission File No. F. 2(4) 85-L.C. (S. No. 33, 37, 39, 41, 42).

⁴Law Commission File No. F. 2(4) 85 L.C. (S. No. 51) letter dated 12 July, 1985 (State Government of Orissa).

⁵Law Commission File No. F. 2(4)85-L.C. (S. No. 55) letter dated 24th June 1985 from Director General and Inspector General of Police, Karnataka.

⁶Paragraph 5.4, *infra*.

CHAPTER 5

RECOMMENDATION

5.1. On a consideration of all aspects of the matter and in the light of the Amendment needed comments received on the Working Paper, the Law Commission has come to the conclusion that there is need for amending the Evidence Act and inserting therein the proposed section. The Commission is aware that there may be special circumstances, where the drawing of a presumption against the police officer having custody of a person who is found to have received injuries may not be justified. However, such situations can be taken care of by the court not exercising its discretion. The reasons in support of amendment as set out earlier¹ are adequate. It may also be added, that support for the proposed amendment has come not only from the public,² but also from a few senior police officers³.

5.2. In the circumstances, the Law Commission recommends the insertion of a new section, say, as section 114B, in the Indian Evidence Act, 1872, as under:—

“114B. (1) In a prosecution (of a police officer) for an offence constituted by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during a period when that person was in the custody of the police, the court may presume that the injury was caused by the police officer having custody of that person during that period.

(2) The court, in deciding whether or not it should draw a presumption under sub-section (1), shall have regard to all the relevant circumstances, including, in particular, (a) the period of custody, (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence, (c) the evidence of any medical practitioner who might have examined the victim, and (d) evidence of any magistrate who might have recorded the victim's statement or attempted to record it”.

5.3. The expression “custody” as used in the provision suggested above will, in our view, cover custody following upon legal as well as illegal arrest. We do not think that the expression needs any definition for that purpose.

5.4. We have taken note of the fact that some of the comments received on our Working Paper³ have raised the question of medical examination of the arrested person immediately on his being taken into charge or custody by the police. The point, no doubt, deserves consideration. However, as the matter has several aspects, it will be convenient if it is considered when the Code of Criminal Procedure, 1973, is revised. Of course, if the problem assumes serious dimensions, or acquires urgency, it can be taken up even independently.

¹Chapter 3, *supra*.

²See Chapter 4, *supra*.

³Paragraph 4.6, *supra*.

APPENDIX

RECOMMENDATION IN RESPECT OF OTHER ACTS

Sections 53-54 of the Code of Criminal Procedure 1973 (medical examination of the accused) should be examined in order to consider whether it should be provided that every person arrested or taken charge of by the police must on arrest be got medically examined¹.

(K. K. MATHEW)
CHAIRMAN

(J. P. CHATURVEDI)
MEMBER

(Dr. M. B. RAO)
MEMBER

(P. M. BAKSHI)
PART-TIME MEMBER

(VEPA P. SARATHI)
PART-TIME MEMBER

(S. RAMAIAH)
MEMBER SECRETARY

DATED 29TH JULY, 1985.

¹Paragraph 5.4 *Supra*