

This is a case of custodial death of Jag Narain Mishra son of late Shiv Dutt Mishra of Bharauli, P.S. Shahpur, district Bhojpur, in district jail Ara. Facts of the matter briefly are as follows.

The deceased was in judicial custody in connection with GR 3050/91, Trial No. 1759/06 under sections 457 and 380 IPC. He had been remanded to custody vide custody warrant dated 17.8.2007 and lodged in district jail Ara. It is said that on 30.8.2007 he had gastric trouble for which he was shifted to the jail hospital. He was given medicines on 1.9.2007 and 2.9.2007 and his condition improved. On 3.9.2007 at 4 AM he allegedly had a fall in the toilet of the hospital. A day earlier on 2.9.2007 also he had allegedly fallen from the veranda of the hospital from a height of three feet and suffered injuries in his head. His neck and back also got scratches. As a result of his fall in the morning of 3.9.2007 in the toilet he again suffered injuries in his head. He was shifted to the Sadar Hospital Ara for treatment and as his condition was serious, referred to PMCH Patna. However, he could not be immediately moved to PMCH as permission of the District Magistrate was required as per circular of the Home Commissioner dated 18.7.2007. The District Magistrate's permission was received on 4:45 PM. At 5:10 PM he died. All this happened on 3.9.2007.

The wife of the deceased, Srimati Manju Devi, filed complaint before the Commission alleging that her husband was killed by the Jail Superintendent Shri Ghanshyam Ram and others. A case being Ara Town P.S. Case No. 239/07 was instituted but it was not being investigated. Neither her statement nor that of any other witness was being taken. The applicant sought Commission's intervention by way of CBI enquiry. The applicant enclosed photocopies of newspaper reports with the complaint.

Report was called for. SP Bhojpur vide his letter no. 2392/CR dated 14.7.2009 informed the Commission that as per supervision of the Dy.SP (Headquarters) Shri Rajesh Tripathi, the deceased was a patient of gastritis and he used to have fits. He had fall which caused injury in the back of his head for which he was treated but he died. Final report has been submitted in case no. 239/07 as 'mistake of fact'.

Not satisfied, the Commission directed the SP Bhojpur to submit case diary and other relevant reports particularly the post mortem report, inquest report etc. I.G. Prisons was also directed to cause an independent enquiry either by himself or by a senior official and submit report. SP Bhojpur has not responded to the said direction. IG Prisons, however, has sent enquiry report of Shri Jai Shanker Prasad, Superintendent Central Jail Buxar. We are of the view as the complaint is

directed against another Jail Superintendent, it would have been in the fitness of things to cause an enquiry by some senior official if the IG Prisons could not spare time for the same. Be that as it may, along with the said enquiry report, photocopies of the hospital records, inquest report, post mortem report, report of the Magisterial enquiry among other things have been sent. These documents are sufficient for coming to a conclusion on the question as to whether the deceased died a natural death as a result of injuries sustained in the fall – as asserted on behalf of the administration – or he died as a result of assault and the resultant injuries – as claimed by the complainant; and secondly, whether proper medical aid was provided to him which could save his life.

In fairness to the administration it may be mentioned that the enquiry officer, namely, Superintendent, Central Jail Buxar examined a number of witnesses on 4.10.2009 all of whom stated that the deceased was a patient of gastritis; he was admitted to jail hospital; and he was not beaten by any jail staff or convict. These witnesses made parrot-like statements and on prima facie reading appear to have been made under some influence. It may be mentioned here that in course of his enquiry the Magistrate (Sub-divisional Judicial Magistrate, Ara) also examined witnesses. We shall soon refer to their version.

At this stage we may mention that as per the earliest version coming from the mouth of Srikrishna Mishra and Baldev Pathak at the time of inquest on 4.9.2009 at 3:30 PM, the deceased died in course of treatment of the injuries suffered as a result of assault. As a matter of fact, Shri Jiut Singh, the Executive Magistrate who made the inquest mentioned in column five of the inquest report that he had found injuries on the occipital region, the head was bandaged. He also found bleeding injuries on the neck and back of head, besides black mark resembling injury on the soles of both the feet. Both Srikrishna Mishra and Shri Jiut Singh stood by the statements before the Sub-divisional Judicial Magistrate (SDJM) in course of the enquiry Srikrishna Mishra (who happens to be brother of the deceased) stated that on 3.9.2007 he along with others came to jail at 7AM and found the Jail Superintendent, Shri Ghanshyam Ram there. He was asked to submit written application and told that he could meet Jag Narain Mishra at 8AM. At that time he had seen the informant of the case (in connection with which the deceased was lodged in the jail) Ram Narayan Mishra talking to the Jail Superintendent. Ram Narayan Mishra was allowed entry while he (Shri Krishna Mishra) remained outside. He heard noise inside jail. After sometime he saw the deceased being carried by three wardens in a naked condition. There were blood stains over the body and he was unconscious. He later learnt that the deceased was taken to the hospital. He went to a lawyer and when he finally reached the

Sadar Hospital he was told that the patient had been referred to PMCH. He saw bandage on the head and black mark on the soles of the feet. The wife of the deceased (applicant herein) was asked on the following date to take the dead body.

Shri Jiut Singh, the Executive Magistrate, who held the inquest was also examined by the SDJM. In course of enquiry he vouchsafed the entries in the inquest report saying that he found black marks on both the soles and injury on the right side of the head. He also saw injuries on the neck and back of the head. Blood was oozing. Blood was all over the body and the patient was totally naked. He stated that the injuries were cut injuries.

The statement of Shri Krishna Mishra finds corroboration from the hospital records. As mentioned above, it is the case of the administration that the deceased had gastric trouble on 30.8.2007 and 31.8.2007. His condition improved after he took medicines. However, on 2.9.2007 he fell from the verandah. He had another fall in the toilet in the next morning at 4 O'clock. It is said that the deceased was suffering from vertigo which caused the fall. It is common knowledge that vertigo manifests at considerable height. Even if it is assumed that the deceased fell from the veranda as a result of vertigo, it is highly unlikely that the fall would result in injuries of the type and description mentioned by the witness referred to above.

More importantly, the hospital record reveals that when the deceased was brought to the Sadar Hospital Ara on 3.9.2007 at 6 AM, his condition was found to be "quite serious". The doctor attending on him immediately referred him to PMCH. On the same day his condition deteriorated which is evident from the further entry in the hospital record to the effect "very very serious – bachne ki ummeed nahin". The doctor advised immediate shifting to PMCH to "save his life". At 4:55 PM the deceased was found to be gasping. At 5:10 PM he was declared clinically dead.

It may be recalled that as per the statement of Shri Krishna Mishra, Ram Narayan Mishra who being the informant of the case was clearly an adversary of the deceased, was seen entering inside the jail with the permission of the Jail Superintendent. In the words of the said witness "soon thereafter there was commotion inside and the deceased was brought outside being carried by three wardens. There was blood all over the body". The attending circumstances clearly suggest that the deceased was beaten inside the jail as a result of which he suffered injuries on the head rendering his condition "quite serious" in the morning of 3.9.2007. The deceased had already recovered from his gastric troubles after taking medicines, and even if it is assumed, that he had two falls –

one in the evening of 2.9.2007 and the other in the early morning of 3.9.2007, it is unlikely that those falls would cause injuries of the type described by the witnesses and mentioned in the inquest report. There is no other explanation as to how his condition, became suddenly "quite serious" and "very very serious" so much so that the doctor opined that there was little chance of his survival. It is clear that something untoward had happened inside the jail and there is a clear possibility of the event taking place with the connivance of the jail authorities, may be in collusion with the deceased's adversary Ram Narayan Mishra.

At this stage it is worth mentioning that the post mortem report also mentions about lacerated wound in occipital region of head and abrasion over the upper part of the body. On dissection of skull, the brain and meninges were found lacerated, subdural haematoma was present. The Sub-divisional Judicial Magistrate who examined the doctors of the jail hospital, Sadar hospital and those who had held the autopsy noted in his report that none of the doctors had opined that such injuries were possible due to fall only. On consideration of the statements of the witness and the materials on record the Magistrate came to the following conclusion –

"Summing up the matter on the basis of material collected during enquiry I come to the conclusion that jail authorities are squarely responsible for this unfoward incident, firstly they either knowingly or deliberately are even as per chance failed to prevent the occurrence which took place inside the jail, secondly, they did not take the matter seriously and was sent to the hospital and hospital admitted him as unknown patient, thirdly he was referred to by doctors very orally but jail authority instead of making efforts to save his life got themselves busing in writing letters here and there and the patient was allowed to die as tragic death and it seems that the doctors also were influenced showing the time of death as enquiry witness no. 8 Devendra Pal has categorically stated that he had died by 2 P.M. itself. The efforts made by jail authority during the period was to save their skin rather to save the patient. The nature of injury on the head seems of other options except that he was given a severe blow on the head which became fatal due to different gravity and also due to no treatment in this regard."

It may be mentioned that the said enquiry was held under section 176(1A) Cr.P.C. Being a statutory enquiry, and by a Judicial Officer, the findings deserve due weight and consideration.

As noticed by the learned Magistrate in his report (quoted hereinabove), the deceased was admitted in the Sadar Hospital as "unknown" – a fact borne out by the hospital records – which shows the casual and indifferent manner in which the deceased was dealt with by the jail doctors. As per the record, he was brought to the Sadar Hospital by Shri Satyendra Prasad, warder and one

Abhimanyu Kr. Singh of District Jail, Ara and in the ordinary course it was expected that the identity of the deceased should have been disclosed. It was only later that his identity was disclosed which is borne out by the endorsement in the bed head ticket to the effect "(identity) reported later on" followed by the name of the deceased with his parentage etc. The doctor after noting that the patient was quite serious prescribed some routine medicines and referred him to the PMCH. It is not known whether he was administered the medicines. At 10:30 AM the doctor noted that the condition was "very very serious" and there was no chance of survival ("bachne ki ummeed nahin"). We are inclined to think that the deceased was not looked after well and dealt with in a routine manner. Had proper care been taken by the jail and hospital authorities, perhaps, his life could be saved despite the beating which he had received in the jail.

It is, thus, not only a case of highhandedness on the part of the jail authorities but also case of negligence – on the part of both the jail authorities and the doctors and staff of the hospital for which the applicant i.e. the widow of the deceased must be compensated. We are also of the opinion that criminal case was wrongly closed as 'mistake of fact'. On the report of the SDJM, it is a fit case for further investigation in terms of section 173(8) of the Cr.P.C. We are further of the opinion that the conduct of the jail authorities and the hospital authorities should be probed and depending on the outcome of the probe, the amount of compensation be recovered from the persons found prima facie responsible for the death of the deceased.

We accordingly call upon the Secretary, Home (Special) Department and the IG Prisons to submit their response as to why directions of the nature mentioned hereinabove be not issued. The response should be filed in the Commission within four weeks.

Justice S.N. Jha
Chairperson