

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.** CD-249/10

Case of **GHURAN MUKHIYA**

This file is about the custodial death of Ghuran Mukhiya son of Mohit Mukhiya, an inmate of Rosera Sub Divisional Jail on 07.05.2009.

The post mortem report prepared by a team of three doctors found the following injuries on dissection of the body of the deceased:- (i) sub cutaneous haematoma in the right side of parieto-temporal-frontal region of scalp; (ii) congestion in neck and trachea (iii) sub cutaneous haematoma in the left side of the chest (iv) fracture of 1st, 2nd, 3rd ribs on the left side of the chest and (v) laceration of left lung.

In the opinion of the doctors the death was caused due to shock and haemorrhage resulting from the "above mentioned multiple injuries". The doctors also opined that injuries were caused by hard and blunt substance.

The Judicial Magistrate in his enquiry report under section 176(1A) Cr.P.C. also came to the conclusion that deceased Ghuran Mukhiya died as a result of injuries on various parts of the body.

Notice was issued to the family of the deceased supplying them copies of the relevant reports pursuant to which the deceased's son Raj Kumar filed appeared along with advocate. Shri U.K. Sharan, AIG Prisons appeared on behalf of the Jail Administration. The matter was finally heard on 03.05.2012.

Attention of Shri U.K. Sharan was drawn to the injuries found on the body of the deceased – as noted in the post mortem report – suggested that he was subjected to assault. He submitted that the injuries could be caused by fall as well. He stated that none of the witnesses examined by the Magistrate stated about any assault on the deceased. The witnesses examined by the Jail Superintendent on the other hand spoke about the deceased falling on the pile of bricks which apparently caused the injuries. Shri Sharan pointed out that no external injury was found on the body of the deceased.

The Commission went through the statements of the witnesses recorded by the Jail Superintendent and the Judicial Magistrate. It is true that there is no positive evidence on the point of the assault or violence to the deceased. It is to be mentioned that the witness examined by the magistrate were jail officials or doctors. In any view, a case is decided on the basis of positive evidence – and in the instant case there is positive medical evidence suggesting that the deceased was subjected to assault and violence.

As regards the witnesses who were examined by the Jail Superintendent and who spoke about the deceased falling on the pile of bricks, the Commission finds that their statements are inconsistent and contradictory and therefore no reliance can be placed on their version.

The Commission is not persuaded to accept the version put forward on behalf of Jail Administration about the injuries being caused by fall on the bricks considering the nature of internal injuries found on the body of the deceased on dissection. Not only three ribs were found fractured, there was also laceration of left lung. Besides, the mouth and nose were also bleeding. The doctors not only mentioned about the "injuries" caused by hard and blunt substance, they mentioned the hard and blunt substance as "weapon" which caused the multiple injuries.

The Commission is satisfied that the injuries found on the person of the deceased have not been satisfactorily explained by the Jail Administration. The deceased having died in custody, inside jail, the Administration was required to explain the injuries and the cause of death. The explanation offered by the Administration not being satisfactory and the relevant facts having been withheld from the Commission, a case for compensation is made out.

In the facts and circumstances, the Commission is of the view that compensation of rupees one lakh would meet the ends of justice.

The Commission would accordingly direct Secretary, Home (Special) Department to pay compensation of rupees one lakh to the next-of-kin of the deceased Ghuran Mukhiya and submit compliance report within six weeks.

Copy of this order may also be sent to Raj Kumar son of late Ghuran Mukhiya for information.

Date: 04.05.2012

Justice S.N. Jha
Chairperson