

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

File No **BHRC/COMP.** CD: 81/11; 2606/11 & 354/12

Case of **RUDAL RAJAK**

The subject matter of these three files is the same and they are thus disposed of together by this common order.

File No. CD-81/11 was opened on receipt of intimation about custodial death of under-trial prisoner Rudal Rajak on 17.6.2011. File No. Comp-2606/11 was initiated suo motu on the basis of a news item in the Hindustan Times relating to registration of FIR (Beur P.S. Case No.147/11) against SHO Patrakar Nagar P.S., Assistant Jailor of Adarsh Central Jail Beur, and four others for causing custodial death of said Rudal Rajak on the direction of CJM Patna. Later, his wife Asha Devi filed complaint which was registered as File No. Comp.354/12. All the files were tagged and taken up for hearing together.

Briefly stated, Rudal Rajak was arrested by Patrakar Nagar P.S. Police headed by S.I. Sanjay Kumar Thakur in the morning of 14.6.2011 in connection with Sessions Trial No.192/07. Prior to production before the magistrate for the purpose of remand, he was taken to the Government Hospital, Rajendra Nagar, Patna for medical examination and report. On reaching the Adarsh Central Jail, Beur pursuant to the remand order, he was subjected to 'health screening' and injuries were found on his body. In view of the injury report he was straightway sent to Jail Hospital for treatment. On 17.6.2011 – on the recommendation of Medical Officer Incharge of the Jail Hospital he was sent to PMCH for better treatment. He died in the PMCH on the same day.

In File No.2606/11 the Commission called for reports from IG Prisons and Sr.S.P. Patna. Sr.S.P. Patna submitted the report of SDPO Phulwarisharif dated 12.7.2012. IG Prisons did not submit any report. However, on the direction of the Commission in File No. CD-81/11, he brought on record copies of the relevant reports viz. injury report of Rajendra Nagar Hospital dated 14.6.2011, treatment record of the PMCH, 'Health Screening' report of Dr. J.B. Singh of Beur Jail Hospital, dated 15.6.2011, report of the Medical Officer Incharge, Beur Central Jail dated 19.9.2011, inquest report dated 18.6.2011, post mortem report dated 19.6.2011, the magisterial enquiry report dated 13.10.2011 and final opinion of cause of death dated 28.11.2011. The matter was finally heard in presence of Asha Devi wife of deceased Rudal Rajak, Sr.S.P. Patna and AIG Prisons Sri U.K. Sharan who appeared on behalf of the Jail Department, on 27.8.2012.

SDPO Phulwarisharif in his aforesaid report stated that Rudal Rajak was arrested in connection with Sessions Trial No.192/07 under sections 395/397 IPC in the morning of 14.6.2011 at 8:05 A.M. – as per Station Diary Entry (SDE) no.521 dated 14.6.2011. As per SDE no.522 he was forwarded for the purpose of judicial remand at 8:15 AM. There was no mention of any injury in the Station Diary. The remand order of the magistrate also does not refer to any physical abuse by the members of the escort party.

In its order dated 23.7.2012 the Commission observed that Station Diaries are hardly expected to disclose the factum of assault by the police party and existence of injury on the body of the accused. Similarly, it is common knowledge that remand orders in magistrate's court are, usually, routinely drawn by the court staff on which Magistrates simply put their signature. And therefore, neither the Station Diary nor the Magistrate's remand order can be conclusive of the question as to assault or existence of injury on the body of the accused/deceased.

As a matter of fact, the injury report issued by the Medical Officer, Government Hospital, Rajendra Nagar, Patna on 14.6.2011 clearly refers to the following injuries on the body of the deceased – (i) sub-conjunctival haemorrhage and (ii) whole body tremor. It is relevant to mention that the injury report was issued on the request of ASI Jai Kumar Singh of Patrakar Nagar P.S. prior to his production before the magistrate. In other words, before the deceased was produced before the magistrate for remand, he was taken to Rajendra Nagar Hospital which prima facie shows that the deceased needed urgent care/treatment.

Indeed, the report of Medical Officer Incharge, Adarsh Central Jail, Beur dated 19.9.2011 clearly states that when the deceased was brought to jail, the Doctor on duty made following endorsement on the margin of the custody warrant – "came with medical (physical) fitness certificate and injury report". The report, further, clearly states that prior to his admission in jail, Rudal Rajak was injured and the Jail Doctor immediately started his treatment. The 'Health Screening' made by Dr. J.B. Singh of the Jail Hospital on 15.6.2011 also mentions that there were injuries on the person of the deceased although he described the injuries as minor. The record further reveals that on the recommendation of the Medical Officer Incharge of Beur Jail, on 17.6.2011 he was sent to PMCH for better treatment. As mentioned above he died later in the day.

The doctor who held post mortem found multiple abrasion on the right chest, postero-lateral surface of right chest and both buttocks. He also found bruises on the right shoulder and right side of chest. He opined that the injuries

could have been caused respectively by sliding on hard and rough surface and by hard and blunt object. Curiously, he also mentioned that he could have sustained those injuries during those convulsions during transportation to PMCH from jail as – on perusal of the hospital record – it appeared that he was in convulsive fits, altered behaviour and sensorium.

Apparently, the doctor was swayed and influenced by the record. It is relevant to mention here that it is the stand of the Department that the deceased was a drug-addict and after he was taken into custody, he started having convulsions because he was not getting drug. In course of bouts/fits of convulsions he sustained those injuries which had nothing to do with the cause of death. The Department in support of its stand places reliance on the opinion of the doctor as to cause of injury as mentioned in the post mortem report, the final opinion about cause of death and the magisterial enquiry report.

As regards the magisterial enquiry report, the Commission would observe that the enquiry was conducted by an Executive Magistrate in violation of the provisions of Section 176(1A) of the Cr.P.C. which contemplates inquiry by a Judicial Magistrate in all cases of death by violence in police or judicial custody.

On perusal of the documents the Commission is inclined to think that officials concerned tried to give a twist to the episode. According to the Commission, even if the Department's version of the prisoner being a drug addict and non-consumption (of drug) manifesting in fits and convulsions is accepted to be true, it is difficult of believe that the injuries viz. bruises and abrasions allegedly on the body would have caused death. No doubt, as per the final opinion about the cause of death dated 28.11.2011 the deceased was said to have died of "chronic liver disease" but in the post mortem examination report it was not said so and the opinion seems to be an afterthought. Even if it is accepted that he had liver ailment that may not be cause of death. It may be mentioned that the viscera examination report also was negative.

The Commission is inclined to think that the deceased was subjected to physical assault after his arrest in the morning of 14.6.2011 which caused some internal injuries described as "sub-conjunctival haemorrhage" in the very first report issued by the Rajendra Nagar Hospital. It is relevant to mention that as per the record of the PMCH he had pain in the whole body and he was in semi-unconscious state. The Commission does not think that even a drug addict would deteriorate so fast as to slump in semi-unconscious condition within three days. The description of the injuries was apparently downplayed. The fact that the applicant was taken to Rajendra Nagar Hospital first, prior to his production before the Magistrate for remand and admission in jail, speaks volume about the

'treatment' received by him at the hands of the police. The Commission concludes, in the facts and circumstances, that the deceased Rudal Rajak died of assault by the police officials and also, may be, by the jail officials which precipitated his death.

It may not be out of place to mention that Beur P.S. Case No.147/11 under sections 341, 342 and 302/120B IPC has been registered on the direction of the CJM Patna on court complaint by the deceased's brother Raju Rajak in case no. 2151C/2011 against the police and the jail officials and the matter is pending. The Commission is of the view that irrespective of the result of the case, the family of deceased Rudal Rajak is entitled to compensation. Rudal Rajak was aged 28 years. His death has turned his wife and minor children into destitutes. Monetary compensation may bring some solace to them for the loss which otherwise cannot be compensated.

In the facts and circumstances, the Commission would direct the state government through Secretary, Home Department to pay compensation of rupees two lakh to deceased's wife Asha Devi within six weeks.

The government may recover the amount from the salary of the officials concerned in accordance with law.

Let copy of this order be sent to Principal Secretary, Home Department, Government of Bihar for compliance.

Put up in the first week of February 2012 awaiting compliance report.

Copy of this order may also be sent to I.G. Prisons, and Sr.S.P. Patna and Asha Devi, deceased's wife, for information.

Date: 14.09.2012

Justice S.N. Jha
Chairperson