

Court no. - 16

Hon'ble Rajan Roy,J.

Hon'ble Jaspreet Singh,J.

ORDER

Tomorrow is Gandhi Jayanti and we are reminded of the words of the Father of our nation Mahatma Gandhi whose heart bled for the weak and downtrodden and we quote his words as under:-

"तुम्हें एक जन्तर देता हूँ। जब भी तुम्हें संदेह हो या तुम्हारा अहम् तुम पर हावी होने लगे तो यह कसौटी आजमाओ:

जो सबसे गरीब और कमजोर आदमी तुमने देखा हो उसकी शकल याद करो और अपने दिल से पूछो कि जो कदम उठाने का तुम विचार कर रहे हो वह उस आदमी के लिये कितना उपयोगी होगा। क्या उससे उसे कुछ लाभ पहुँचेगा ? क्या उससे वह अपने ही जीवन और भाग्य पर कुछ काबू रख सकेगा ? यानि क्या उससे उन करोड़ों लोगों को स्वराज्य मिल सकेगा जिनके पेट भूखे हैं और आत्मा अतृप्त है ?

तब तुम देखोगे कि तुम्हारा संदेह मिट रहा है और अहम् समाप्त होता जा रहा है। "

This is a time to strengthen our resolve to live up to the ideas which "Bapu" stood for, but, unfortunately ground realities are very different from the high values propagated and practiced by the Father of our Nation.

Today, we find ourselves constrained to take cognizance of an extremely sensitive and important matter touching upon the basic

human/fundamental rights of the citizens of this country and residents of this State based on certain newspaper items and programs shown in the audio-visual media, according to which, a young girl of 19 years, a resident of District - Hathras in the State of U.P. was subjected to gang rape and in this process not only her bones were broken but her tongue was also mutilated presumably with the intent that she may not disclose the names of the perpetrators of this abominable crime. The incident has evoked disgust amongst the Public at large as is borne out from newspapers, TV channel programs and has been condemned by all. Another unfortunate aspect of the matter is that the victim fought for life for almost two weeks but ultimately she succumbed to on 29.09.2020 at Safdurjung Hospital, New Delhi. It is said that the alleged perpetrators of the crime have been apprehended and some SIT has been formed by the State Government to investigate the matter. However, for the moment, we are concerned with what has happened thereafter. The incidents which took place after the death of the victim on 29.09.2020 leading up to her cremation, as alleged, have shocked our conscience, therefore, we are taking suo moto cognizance of the same.

As per the newspaper items and electronic media reports, the dead body of the victim was taken to her native village but surprisingly and painfully enough it was not handed over to the family members so that the last rites of the deceased victim could not be performed as per prevalent customs and religious inclinations in a decent and dignified manner. Based on the aforesaid news items and reports, we have also come to know that not only the body was not handed over to the family members i.e. her father, mother, brother or sister, it was cremated with the help of some other persons. Moreover, the cremation took place at about 2:00 - 2:30 AM and from the aforesaid reports and news items what comes out is that the family of the deceased victim followed Hindu traditions, according to which, last rites are not performed after sunset and before

day break. The newspaper reports and the electronic media program/video clippings show that the family members kept demanding for the body and also informed the authorities that as per traditions followed by them, cremation cannot take place after sunset and before day break, yet, the District Authorities got the cremation performed, contrary to the traditions which the family followed. As per newspaper items and electronic media reports, the cremation is said to have been performed forcibly and without the consent of the family members. However, certain officers of the State Government have given statement in the newspapers and electronic media that cremation was performed with the consent of the family members and they were present during it. The electronic media reports and news items published in newspapers have belied such statements made by the State Authorities. In this regard we have taken note of a news reported in Indian Express, Lucknow edition dated 01.10.2020 with the headline " **U.P. Police out in full force to cremate Hathras women, away from family**". As per the said report, the moment the body of the deceased victim left Delhi's Safdarjung hospital at 9:30 PM on Tuesday to a hurried cremation in a Hathras village 200 kilometers away at 3:30 AM on Wednesday, it was marked by a disregard to protocol and high handedness by a Police force that did not let her family perform her last rites. According to the said report, the 19 year old Dalit women died at 06:55 AM on Tuesday at Safdarjung Hospital where she had been shifted from Aligarh on Monday night as her condition had deteriorated consequent to the gang rape and other atrocities afflicted on her by the accused. After post mortem, the body was released and taken to Hathras in an ambulance. The family told the Indian Express, they were not informed, instead, accompanying the body in the vehicle was an Uttar Pradesh Police Constable apart from the driver. The father of the victim said "We had been waiting all day to take her home, do the rituals, the last rites. The Police did not inform us deliberately."

The report further goes on to say that even as the body was on its way, the District Authorities and Police started preparations at the woman's village for a late night funeral. Logs of wood were arranged, lights of the cremation ground switched on and the road to the victim's home heavily barricaded. The report also mentions about statement of the Superintendent of Police that the body was handed over to the family and the Administration only provided logistical support to transport the body and in fact the father told him more than once that the time cremation was done, would not matter. However, the same report mentions about the statement of the father of the victim that "There was hardly any conversation on the way to the village, there was just silence; we were so overwhelmed." The news report further goes on to mention that by the time the ambulance reached the village at least 3 layers of barricades had been put up between the main road and the victim's home. When the ambulance stopped 100 meters from the woman's home that is when the first flare up took place between the local residents and the Officials. The report mentions an Official acknowledging on condition of anonymity that there were instructions to wrap up the cremation at night to prevent a "law and order" situation in the morning. The deceased victim's brother is stated to have said that "The ambulance headed straight to the cremation spot. Her mother fell on their feet, the women from the family cried on the bonnet. They folded our hands." Her mother said "Let me put haldi on her, let me take her home one last time" but no one heard then. The report mentions the time 1:00 AM - 3:30 AM to state that the family refusing to cremate the body and the District Authorities and Police Officer's adamant, the conversation became heated. It then quotes the victim's brother saying " At one point, Police personnel got aggressive and pushed, kicked some relatives who were trying to intervene. That's when we became so scared that we locked ourselves in. We were afraid we would be lathi charged." The brother added that all of them stayed inside, his

parents, brother, sisters and other relatives. For 2 hours they were not even sure that their sister had been cremated.

The report then mentions the presence of the District Magistrate Praveen Kumar Laxkar and S.P., Hathras, Vikrant Vir as also Additional SP Prakash Kumar, Sadabad Circle Officer Bhram Singh, Ramshabd Circle Officer, City, Surendra Rao, and Circle Officer Sikandarao and Joint Magistrate Prem Prakash Meena besides 200 personnel of the PAC and forces from 11 Police Stations of the area. The report records a contrary version of the District Authorities referring to a video of three men throwing wood into the fire to counter the claim that the family members were not involved in the cremation. However, one of the men in the video, the woman's paternal uncle told The Indian Express that he had been "coerced" to attend. The 40 year old said that "We were outnumbered by the police... They said we have to attend; they didn't give us an option. We were scared. If they wanted to include family members, they could have allowed the brother and father, but they chose who they wanted." The report also mentions about the deceased victim's father saying that he was under the impression that his assent was asked only for the post mortem and for the body to be released from the hospital.

The report refers to a statement given by the Additional Director General (ADG), Law and Order, Shri Prashant Kumar to the media at Lucknow that "The cremation was done in the presence of family members and with their agreement... The body was decomposing and that is why the family members agreed that cremating it late night itself would be better."

The report mentions the time 3:30 AM to state that still afraid to leave their home, the girl's brother told The Indian Express "It appears my

sister has been cremated, the police aren't telling us anything. Why are they doing this?"

To similar effect are other newspaper reports such as in the Hindustan Times, Lucknow edition dated 01.10.2020 "**Hathras Cops cremate rape victim by stealth**". We may also refer to another news item in The Times of India, Lucknow edition dated 01.10.2020 under the heading "**Cops cremate victim in dead of the night**" at internal Page 6 of the newspaper. The news reported in the said newspaper is on the same lines as referred herein above. We may also refer to another newspaper item published in daily newspaper Amar Ujala, Lucknow edition dated 01.10.2020 under the heading "पुलिस ने रात ढाई बजे किया हाथरस की बिटिया का अंतिम संस्कार, एस.आई.टी. ने शुरू की जाँच।"

In this very context we may also refer to an electronic media program shown on India TV channel by the name "**Aaj ki Baat**" where the anchor Shri Rajat Sharma dwelled on the issue of alleged forcible cremation of the deceased victim at length and in the said program videos which were recorded on the spot at the time the deceased victim's body arrived in the village and her cremation indicating the forcible cremation without the family members being allowed to participate, that too, in the midst of the night contrary to the religious practices followed by the family, have been shown. The family members were shown as stating that cremation is not carried out after sunset and before day break and that the body of the deceased should be taken to their home, but this was not done.

The matter before us, of which we have taken suo moto cognizance is of immense public importance and public interest as it involves allegation of high handedness by the State Authorities resulting in violation of the basic human and fundamental rights not only of the deceased victim but also of her family members. As it is, the deceased

victim was treated with extreme brutality by the perpetrators of the crime and what is alleged to have happened thereafter, if true, amounts to perpetuating the misery of the family and rubbing salt in their wounds.

We, in this regard, may refer to the decision of the Hon'ble Supreme Court reported in **(1995) 3 SCC 248; Pt. Parmanand Katara Vs. Union of India (UOI) and Others**; where the Hon'ble Supreme Court had an occasion to consider various facets of the Right to Life enshrined under the Article 21 of the Constitution of India. It agreed with the contention of the petitioner that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death. It being the legal position, the deceased victim after her death was entitled to honourable, decent and dignified last rites/cremation to be performed by her family members in keeping with the customs and traditions followed by the family which as per the electronic media report was a follower of Sanatana/Hindu traditions, which, as alleged, was not allowed. If this is found to be true, then it would be a case of gross violation of basic human and fundamental rights enshrined under Article 21 and Article 25 of the Constitution of India in a most blatant and uncalled for manner something which is absolutely unacceptable in our country governed by Rule of Law and the Constitution.

We may also refer to a Division Bench judgment of this Court reported in **2009 (5) ALJ 376, Ramji Singh @ Mujeeb Bhai Vs. State of U.P. and others**; wherein also facets of Right to Life under Article 21 came up for consideration and it was held that this right extends to a dead person in a limited sense that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion which he professed. The State must

respect a dead person by allowing the body of person to be treated with dignity and unless it is required for the purposes of establishing a crime to ascertain the cause of death and be subjected to postmortem or for any scientific investigation, medical education or to save the life of another person in accordance with law, the preservation of the dead body and disposal in accordance with human dignity.

At this juncture it would be worthwhile to quote **Oscar Wilde** who said that "*Death must be so beautiful. To lie in the soft brown earth, with the grasses wearing above one's head, and listen to silence. To have no yesterday, and no tomorrow. To forget time, to forget life, to be at peace.*"

The matter before us also involves the rights available to the deceased victim and the family members under Article 25, as, last rites are performed as per religious traditions followed by the family, as already noticed. Reference may be made in this regard to a decision of the **Calcutta High Court dated 16.09.2020 rendered in the case of Vineet Ruiya Vs. The Principal Secretary, Ministry of Health and Family Welfare, Government of West Bengal and others.**

We may also refer to a judgment of the Bombay High Court in the case of **Pradeep Gandhi Vs. State of Maharashtra; 2020 SCC Online Bombay 662**; wherein Right to a decent burial commensurate with the dignity of the individual was reiterated as a recognized facet of the Right to life guaranteed under Article 21 of the Constitution.

In the light of what we have stated hereinabove, we are inclined to examine as to whether there has been gross violation of the fundamental rights of the deceased victim and the family members of the victim; whether the State Authorities have acted oppressively high handedly and illegally to violate such rights as if it is found to be so, then, this would be

a case where accountability will not only have to be fixed but for future guidance also stern action would be required.

The rights of individual citizens in the Country and the State especially that of the poor and the downtrodden such as the family members of the deceased victim and the deceased herself are paramount and the Courts of Law are under a bounden duty to see that the said rights available under the Constitution are protected at all costs and the State does not in its misplaced endeavour for political or administrative reasons transgress the limits of its powers to encroach and violate such rights, especially in the case of poor and the weak. We would like to examine as to whether the economic and social status of the deceased's family has been taken advantage of by the State Authorities to oppress and deprive them of their Constitutional rights?

We have also pondered over the heinous crime committed against the deceased victim and though an SIT has been constituted by the State Government in the matter, we leave it open for our consideration on future dates, as to the necessity of monitoring the investigation or getting it conducted through an independent agency as per law.

The seat of governance being at Lucknow and the high Police Officials posted in the office of Director General of Police, U.P. at Lucknow having justified the cremation at night, we have taken cognizance of the matter.

In view of the above, we direct the Senior Registrar of this Court at Lucknow to register a suo moto Public Interest Litigation with the title **In Re : Right to decent and dignified last rites/cremation**” and place it before the appropriate Bench having jurisdiction to hear Public Interest Litigations. The news items referred above shall be kept on records of the

proceedings. The State of U.P. through Additional Chief Secretary (Home), the Director General of Police, U.P., Lucknow, Additional Director General of Police, Law and Order, U.P., Lucknow, District Magistrate, Hathras, Superintendent of Police, Hathras shall be arrayed as opposite parties in the said Petition.

We appoint Shri Jaideep Narain Mathur, learned Senior Advocate and Shri Abhinav Bhattacharya, Advocate, who are practicing lawyers of this Court, as Amicus Curie and request them to assist this Court in the matter.

We further direct the Senior Registrar of this Court at Lucknow to obtain the addresses of The Times of India, The Indian Express, Hindustan Times, Amar Ujala, India TV, Aaj Tak, NDTV and TV Today and Times Now from the Director, Information, U.P., Lucknow and communicate this order to them with the request to produce relevant material and content, on the basis of which they have reported the matter in the newspapers and the electronic media about the aforesaid incident, in a Compact Disc or Pen Drive, for the assistance of this Court.

List this case on **12.10.2020**. On the said date the Additional Chief Secretary/Principal Secretary (Home), Director General of Police, U.P. Lucknow, Additional Director General, Law and Order, U.P., District Magistrate, Hathras, Superintendent of Police, Hathras shall appear before this Court and put forth their version with support of requisite material. They shall also apprise the Court about the status of the investigation relating to the crime against the deceased victim.

We further direct that family members of the deceased victim i.e. the father, the mother, brothers and sisters shall also be present before this Court so that this Court ascertains the facts and their version of the

incidents which took place at the time of cremation. In this regard we direct the District Judge, Hathras to ensure that the said family members are present before the Court on the date fixed.

To facilitate the aforesaid exercise the District and State authorities shall extend all necessary cooperation and facilities, including transportation, fooding, lodging and security, to the family members of the deceased victim.

The State Authorities are directed to ensure that no coercion, influence or pressure is exerted upon the family members of the deceased in any manner, by anyone.

The Senior Registrar of this Court at Lucknow shall communicate this order to all concerned through fax/ e-mail/ whats app and also in hard copy mode which shall be treated as sufficient notice of the proceedings upon them as also to the District Judge, Hathras for further communication to the family members of the deceased victim. The District Judge, Hathras shall send his report of compliance in this regard.

A copy of this order and the factum of a Suo Moto Public Interest Litigation having been registered under the orders of this Court shall be communicated to the Chief Standing Counsel, the Government Advocate as also to the Advocate General and the Amicus Curie appointed by us hereinabove which shall be treated as sufficient notice to the State Authorities.

(Jaspreet Singh,J.) (Rajan Roy,J.)

Order date:- 01.10.2020

Lokesh Kumar