

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL SUO MOTU CONTEMPT PETITION No. 1 of 2018

The Registrar (Judicial),
The High Court of Judicature at Bombay,
Bench at Aurangabad

...Petitioner

VERSUS

1. Shankar P. Rathod,
Police Head Constable,
age major occup. service
2. Shri Fufate, badge No. 1277,
Police Naik, age major occupation service
3. Shri Misal, badge No. 1490,
age major occup. service
4. Shri Yeole, badge No. 2157,
Police Constable, age major occup. service

Nos. 1 to 4 R/o Shivaji Nagar Police Station,
Beed Taluka and Dist. Beed.

5. The State of Maharashtra
through its Secretary,
Home Department,
Mantralaya, Mumbai – 32.

...Respondents

*Mr. P.B. Pawar, Advocate, and Mr. A.D. Ostawal, Advocate for
petitioner (Appointed)*

Mr. S.S. Gangakhedkar, Advocate for respondents No. 1, 2 & 3

Mr. V.B. Jagtap, Advocate for respondent No.4

Mr. R.D. Sanap, Addl. Public prosecutor for the Respt. No.5/State

CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.

Reserved on : 5th March, 2020

Pronounced on : 29th May, 2020

J U D G M E N T (Per : T.V. NALAWADE, J.)

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. Victim Shaikh Mohammad Shaikh Rustum was husband of one Smt. Shaikh Shama. He was living with Smt. Shama in village Koregaon Tahsil Kaij Dist. Beed. On 26th August 2015, he left home early in the morning in search of work as he was earning livelihood by doing labour work.

3. On 26th August 2015 at about 1.00 pm, Shaikh Raju, real brother of the deceased, received a phone call from his friend and the friend informed that Shaikh Mohammad was admitted in Government Hospital, at Kaij. After receiving this information Shaikh Shama, brother of the deceased and other relatives rushed to the Rural Hospital, Kaij. The condition of Shaikh Mohammad was serious, he had sustained injuries and from there, the police shifted Shaikh Mohammad to the S.R.T.R. Medical College & Hospital, Ambajogai. In the said hospital, the doctor declared that Shaikh Mohammad was already dead.

4. The widow, father and other relatives of the deceased tried to get information from police, who had taken Shaikh Mohammad to Kaij Hospital and Ambajogai hospital, but the police did not supply them the information. They only learnt that the deceased was arrested by police in a theft case. It was then informed that police were taking the deceased to aforesaid place, Koregaon, in a police van and, on the way, he jumped from police van and he sustained injuries. They did not believe the story given by the police. The relatives requested to register the crime against the police officers for offence of murder as they suspected that police had caused injuries which were found on the dead body. The police did not register the crime and then the widow, father and brother of the deceased filed Writ Petition No. 1451 of 2015 on 17th November 2015 in this Court. In Writ Petition No. 1451/2015 following reliefs were claimed:

- "B. *By issuing appropriate writ, order or direction in the like nature, this Hon'ble Court may kindly be pleased to transfer the investigation of the custodial murder of Shaikh Muhammed Shaikh Rustam from C.I.D., Beed to the Central Bureau of Investigation.*
- C. *By issuing appropriate writ, order or direction in the like nature this Hon'ble Court may kindly be pleased to direct the Respondents to register the F.I.R. against the guilty policemen namely (1) Shankar Rathod (Batch No. 502), (2) Phuphate (Batch No. 1277), (3) Misal (Batch No. 1490) and the police driver namely (4) Yevle (Batch No.*

2157) attached to the Shivajinagar Police Station, Beed for the murder of victim Shaikh Muhammed Shaikh Rustam.

- D. The Respondent No.1 State of Maharashtra may kindly be directed to pay the compensation to the relatives of the deceased victim namely Shaikh Muhammed Shaikhy Rustam i.e. his parents, both wives, and 5 minor children including 3 girls and 2 boys.*
- E. The Departmental Inquiry may kindly be ordered against the guilty policemen namely (1) Shankar Rathod (Batch No. 502), (2) Phuphate (Batch No. 1277), (3) Misal (Batch No. 1490) and the police driver namely (4) Yevle (Batch No. 2157) attached to the Shivajinagar Police Station, Beed for the murder of victim Shaikh Muhammed Shaikh Rustam and submit the Report before this Hon'ble Court.*
- F. Any other just and equitable order or relief, which this Hon'ble Court may deem fit and proper, may kindly be passed, in favour of the present petitioners."*

As per the record, present respondent No.1 Shri Rathod was Investigating Officer of the crime, in which Shaikh Mohammad Shaikh Rustum was arrested, was respondent No.7 in Writ Petition No. 1451/2015.

5. Writ Petition No. 1451 of 2015 was allowed on 16th August 2018 and the following reliefs were granted in the decision.

"II. The respondent State is hereby directed to pay an amount of Rs.5,00,000/- (Rupees Five lacs only) by way of compensation to petitioner No.1 and petitioner No.2, within three months from today.

- III. a) *We direct respondent No.3 Superintendent of Police, Beed to forthwith issue suitable directions for registration of crime in the concerned police station against respondent Nos. 7 to 10 i.e. Mr. Shankar H. Rathod (Buckle No.502), Mr. Rajaram V. Fufate (Buckle No.1277), Mr. Narayan D. Misal (Buckle No.1490) and police driver Mr. Yeole (Buckle No.2157), respectively, then attached to Shivaji Nagar police Station, Beed, for the offence punishable under Section 302 r.w. 34 of I.P.C.*
- b) *On registration of crime as above, we direct the respondent State of Maharashtra to entrust the investigation of the said crime to the State C.I.D. forthwith. The Additional Director General of Police, C.I.D. Pune, within fortnight from today shall appoint an Investigating Officer not below the rank of Superintendent of Police to investigate into the said crime. The over all supervision of further investigation into the said crime should be constantly monitored by the Additional Director General of Police, C.I.D. Pune, who shall seek report after fortnight.*
- c) *We make it clear that the investigating agency is at liberty to add the other persons as accused in the crime in the event their involvement in the crime is revealed during the course of investigation.*
- d) *We hope and expect that the investigation would be expedited and be taken to its logical end within a period of four months from today.*
- IV. *Registrar (Judicial) of this Court is hereby directed to file suo motu contempt proceedings against respondent No.7, the police head constable, Mr. Shankar P. Rathod, buckle No. 502, for violating the mandatory direction given by the Supreme Court in the case of D.K. Basu (supra). "*

In Writ Petition No. 1451/2015, direction was given to file *suo motu*

contempt proceedings for violation of directions given by the Hon'ble Apex Court in the case of ***D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416***. In view of this direction, the Registrar (Judicial) filed the present proceeding on 24th November 2018. He had not engaged any Counsel but on the first date i.e. on 24th November 2018, notice was issued in the *suo motu* Contempt Proceeding to Shri Rathod, Investigating Officer of the theft case. One Advocate was then appointed on 1st October 2018 and he was asked to prepare draft of the petition. When the draft of petition was filed and Advocate Shri Pawar, who was then representing the Registrar (Judicial), made a submission that not only Shri Rathod, I.O., but other persons like present respondents No.2, 3 and 4 were also responsible for the death of Shaikh Mohammad and contempt proceedings can be started against them also. To avoid delay, notice was issued to these respondents also. On 3rd December 2019, the learned Counsel for respondents No. 1, 2 & 3 filed reply affidavit. By order dated 2nd January 2020 for removing technical problem which may arise, notice was issued to respondent No.1 again in form No.1. Though respondent No.1 Rathod had filed reply affidavit on 3rd December 2019 itself, one more reply affidavit has been filed by Shri Rathod.

6. It is the contention of respondent No.1 Rathod that in Writ Petition No. 1451/2015 he was not served with notice of that proceeding and as the aforesaid order was passed by the Court in that proceeding behind his back, present proceeding cannot be continued against him.

7. It is the contention of respondent No.1 Rathod that he was in-charge of investigation of Crime Regn. No. 251/2015, which was registered in Shivaji Nagar Police Station, Beed, for offence of theft of mobile handset punishable U/S. 379 of the Indian Penal Code and it was registered on 25th August 2015 against unknown persons. He contended in reply that some persons produced the deceased in Shivaji Nagar Police Station, Beed, as the thief on 26th August 2015 at about 9.00 am. It is the contention that the deceased was not tortured by him and arrest panchnama was prepared after his production in the police station though entry was not made in the station diary of the police station. It is the contention that if there is breach of guidelines given by the Hon'ble Apex Court in **D.K. Basu's** case, (cited supra), the Hon'ble Apex Court can take cognizance of such matter and this Court has no jurisdiction to start the contempt proceeding. In additional reply filed on 20th February 2020, he contended that due to oversight, he

did not make entry of the arrest in station diary and he had no idea of the necessity of making such entry or the directions given in that regard. He contended that for the lapse committed by him, he regrets and he is tendering unconditional apology.

8. It is the contention of respondent No.1 Rathod that on inquiry with the deceased on 26th August 2015, the deceased disclosed the place where stolen property-mobile was kept, at his native place Koregaon Tahsil Kaij. It is the contention that as per the disclosure, the deceased was taken to Kaij Police Station first from Shivaji Nagar Police Station, Beed, at 10.30 am, on 26th August 2015, as Koregaon is situated within the territory of Kaij Police Station. It is the contention that no entries were made of this incident in the record of Kaij Police Station or Shivaji Nagar Police Station as there was urgency of investigation. It is the contention that as there was aforesaid urgency, no information was given to a friend and relatives of the deceased. It is also contended that due to urgency, before taking further steps, the deceased was not referred for medical examination and before taking any such steps, the incident took place and Shaikh Mohammad died in the incident.

9. In the reply, respondent No.1 Rathod has admitted that he was in-charge of the investigation of the crime and he further

admits that no entry of the incident and arrest of Shaikh Mohammad was made in the station diary of Shivaji Nagar Police Station, Beed. He also admits that intimation of arrest of the deceased was not given to friends or relatives of the deceased. He also admits that the deceased was not referred for medical examination after his arrest.

10. Respondent No.1 Rathod is relying only on the document like arrest panchnama to show that Shaikh Mohammad was in fact arrested in Shivaji Nagar Police Station, Beed. The arrest document is in the form prepared by the State Government. In this document, there is mention that Shaikh Mohammad was arrested on 26th August 2015 at 10.00 am in C.R. No. 251/2015, which was registered for offence punishable U/S. 379 of I.P.C. This form shows that the deceased was illiterate. He had attended only first standard class. It is mentioned in the form that the deceased had informed that he was living with his wife, family and address of Koregaon was given by him. Two panch witnesses like Prem Laxman Gujar and Ashok Abhiman Landge have signed on the form as panch witnesses. In addition to signature of Shri Rathod, signature of the deceased is appearing in *Deonagari* script and only name 'Mahammad' is there as signature on the form.

11. Crime Regn. No. 251/2015 was registered on the basis of report given by informant Shri Tejas Neharkar. The record shows that Tejas is not only Press Reporter but he is an Advocate also. The record shows that his real brother was working in Police Department. All these circumstances need to be kept in mind as on one hand, respondent No.1 Rathod is contending that some persons had produced the deceased in the police station on 26th August 2015 and, on the other hand, Tejas Neharkar is denying the case of police that he had produced the deceased in the police station.

12. The F.I.R. shows that the incident of theft of mobile handset of Tejas Neharkar had taken place on 25th August 2015 at about 6.30 am. The mobile handset was stolen from his house by somebody after entering his house at those hours. The crime was registered at 12.45 hours of 25th August 2015. The contents of F.I.R. show that the informant had no clue about the person, who had committed the theft and so he gave report against unknown person that he had entered his house and the theft was committed at about 6.30 am. The spot panchnama of the house of Tejas Neharkar was prepared on 25th August 2015 between 13.00 to 13.45 hours. In spot panchnama also, there is no mention that the informant had any clue about the thief.

13. There is copy of supplementary statement of Tejas Neharkar dated 22nd September 2015 on record. In this supplementary statement, Tejas contended that on 25th August 2015 after realizing that his mobile was stolen, he had gone to the house of Shri Rohite, a neighbour, as Rohite had fixed CCTV system at his house. He contended that he went through the CCTV footage of the system of Shri Rohite and he found that one unknown person had entered his house at the relevant time and he had left his house within no time. He contended that he had collected the CCTV footage in pen drive and said footage was shown by him to police. In F.I.R. or Panchnama, there is no mention of such CCTV footage and that record shows that the informant and police had no clue against the thief. The record, which was made available to this Court, does not show that there is such CCTV footage, even in record of investigation made of the offence of murder of Shaikh Mohammad.

14. In supplementary statement dated 22nd September 2015, the informant had contended that he had gone towards Shivaji Nagar Police Station, Beed, on 26th August 2015, at about 6.00 am and when he was passing by that side, he had noticed that 10-12 persons were standing inside the campus of the police station. He

contended that he had entered the campus and then he had noticed that one person was virtually tied by using rope and he was made to sit in the police station. He contended that he had taken photograph of that person and he was ready to produce that photograph before police. This statement dated 22nd September 2015 also does not show that the person, who was made to sit in police station, was the same person, who was seen by him in the CCTV footage collected from the system of Shri Rohite. In the statement dated 22nd September 2015, he further contended that at about 9.30 am, police had told him that the said person had admitted that he had stolen his mobile handset and steps were being taken for the recovery of that handset. There is no whisper about the SIM card, which must have been there in the mobile handset.

15. There is copy of statement of Shri Rohite dated 31st October 2015. In this statement, Shri Rohite contended that on 25th August 2015, CCTV footage from his system was collected by the informant and he had noticed that one unknown person had entered the house of the informant and he had probably committed offence of theft. He did not supply the CCTV footage to police.

16. The second supplementary statement of informant of Tejas Neharkar came to be recorded by police on 27th October 2015.

This statement shows that on 26th August 2015 at 6.00 am, he had seen a man sitting in-front of the entrance of the aforesaid police station and he had taken photograph of that person. Thus, Tejas changed his previous contention that he had noticed the person, who was found tied by using rope and who was made to sit inside the police station. In the statement dated 27th October 2015, he had informed that a photograph was taken of the said person by him and he was ready to produce that photograph if required by the police. In the last statement he contended that he was not in a position to produce that photograph. Thus, he changed his stand and it can be said that he wanted to help the police by contending that the photograph was not available with him.

17. The statement of informant Tejas and the contention of the police show that there is something which they want to conceal from the Court and there is some manipulation in respect of the incident of so called arrest of Shaikh Mohammad. At present there is no CCTV footage of the system of Rohite. There is no photograph with the informant to show that he had seen Shaikh Mohammad in the police station at 6.00 am and police never recovered the mobile handset of the informant. There is no statement of any person to the effect that he had found deceased at any place on 26th August

2015, he had knowledge about the incident, registration of the crime against him and he had taken the deceased to the police station on that morning. There is nothing to support the contention of police that the deceased was brought to police station by some persons on that morning. These circumstances are important as arrest of the deceased was not recorded in the station diary of the police station as per the form of the arrest. Form could have been prepared subsequently. If the deceased was brought to police station at 6.00 to 7.00 am by anybody, it was necessary to create some record in that regard. The arrest panchnama shows time as 10.00 am of 26th August 2015. There is nothing on the record to explain things, which could have taken place between 6.00 to 7.00 am and 12.30 noon of 26th August 2015. The absence of record, the non-compliance of the directions given by the Hon'ble Apex Court in ***D.K. Basu's*** case, (cited supra), has created serious doubt against police of that police station.

18. It is case of respondent No.1-Rathod that information was given by deceased about the stolen property and as the stolen property was concealed at a place from Koregaon, he and his colleagues were taking the deceased to Koregaon side. Though there is such specific case, there is no record like memorandum of

statement of the deceased. In the ordinary course, respondent No.1 Rathod would have prepared memorandum of such a statement in the presence of panch witnesses and then he would have taken panchas also with him to the place where stolen property was concealed. The absence of such record shows that there is no force in the defence taken that such statement was given by the deceased and for recovery of the stolen property, they were proceeding towards that spot. All these things show that there is something fishy and some mischief is done by police, respondent No.1 Rathod, Investigating Officer.

19. In Writ Petition No. 1451/2015 a direction is already given to register the crime and make investigation for offence of murder and, therefore, this Court is not making observations in detail about the incident described by respondent No.1 Rathod to explain the injuries sustained by Shaikh Mohammad. As there are aforesaid circumstances, this Court is feeling it necessary to mention some other important circumstances, which again show that respondent No.1 Rathod and his superior officers have not come with truth before this Court.

20. A copy of panchnama of police van bearing No. MH-23/F-5234 and photographs of this van taken from front side, left side,

right side, back side and from inside are available. The panchnama and the photographs show that van has separate entrance door on the driver side. There are two more doors to this van. One door is to the cleaner side and it is situated near front left wheel of the van. The third door is on the backside of the van. This record shows that the door on the cleaner side was a folding door and unless and until such door is pressed inside to fold it, it is not possible to make a way. This circumstance needs to be kept in mind as the story is given by respondent No.1 Rathod and his colleagues that after opening this door, deceased jumped through this space. The record further shows that the door situated on cleaner side and the door situated on backside were having facility of lock from outside. In ordinary course, police could have locked the door of cleaner side and backside from outside or they would have atleast closed doors by putting latches properly from outside. In that case, it becomes virtually impossible for anybody to open the doors from inside. In such a case, only the driver can go outside and then he can remove the latches or the locks and make it possible to open the said doors. There is no explanation about the said circumstance anywhere, in any record, including the record of investigation of offence of murder. All the circumstances, record of investigation of murder case show that whatever story was given by respondent No.1

Rathod, is accepted by police and the investigation or inquiry was not made fairly. It is unfortunate but it is a fact that these days, employees of department try to save their colleague in any way and for that they are ready to go to any extent. That can be seen in the police statements of colleagues of respondent No.1 Rathod, like Police Naik Misal, Police Naik Fufate and even driver. Police Naik Misal was aged about 27 years, Police Naik Fufate was aged about 32 years and Rathod was aged about 51 years. The story given by them shows that two of them were sitting towards cleaner side door but the deceased overpowered them, opened the door and jumped down from the running police van. Said story does not appear to be probable in nature. One more circumstance needs to be kept in mind. In the story itself, it is contended that the deceased was handcuffed and further, rope was also tied to see that he should not make an attempt to escape.

21. For the aforesaid reasons, this Court is discussing some circumstances mentioned in spot panchnama. It was prepared for the murder case, which could have been used for murder case and it is dated as 27th August 2015. This panchnama was drawn at about 7.30 to 8.10 am. This record shows that the incident took place on Beed-Kaij road. The tar road was having width of 22'.4"

and on either side of the tar road there was side *Patti* of 10 feet width, each. At the distance of 7'.4" from edge of the tar road, some bloodstains were found in the side strip at three places. No opinion of expert of science, in the field of physics was obtained to ascertain as to whether the deceased could have gone upto that distance after jumping if the vehicle was being driven with the speed of more than 60 Kms. per hour and when the vehicle was on the tar portion of the road. This circumstance shows that every attempt was made to see that respondent No.1 Rathod is believed.

22. The spot panchnama dated 27th August 2015 further shows that the tyre marks started at the distance of 64 feet from the aforesaid place and they had started on the tar portion of the road. The length of the tyre marks on tar portion of the road was around 23 feet and then the tyre marks were present on side strip situated on the same side, of the length of 20 feet. There is mention in the spot panchnama that from this spot at the distance of 2½ furlongs, there is the land and house of the accused. All these circumstances appear to be fishy. If there was the information already supplied and if they were proceeding towards the same side and there were other circumstances, there was no question of escaping from trial of the case. The record shows that at least two

crimes were registered against accused in the past and he was known to police.

23. For the aforesaid reasons, this Court is quoting the injuries, which were found on the dead body when the post mortem was conducted on 27th August 2015. The post mortem report shows that it was conducted between 2.30 pm and 5.30 pm of that day. The dead body was handed-over at 1.00 pm of 27th August 2015 for post mortem examination with the inquest panchnama, which was drawn between 11.45 am to 12.20 pm of the same day. This record shows that the height of the deceased was 153 cms and his weight was 55.900 Kgs. and he was having medium physic. This circumstance also need to be kept in mind as there is defence that he overpowered three police officers and then he jumped out of the running police van.

24. In post mortem report, following surface injuries are described:

- "1. *Lacerated-wound present over the posterior aspect of head in occipital region, 2mc above to occipital protuberance, 3 cm x 0.5 cm in length, scalp deep, irregular in shape, Horizontal in direction towards left with dark reddish colored blood adherent at site surrounded by graze abrasions in 4 x 5 cm. area*
- 2 *Contusion-present over the lower aspect of the chin, 4cm x 3 cm in size, horizontal in direction,*

Bluish in colour.

3. *Contusion present over the left ear pinna- 1cm x 1 cm in size bluish in color vertical in direction, circular in shape.*
4. *Grazed Abraded contusion- present over the left scapular region, posterior aspect, 7cm x 6 cm lateral to midline horizontal in direction, reddish blue in color.*
5. *Grazed Abrasion – present over the left scapular region, posterior aspect, upper part, 6 cm x 3cm in size, 8 cm lateral to midline horizontal in direction reddish in color.*
6. *Abraded contusion-present over the right scapular region from the tip of right shoulder joint, posterior aspect, 12cm x 4 cm in ize, horizontal in direction, reddish blue in color.*
7. *Multiple grazed abrasions-present over the right posterior upper back 7 cm lateral to midline of spine 20 cm x 7 cm in size reddish in color, varying in shape, vertically oblique in direction.*
8. *Grazed Abrasion-present over the right buttock posterior upper aspect, from right lateral aspect of buttock, 13cm x 9 cm in size horizontal in direction reddish in color.*
9. *Grazed Abrasion-present over the left buttock posterior medial aspect 9cm x 6 cm in size horizontal in direction reddish in color.*
10. *Lacerated- wound present over the left posterior side of heel on posterior aspect of size 3cm x 0.5 reddish in colour, vertical in direction.*
11. *Abrasion- right lateral aspect of thigh, upper part, 4 X 1cm, reddish, vertical in direction.*
12. *Graze abrasion-right lateral aspect of the elbow joint, 8x5 cm, reddish in colour.*
13. *Contusion-present over the right lateral aspect of the elbow joint, 5cm x 2 cm in size horizontal in direction bluish in colour*
14. *Contusion-dorsum of right hand, (on giving*

incisions collection of dark reddish colored blood adherent at site) of size 8cm x 7 cm. No e/o any bony injury.

15. *Multiple small Grazed Abrasions-distributed in 40cm x 6 cm area of right lateral aspect of the forearm, varying in direction, reddish in colour.*
16. *Contusion present over the left elbow joint with left side forearm 7 cm x 4 cm in size oblique upward in direction, bluish in colour, on giving incision dark colored blood adherent at site*
17. *Laceration-tip of right ring finger, medial aspect, towards middle finger with dried blood stains 2 cm x 1cm in size, dark red in colour.*
18. *Contusion present over the left dorsum of hand (wrist) 2 cm from wrist joint, 0.5 cm x 0.5 cm in size, bluish in colour, on giving incision dark colored blood adherent at site on giving incision injury beneath is 3cm x 2 cm in size.*
19. *Grazed abrasion present over the middle third of left forearm 6cm x 2cm reddish in colour horizontal in direction.*
20. *Contusion present over the right anterior upper two third and lower one third of leg 4cm x 2cm in size reddish in colour horizontal in direction.*

All injuries were fresh, recent and ante mortem in nature.

**Multiple incision taken on upper and lower limbs with palms, soles, back and buttock to find any deep seated injury after examination And No evidence of injuries found except at right anterior aspect of leg showing evidence of fresh reddish bruising in subcutaneous tissue "*

In post mortem report, following internal injuries are mentioned:

"1. HEAD

- | | | |
|----------|-----------------------|--|
| a | Scalp findings | 1. Subscapular hemorrhage with huge hematomma present over the both parietal, |
|----------|-----------------------|--|

temporal and occipital region with dark reddish colored blood adherent at site

- b Skull (Describe fractures here and show them on body diagram enclosed)*
Linear displaced communicated fracture from 5 cm above to internal occipital protuberance of left side of occipital region present 9 cm vertical, 9 cm left side, 4 cm right side and 3cm below inward toward inner side of the skull. Posterior cranial fossa showing linear displaced communicated fracture of 4cm in length horizontal in direction medial to foremen magnum e/o infiltration present
- c Meninges- Meningeal spaces and cerebral vessels (Haemorrhages and its location, abnormal smell etc. be noted) – Intact and congested with evidence of sub-dural hemorrhage on right parieto-temporal, left parietal, occipital region, reddish in colour. No e/o hemorrhage in sagital sinus.*
- D Brain 1000 gms. Congested and edematous, findings evidence of petechial hemorrhages in grey and Wt.: matter of cerebrum and cerebellum, pons and medulla. No e/o of intra-ventricular hemorrhages."*

In post mortem report, opinion about the time of death and cause of death is given as under :

- " (i) Probable time since death*
(Keep all factors including observations at inquest)--
More than 24 hours before doing post mortem
(ii) Cause and manner of death – The cause of death
to the best of our knowledge and belief is :-

(a) *Immediate cause -*

Postmortem findings are suggestive of death due to Head Injury in the form of fracture of skull and subdural hemorrhage however viscera preserved for chemical analysis and organs for histopathology preserved, opinion reserved.

(b) *Due to – Final Opinion Reserved.*

(c) *Manner of Death – Unnatural*

(d) *Which of the injuries are ante mortem & which of the injuries post mortem – All the injuries were ante mortem in nature*

(e) *And duration, if ante-mortem ? Fresh and recent*

(f) *Manner of causation of injury – Unnatural*

(g) *Whether injuries (Individually or collectively) are sufficient to cause of death in ordinary course of nature or not : Final opinion reserved."*

Final opinion about cause of death is given by the doctor who conducted histopathology and that is as under :

"Death due to Head injury in the form of fracture of skull and subdural haemorrhage with cerebral and cerebellar edema with interstitial pneumonitis and focal pulmonary edema."

25. In Writ Petition No. 1451 of 2015 report was submitted by the District Superintendent of Police (LCB) that it was not case of murder. After considering the record of investigation, this Court

directed to register crime and make investigation of the murder case.

26. It can be said that the truth is being concealed from this Court, even by the relatives of the deceased. It is the contention of the widow of the deceased, Smt. Shama, that the deceased had left home, the residential place situated at Koregaon at 7.00 to 8.00 am of 26th August 2015. Considering the time required for covering that distance and for reaching Beed, it can be said that the deceased could not have reached Beed at the time mentioned by Tejas, the informant of theft case. Similarly, the maps collected by the District Superintendent of Police from Google of the road connecting Beed and Koregaon and approximate time given for covering that distance also show that attempt is made to support respondent No.1 Rathod. When the distance is mentioned as 76 Kms. and the road is having sufficient width, which is mentioned above, the time required is mentioned as 2 hours 22 minutes. It can be said that this is done to see that the time given of leaving the police station, at 10.30 to 11.00 am matches with the time of the incident of so called jumping by the deceased out of the police van. In any case that circumstance needs not be discussed in detail in the present matter. These circumstances are discussed only to ascertain as to whether

intentionally false record, like arrest panchnama, was prepared subsequently and steps were taken to cover up the things of atrocities of police. The aforesaid circumstances show that there was certainly some mischief done by the police. Only because respondent No.1 Rathod was the Investigating Officer and in the past in Writ Petition No. 1451/2015 the direction was given to start proceedings of contempt against him only, this Court is avoiding the action against others.

27. The aforesaid discussion shows that there is no convincing record about the time when the deceased was brought to police station. There is no convincing record to show that the deceased was real suspect in Crime No. 251/2015. There is no plausible explanation about the circumstance that he was tied by using rope and he was handcuffed right from beginning. The story given by respondent No.1 Rathod and other police that prior to the arrest panchnama, he had made an attempt to escape and he had run out of the police station, is also not believable. All police statements in that regard are belated and there is no whisper about such incident from Tejas, the informant of theft case. All these circumstances and absence of making record of the arrest and other entries in police station diary have created probability that the

deceased became victim of atrocities of police and many things were done subsequently to cover up the things. Only because the deceased was shown as suspect in previous one or two cases, such approach against the deceased was not expected from police machinery. These circumstances tell as to how specific directions of the Hon'ble Apex Court given in **D.K. Basu's** case, cited supra, are important.

28. In paragraph 35 of **D.K. Basu's** case, cited supra, the Hon'ble Apex Court has given the requirements, which are to be followed in all cases of arrest and detention till the legal provisions are made in that behalf as preventive measures and relevant directions are as under:

"(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up,

shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or and through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that

time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and is copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board."

29. In the present matter in view of the aforesaid circumstances, this Court holds that there was no compliance of

directions quoted above. Though in direction No.8 time of 48 hours is given in view of the Amendment made to the Criminal Procedure Code to incorporate directions and to give more protection to the accused, time should be as per the provision of Sections 53 & 54 of the Criminal Procedure Code.

30. In paragraph 36 of the ***D.K. Basu's*** case, (cited supra), consequences of failure to comply the aforesaid requirements are mentioned and that para is as under:

"36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for Contempt of Court may be instituted in any High Court of the country having territorial jurisdiction over the matter."

31. In ***D.K. Basu Vs. State of West Bengal and others (2015) 8 SCC 744*** while discussing the importance and mandatoriness of provisions of the Protection of Human Rights Act, 1993, the Hon'ble Apex Court has made observations with regard to the custodial tortures. It is observed that the custodial torture is a naked violation of human dignity and degradation that destroys self-

esteem of the victim and also does not spare the personality. It is observed that custodial torture is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backwards. It is observed that despite recommendations for banishing torture from the investigative system, incidents are growing of torture and deaths in police custody and prisons. Necessity of fixing CCTV in police station is also mentioned in this case by the Hon'ble Apex Court. It appears that in the present matter there was no CCTV system in the police station and this circumstance is also misused by the concerned police.

32. This Court has carefully gone through the Contempt of Courts (Bombay High Court) Rules, 1994. The relevant facts showing that action was taken by the Court after noticing the breach of directions given in *D.K. Basu's* case, cited supra, are mentioned. Subsequent relevant facts like filing of the proceeding by the Registrar (Judicial) and then giving opportunity to contemner are mentioned. In the case of *Daroga Singh Vs. B.K. Pandey [2004 AIR (SC) 2579]*, the Hon'ble Apex Court has laid down that the High Court has power to proceed with the contempt proceedings in a summary manner and only thing which can be ascertained in such proceeding is, whether reasonable opportunity was afforded to the

contemner for defending the matter. The necessity of verifying material available before it is also mentioned in this case. This Court has mentioned all the relevant material in the present matter. Due to aforesaid circumstances and the material and to create a lesson for similar minded police officer, this Court holds that the apology cannot be accepted of respondent No.1 Rathod in the present matter and he needs to be given penalty of imprisonment.

33. Today's date was informed to the Counsel of respondent No.1 and he was asked to see that respondent No.1 makes himself available on video conferencing to have his say on the point of sentence. Learned Counsel Shri Gangakhedkar for respondent No.1 informed that he has instructions to make submissions on the point of sentence and his client is on duty. So, the hearing was given to him on the point of penalty.

34. After hearing learned Counsel Mr. Gangakhedkar for respondent No.1 and learned Counsel Mr. Ostawal for the petitioner, we proceed to pass the following order.

ORDER

I) We hold that the respondent No.1 Shankar P. Rathod -

contemnor is guilty of having committed Criminal Contempt on account of his acts of commission and omission, as referred above.

- II) We impose punishment of simple imprisonment for a period of 1 (one) month to be suffered by respondent No.1- contemnor and also to pay fine of Rs.2000/- (Rs. two thousand only), in default, to suffer simple imprisonment for 1 (one) week more.
- III) The show cause notice and the Rule is made absolute in above terms as against respondent No.1 Shankar P. Rathod.
- IV) The proceeding is dropped as against other respondents/ contemnors.
- V) The execution of the sentence as against respondent No.1 Shankar P. Rathod is suspended for the period of 60 (sixty) days in view of the peculiar circumstances prevailing like Corona virus pandemic and regular Courts are not functioning. After the period of sixty days, necessary steps are to be taken for execution of the decision.
- VI) The Registry is to provide copy of this Judgment to respondent No.1 free of costs.
- VII) Fees of appointed advocate Mr. A. D. Ostawal for the petitioner-Registrar (Judicial) is quantified @ Rs.8,000/- (Rs. eight

thousand only), which is to be given from the High Court Legal Services Sub- Committee, Aurangabad.

VIII) Fees of Rs. 2000/- (Rs. Two thousand only) is to be given to previous learned Counsel Shri P.B. Pawar, who was appointed to represent the petitioner-, which is to be given from the High Court Legal Services Sub- Committee, Aurangabad.

IX) On the request made by learned Counsel Mr. A.D. Ostawal for the petitioner, the fees, which was to be given to him, is to be given to the Hon'ble Chief Minister Relief Fund, created for Covid 19 purpose, or it may directly be given to the Collector, Aurangabad, for the Hon'ble Chief Minister Relief fund created for the aforesaid cause.

X) The Contempt Petition is disposed of accordingly.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE

Madkar