

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
16.10.2020	02.12.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12608 of 2020

and

W.M.P(MD)Nos.12224 and 12225 of 2020

Santhosh

... Petitioner

Vs.

- 1.The District Collector,
Madurai District,
Madurai - 625 020.
- 2.The Revenue Divisional Officer,
Revenue Divisional Office,
Usilampatti, Madurai District.
- 3.The Tashildar, Taluk Officer,
Peraiyur Taluk, Madurai District.
- 4.The Superintendent of Police,
District Police Office,
Moonrumavadi, Madurai District.
- 5.The Deputy Superintendent of Police,
Peraiyur Sub-Division, Madurai District.
- 6.The Inspector of Police,
Peraiyur Police Station, Madurai District.
- 7.The Sub-Inspector of Police,
Saptur Police Station, Madurai District.
- 8.The Chief Medical Officer,
Government Hospital,
Usilampatti, Madurai District.
- 9.The Dean, Government Rajaji Hospital,
Madurai, Madurai District.
- 10.The Deputy Superintendent of Police,
District Crime Branch, Madurai.

(R10 suo motu impleaded vide Court order dated
06.10.2020)

11.The State of Tamil Nadu,
Rep.by the Secretary to Government,
Home (Police) Department,
Fort St.George, Chennai-09.

... Respondents

(R11 suo motu impleaded vide Court Order
dated 16.10.2020)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to exhume without any further delay the petitioner's younger brother Ramesh's body from the graveyard situated at Ananikkaraipatti, Vandarai Post, Peraiyur Taluk, Madurai District and direct the 9th respondent to conduct postmortem by a team of three senior professors from forensic departments of Madurai, Theni and Sivagangai Government Medical College Hospitals under the full video coverage with the help of a scientific officer within a stipulated time that may be fixed by this Court and submit the preliminary report of the said postmortem and the video tape to this Court.

For Petitioner : Mr.Henri Tiphagne
For Respondents : Mr.S.Chandra Sekar,
Additional Public Prosecutor.

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

2.The petitioner is a permanent resident of Anaikkaraipatti, Vandarai Post, Peraiyur Taluk, Madurai District. He belongs to scheduled caste community. His elder brother Idhayakani fell in love with a relative by name Punitha and in view of the objection raised by her parents, he is residing elsewhere. Punitha's family had given a police complaint as if she had been abducted. The Sub Inspector of Police, Saptur Police Station is enquiring into this complaint. Since Idhayakani and Punitha could not be traced, the petitioner and the other members of the family were periodically directed to appear for enquiry before the investigating officer. The petitioner alleges that all the family members have been subjected to physical abuse.

3.While so on 16.09.2020 at about 06.00 p.m., the local police came to the petitioner's house. The petitioner would allege that he was beaten up. When they visited the house again after a while, the petitioner's younger brother Ramesh was at home. He was beaten up and taken to custody. He did not return home. On 17.09.2020 at about 06.30 a.m., Ramesh was found hanging on a tree in the nearby hillock. According to the petitioner, Ramesh was tortured by the local police and that he died as a result. In order to cover up the crime, the police have made it appear as if he committed suicide by hanging from the tree.

4.The petitioner lodged a complaint before Saptur Police Station on the same day. It was registered as Crime No.1960 of 2020 under Section 174(3) Cr.P.C. The body was brought down and removed only at about 03.30 p.m. on 17.09.2020. According to the petitioner, after giving an assurance that proper postmortem will be conducted at Government Rajaji Hospital, Madurai, the body was taken to Usilampatti Government Hospital and a farce of an autopsy was conducted. The petitioner's family was persuaded to accept the body and since it could not be taken home, the petitioner's family put the body in a coffin and buried it. This petition had been filed seeking a direction to the respondents to exhume the body and conduct a second postmortem.

5.Status report was filed by the Deputy Superintendent of Police, District Crime Branch, Madurai District. When the matter was taken up for hearing, the prosecution did not oppose the petitioner's request. Thereupon, a direction was issued by this Court on 08.10.2020 for conducting second postmortem at the burial site itself. Dr.Selvamurgan, Head of the Department, Faculty of Forensic Medicine, Tirunelveli Medical College, Tirunelveli and Dr.P.Prasanna, Associate Professor, Faculty of Forensic Medicine, Tirunelveli Medical College, Tirunelveli, were called upon to do the second postmortem. The entire second postmortem was also directed to be videographed. The petitioner's counsel as well as an expert were permitted to be present. The second postmortem was accordingly done.

6.Though the prayer sought for by the writ petitioner had been complied with and the matter could be disposed of by recording the same, the learned counsel appearing for the petitioner submitted that certain directions deserve to be issued. He pointed out that since allegations have been made specifically against the local police, it would not be in the fitness of things to permit the investigation to be conducted by the Deputy Superintendent of Police, District Crime Branch, Madurai District. He wanted the investigation to be transferred either to CBI or CBCID.

7.I find the request for transferring investigation to be fully justified. In the case on hand, the FIR itself contains specific allegations against the local police. Therefore, interest of justice certainly demands that the investigation is transferred to some other agency. It is however not a case in which CBI should be entrusted with the said responsibility. It would suffice if investigation of the case in Crime No.1960 of 2020, registered on the file of Saptur Police Station, Madurai District, is entrusted to CBCID, Madurai District. The Additional Director General of Police, CBCID is directed to issue appropriate proceedings immediately in this regard so that the Deputy Superintendent of Police, CBCID, Madurai District, can take over investigation in this case. The new investigating officer is directed to conclude the investigation within a period of four months from the date of receipt of a copy of this order and submit the final report before the jurisdictional

Court. I make it clear that this direction for transferring investigation shall not be deemed to cast any aspersion on the rights and defences of the police personnel. It is for the investigation to unearth the truth. I have not expressed any opinion.

8.It is seen that the postmortem in this case was conducted by two doctors attached to Government Hospital, Usilampatti. As claimed by the learned Additional Public Prosecutor, those two doctors might have even earlier conducted postmortems. But it is not denied that they do not have master's degree in forensic medicine. Though it was originally claimed that the entire autopsy had been duly videographed and even a statement was made in writing to that effect in the status report, it turned out that what was recorded were only brief clippings. A proper videograph was not at all taken. That is why, the learned counsel for the petitioner insisted that appropriate directions will have to be issued for future observance and strict compliance in cases of custodial death or where it is alleged that the death is due to police torture.

9.I have been relieved of the need to labour much in view of the comprehensive directions issued by the Hon'ble Division Bench of this Court in a Public Interest Litigation in W.P.(MD)No.78 of 2019 on 28.09.2020. The Hon'ble Division Bench had issued the following directions:-

"51. In view of the above, the following directions are given while disposing of the writ petition:

(i) There shall be a direction that the Doctors shall follow Article 621 of Tamil Nadu Medical Code by sending the post-mortem certificate as soon as it is over to the Judicial Magistrate and send a copy to the Head of the Department on the same day failing which departmental proceedings shall be initiated against them.

(ii) The Health Secretary shall issue a circular directing the Doctors to follow Article 621 of Tamil Nadu Medical Code in letter and spirit.

(iii) The post-mortem certificates should be issued based on the NHRC model and following the regulations governing the same.

(iv) ...

(v) ...

(vi) There shall be a direction to the respondents to videograph postmortems whenever a request is made by the relatives or friends of the deceased

(vii) There shall be a notice in the hospitals especially in the mortuaries, dissection halls informing that there will be videographing of post-mortem in case of request apart from advertising in the newspaper that at the request of relatives,

videographing of post-mortem could be done.

(viii) All important points in the mortuaries as well as in the dissection halls, CCTV cameras shall be placed and shall be operational at all times.

(ix) The Government shall ensure that all the hospitals where the postmortem are done are provided with sufficient set of equipments, tools and other consumables within a period of six months.

(x)

(xi) The web based system namely, MedLeaPR developed by NIC, Haryana, shall be followed by all the Doctors of the Hospitals in the State of Tamil Nadu, in Government Health Institutions, Private Nursing Homes and Hospitals and this direction shall be with effect from 1st January, 2021.

(xii) The Government should appoint Scientific Officers in all the Government Medical College Hospitals and in every District headquarters. The qualification, duties and responsibilities for the post of Scientific Officers shall be defined by the Government with the assistance of a Committee of Experts constituted by the Government consisting of experts in Forensic Science, Criminology and medical examination and in other fields as may be suggested by the Forensic Department. The State Government is directed to constitute a Committee of Experts within six months and the appointment of required number of Scientific Officers should be made within one year after the qualifications and duties and responsibilities of the Scientific Officer are defined by the Committee of Experts.

(xiii)

(xiv) Directions given by this Court in Crl.O.P. No. 12582 of 2007 in *Muniammal V. The Superintendent of Police and Others* by order dated 16.02.2008 shall be complied with on or before 28.02.2021."

10. The foundations of any democratic government rest on popular acceptance. Though State primarily functions through its coercive apparatus, its actions must be perceived as proper by the people. What the government does must inspire the confidence of the people. Every time a custodial death occurs, the legitimacy of the State suffers a big dent. That can be set right only by ensuring transparent investigation. A dead person is equally entitled to justice. I would call it posthumous justice. Whenever someone suffers an unnatural death, the circumstances that led to it will have to be unearthed. Otherwise, there would be no closure. To ensure this, as suggested by the learned counsel for the petitioner, I deem it fit to issue the following directions :

(i) The Judicial Magistrate conducting the enquiry under Section 176(1)(A) Cr.P.C. shall ensure that the family of the deceased or its representatives are given

access to see the body both front and back and are also allowed to take video and photos.

(ii) No autopsy shall take place or commence without the next of kin having seen the body. Of course, if the family of the deceased refuses to see the body, even after so being permitted by the concerned Judicial Magistrate conducting the enquiry, the Judicial Magistrate can, in writing, permit the conducting of postmortem.

(iii) The autopsy shall be carried out by a team of two doctors who have a master's degree in forensic medicine and are attached to a Medical College and Hospital in the State. In other words, what is called as forensic autopsy must be conducted.

(iv) The autopsy shall be done by adhering to the norms laid down by the Hon'ble Division Bench in V.Eswaran vs Government Of Tamil Nadu, dated 16.04.2019 in W.P.No.10694 of 2019 and in W.P.(MD)No.78 of 2019, dated 28.09.2020.

(v) The whole body shall be x-rayed in order to find out if there are any fractures. The entire autopsy should be videographed from the start of the examination till its completion by adhering to the following six phases set out in Modi's 'a Textbook of Medical Jurisprudence and Toxicology' 26th Edition edited by Justice K.Kannan. For easy reference, the same is extracted as under:-

"Procedure for Autopsy in Custodial Deaths.-- The National Human Rights Commission has recommended video recording of the autopsy, in cases of custody deaths. Circulars directing the police to do this recording have been issued by many State governments like Gujarat and Tamil Nadu.

In Tamil Nadu, in order to minimise the speculation that medical officers are being influenced by the police authorities, post-mortem of victims of custodial violence is conducted by a team of two or more medical experts within 24 hours of the death of the victim.

Only forensic medicine experts at the teaching hospitals of government medical colleges should do autopsies of all custodial victims where the departments of forensic medicine are present. When the autopsy is conducted in district or taluk government hospitals, efforts should be made to include a forensic medicine expert from the nearest teaching hospital.

Phases of Videography

Phase I.-*The bearings of the dead body, like clothes, should be videographed individually with more focus on striking features like stains, cuts or holes on*

relevant material.

Phase II.-1. Front view of the dead body on the autopsy table before wiping and after wiping the dead body.

2. The same process should be repeated with the back of the dead body.

3. The conjunctiva and lips should be videographed for the presence of any haemorrhagic spots.

Phase III.-External Injuries

1. These injuries should be recorded according to one's own practice, i.e., beginning with head and neck, trunk, upper and lower (right and left) extremities (front and back and sides of the body) are the commonest way of recording.

2. Each injury should be serially numbered by number tags (adherent labels).

3. The videography should be taken in parts or as whole as the videographer feels fit to produce the images with clarity.

4. Each external wound need not be individually videographed, because all these injuries are tagged and covered by the above process.

5. Any suspected areas of fractured bones of the limbs should be exposed and videographed.

Phase IV.-The actual dissection for exposing the body cavities need not be videographed in order to avoid the lengthiness of the cassette and to keep the viewers live to the bare facts of trauma. It is a good practice to begin the autopsy with the exposure and removal of the brain.

Phase V-The scalp should be dissected up to the eyebrows on the front and below the mastoids on the back. The inner surface of the anterior and posterior flaps should be videographed separately, followed by the videography of the exposed cranial surface.

The removed vault of the skull should be videographed by stretching it in the sagittal - plane and in the coronal plane. This procedure will expose all types of fracture, if any.

The extradural space should be videographed in situ followed by subdural space. If there is subdural haemorrhage, it should be removed and videographed again to confirm subdural haemorrhage and for the presence of subarachnoid haemorrhage.

The brain is removed and placed on its vault to expose the basal surface. This exposed surface should be videographed. The circle of Willis dissected out and

exposed in situ. This should be videographed again. Then it is turned to rest on its base and videographed again.

Each stage of the brain dissection should be exposed and videographed to its finale according to one's methodology of brain dissection.

The base of the skull, along with the meninges, should be videographed before and after wiping its surface. The basal meninges should be stripped out.

The stretch force is applied to the base of the skull in the sagittal and corona' planes and videographed in each plane to expose any type of fracture.

Phase VI—Chin to pubic symphysis dissection is continued to expose the abdominal cavity. The neck and the chest wall are dissected to their extreme sides to expose the front as wide as possible. This widely exposed neck and the chest wall should be videographed.

The cupped palm should be dipped gently into the pelvic cavity and raised. If there is blood, it will be seen in the palm. If the palm is empty, then there is no blood in the pelvic cavity, which excludes bleeding injury to the visceral organs of the abdomen. The entire manoeuvre of dipping and raising the hand should be videographed consecutively.

Then the removed sternum should be bent in both the planes to expose any fracture. This process should be videographed.

The hand manoeuvre done in the pelvic cavity should be done to rule out any bleeding injury for right and left pleural cavity with consecutive videography of the procedure.

The pericardium with the heart in situ should be videographed. The heart is exposed in situ and videographed before and after wiping the pericardial sac.

(iv) Neck.—The superficial muscles of the neck should be exposed and videographed. Then the superficial muscles of the neck are removed with little dissection of the deep muscles. This will partly expose the hyoid bone.

The hyoid bone is examined in situ by slight adduction and abduction of the greater horns of the hyoid bone. This manoeuvre should be videographed as it explicitly conveys that the hyoid bone was properly examined for any fractures in the greater horn. This manoeuvre will show inward or outward compression fractures, if present.

The deep muscles are removed to expose the larynx, submandibular glands and thyroid glands. The exposed surface should be videographed.

Evisceration Process.—Evisceration is done from the tongue down to the rectum. The body cavities should be cleaned and later videographed.

The anterior chest wall should be pressed backwards on each side separately. If there is yielding, it indicates fracture of the ribs and that area alone should be videographed.

The aorta should be opened before the visceral organs are separated. The intima of aorta should be videographed.

The posterior surface of pharynx and the oesophagus should be videographed for the presence of blood or no blood.

The oesophagus is opened up to its cardiac end and videographed. The larynx and trachea should be opened and videographed.

(v) Heart—The heart should be dissected.

1. Inflow-chambers should be exposed and videographed.

2. Outflow-pulmonary and aortic valves are exposed and videographed.

3. Coronary arteries should be dissected as far as possible. Videography is done before sectioning and after serial sections to explore any block in them. The area of block should be isolated and videographed again.

(III) Visceral Organs.—Each organ should be separated and the separated organ should be videographed. After sectioning, each organ should again be videographed. The process of sectioning by the dissector need not be videographed.

In the case of kidneys, the process of stripping the capsule should be videographed.

Scrotum—through the midline incision the testes are exposed and videographed.

To Expose Deep Contusions of the Limbs.—In fair skinned people, abnormal discolorations of the skin should be cut and exposed and videographed. In dark skinned people through one long incision on the front and back on each limb should be made to exclude any extravasations of blood in the muscular tissue. Multiple parallel incisions can be put in the sole and palm. These should be videographed.

Norms to be followed for the Videography

1. Essential elements in the videography

(a) Videograph is a visual document, not a news report or a chat show, and therefore the coverage should be comprehensive and detailed.

(b) Memory chip (in case of digital recording) Video

cassette is to be used as corroborative evidence. Therefore, visual gimmicks and bias should be avoided.

(c) Memory chip/ Video cassette is to be preserved as a source for future reference. Therefore, professionalism should be maintained while recording and an unedited version should be provided.

(d) During the videography of autopsy in custodial deaths, the date and time button should be pressed so that the date and time will automatically be superimposed.

(e) The context of the videography should be established by mixing appropriate combination of wide-angle shot, panning and tilting.

(f) While highlighting details, continuity should be ensured by using zoom in and zoom out without cutting. It is suggested to limit the details viz., the contusions and incisions to eye-level shot and to use ped-up/down if necessary; however, high/low angles should not be used.

(g) Complicated lighting should be avoided. It is advisable to light the subject fully if the ambient light is not sufficient. When lighting is poor, use of manual mode to focus is suggested.

(h) It is necessary to use the normal lens in general and to avoid use of filters. However, before any recording the auto white balance button should be used.

(i) It is suggested to use the tripod during videography of autopsy.

(j) Each injury, whole and cut internal organs should be videographed for a minimum of ten seconds.

Procedure for Autopsy in Custodial Victims

a. The bearings of the dead body should be videographed separately.

b. The face should be videographed for the presence of haemorrhagic spots in the eyes and the lips'.

c. All external injuries should be serially numbered with adherent tags and videographed at the technical option of the videographer as a whole or in parts.

d. The actual process of dissection for exposing the three body cavities need not be videographed.

e. The hyoid bone should be exposed in situ.

f. The internal organs should be separated and video-graphed before and after sectioning of each organ. The actual process of separation and sectioning by the dissector need not be videographed.

g. Both the testes must be exposed and videographed.

h. Suspected fracture sites should be exposed and videographed.

i. In fair skinned people, the discolored skin site alone should be cut and exposed and videographed. In dark skinned people, one long incision on the front and the back of each limb should be made to exclude any internal contusion. The exposed surfaces should be videographed.

2. Custody of the memory chip/videocassette

(a) Immediately after the videography of the autopsy is completed, the essential details relating to the case such as name of the deceased; general particulars of the deceased, particulars of requisition of autopsy etc., should be recorded on the video.

(b) Thereafter, the forensic medicine expert conducting the autopsy should ensure immediate sealing of the memory chip/video cassette and its immediate dispatch with all required particulars to the inquest authority, who in turn should send it to the National Human Rights Commission."

vi) The autopsy report should be prepared expeditiously and handed over to the investigating officer in the case so that the filing of the final report is not delayed. **(*)A copy of the autopsy report as well as video should be simultaneously given to the legal heir or representatives of the family of the deceased by the Deans of the Medical College Hospitals where such postmortems of custodial deaths are acutally conducted.** This alone will enable them to take recourse to legal remedies immediately. If after receipt of the autopsy report, the legal heir/representatives of the deceased family give in writing that they intend to move the High Court, the body shall be preserved in the mortuary for atleast 48 hours. If the body is disposed of either by cremation or otherwise in the meanwhile, the very purpose of holding a second postmortem will be rendered infructuous. All of us know that hasty cremation in the tragic Hathras gang rape case led to controversy. It is in the interest of the police to take the family of the deceased into confidence and avoid rushing things through. They are stakeholders in the process and the police have to treat them accordingly.

11.The writ petition is allowed with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-


Assistant Registrar(AE)

(*Corrected as per the order of this Court dated 28/02/2023.

Sd/-

Assistant Registrar(CS-II)

// True Copy //


3/03/2023

Sub Assistant Registrar(CS)

ias/skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

To be substituted to the order already despatched on 30/12/2020

- 1.The District Collector, Madurai District, Madurai - 625 020.
- 2.The Revenue Divisional Officer, Revenue Divisional Office, Usilampatti, Madurai District.
- 3.The Tashildar, Taluk Officer, Peraiyur Taluk, Madurai District.
- 4.The Superintendent of Police, District Police Office, Moonrumavadi, Madurai District.
- 5.The Deputy Superintendent of Police, Peraiyur Sub Division, Madurai District.
- 6.The Inspector of Police, Peraiyur Police Station, Madurai District.
- 7.The Sub-Inspector of Police, Saptur Police Station, Madurai District.
- 8.The Chief Medical Officer, Government Hospital, Usilampatti, Madurai District.

12/13

"C4730583

9.The Dean, Government Rajaji Hospital, Madurai, Madurai District.

10.The Deputy Superintendent of Police, District Crime Branch, Madurai.

11.The Secretary to Government, Home(Police)Department Fort St.George, Chennai - 09.

Copy to:-

1.The Additional Director General of Police, CBCID, Madurai District.

2.The Deputy Superintendent of Police, CBCID, Madurai District.

+1 CC to Mr.R.KARUNANITHI, Advocate SR.No. 3209

AP(28.12.2020) 13P 14C
SS(03.03.2023) 13P 15C



Order in
W.P. (MD)No.12608 of 2020
02.12.2020

**MADRAS HIGH COURT
MADURAI BENCH**

S.R. No. 3209.....

Carbon Copy Application

Made 02/03/2023

Application Returned 1.....20

Application Represented 1.....20

Copy Made ready 03/03/2023

Copy delivered 06/03/2023



Section Officer
C.C.C. Section