

Of Police & Prison

A Death Via Two Custodies

**PEOPLE'S UNION FOR DEMOCRATIC RIGHTS
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On 5 June 1995, 23-year-old Ajay was arrested by the Paharganj Special Investigation Unit (SIU) in connection with a break-in and stabbing at Madras Automobiles, Daryaganj. Six days later, Ajay's dead body reached Deen Dayal Upadhyay (DDU) hospital from Tihar Jail. The SDM started the inquest. *Post mortem* examination was conducted two days later and the body was handed over to the family.

Ajay lived with his family in a small house in the Kala Mahal area near the Jama Masjid. From an early age Ajay had started earning. First as a trainee at a small auto repair shop in the area and later as an auto mechanic at Madras Automobiles (Pvt.) Ltd. Ajay worked with the company for three to four years and had stopped working there a year ago.

FAMILY VERSION

According to the family, two policemen came to their house around 11.00 a.m. on 5 June. Ajay was sitting down to a meal with his father at that time. The two policemen Head Constable Ram Naresh Tyagi and Sub Inspector Syed Ali were known in the Kala Mahal area. They had previously come to the house on 3 June and had taken Ajay for questioning to the Jama Masjid police station from where he had been let off after a few hours. This time round however the first news of Ajay was a phone call that the family received on 7 June informing them that Ajay was being produced at the Tis Hazari courts. Ajay's father tried arranging for bail, but Ajay was remanded to judicial custody. That day Ajay had bandages on his arms and feet. Two days later, on 9 June, when his sister Sunita visited him in Jail No. 3, Tihar, Ajay could barely walk or speak, and had to be supported by two other inmates. He told her that he had been beaten up and tortured by the police before being sent to jail. He showed her marks of injuries on both ankles, at the roots of his fingernails, and on various parts of his body. He also told her the specific methods of torture that the police had used. The two other prisoners who were helping Ajay,

informed Sunita that Ajay had not been beaten up in jail, but that he already had the injuries when he arrived on 7 June. On 12 June the family received another phone call informing them that Ajay had been brought dead to Deen Dayal Upadhyay hospital the previous night. The family went to the mortuary and managed to take photographs of the body, which confirm extensive external injuries. The nature of the injuries, as well as their symmetrical positioning (on both elbows, both ankles, and so on) are obvious signs of systematic beating and torture.

POLICE VERSION

The police denied all charges of torture when we met them. The officiating Incharge at Jama Masjid police station told the team that there was no case against Ajay at the police station. He however confirmed that Head Constable R.N. Tyagi belonged to the Jama Masjid police station but insisted that Ajay had not been brought to the Jama Masjid P.S. The SHO at Daryaganj police station confirmed that a case of attempted robbery and stabbing had been registered there. Since Ajay had worked at Madras Automobiles in the past and was familiar with the shop and the house above it, he was the most likely suspect. He informed the team that investigation had not been conducted by the police station. For the investigation of heinous crimes a Special Investigation Unit (SIU) had been created in every police district. This case had been handed over to the Unit on the recommendation of the DCP, Central.

The ACP incharge of the SIU at Paharganj stated that Ajay had been arrested by the personnel of the SIU and not by the above named policemen belonging to police stations. Again he held that Ajay had been picked up from a nearby park and not from home. Ajay had sustained minor bruises at the time of arrest, because he had offered resistance. A medical examination was conducted and a medico-legal case (MLC) was registered at Sucheta Kripalani hospital on 5 June itself, because of these minor injuries. Ajay was charged under the Indian Penal Code sections 394 (voluntarily causing hurt in committing robbery), 511 (punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment) and 34 (acts done by several persons in furtherance of common intention). Ajay was brought to the court the next day and remanded to police custody for one day. When asked about the serious injury marks on Ajay's body, the ACP said that the SIU did not believe in third degree treatment and used only "scientific" methods of interrogation. He added that it was therefore quite likely that the injuries had been inflicted inside Tihar jail. He also speculated whether Ajay had died of a heatstroke, brought on by the very high temperatures in early June, and the unfavourable living conditions and overcrowding in Tihar jail.

JAIL RESPONSE

The Jail Superintendent of Jail No. 3 where Ajay was lodged, had a different version of the events. According to him, jail authorities had refused to accept Ajay on 7 June when he was being handed over to the jail staff. They insisted that a medical examination be conducted to record extent of the injuries. The Superintendent told us that jail authorities insist on an MLC when an incoming prisoner has visible external injuries; and that Ajay's injuries were clearly visible. The police then took Ajay to Sucheta Kripalani Hospital for a *second* MLC. Ajay was since then receiving treatment from the jail hospital, but the jail authorities did not think his condition serious enough for hospitalization. On 11 June, Ajay's condition deteriorated, and he was rushed to Deen Dayal Upadhyay Hospital late in the evening, but collapsed on the way, and was declared brought dead on arrival. Tihar authorities thus maintain that Ajay died primarily as a result of the injuries he sustained while in police custody. This confirms the information that both the victim and the two other inmates gave to the victim's sister when she visited him in jail.

THE INQUEST AND CONTRADICTIONS

Since the death took place in judicial custody, an SDM enquiry was ordered under Section 176 Cr.P.C. The *post mortem* examination report becomes crucial here, as it ascertains the cause of death, and fixes a time span within which injuries, if any, were inflicted and also the time death. In this case, the *post mortem* examination could not be conducted until more than 24 hours after death. As the authorities at the Civil Hospital mortuary at Subzi Mandi informed us, they are severely under-staffed, and the number of deaths occurring in summer is substantially higher. Further, since bodies decompose faster in summer, *post mortem* reports are even less likely to be accurate. These constraints of the mortuary have special significance for cases of custodial death. The greater the delay, the more difficult it becomes to fix the time of injuries and death as well as the cause of death with any degree of precision. In Ajay's case therefore, the interim *post mortem* report records the injuries but is inconclusive regarding the cause of death.

The SDM's report has also been delayed because of the delay in the *post mortem* report. There are, however, obvious gaps and inconsistencies in the police version. Where was Ajay arrested from? Who were the policemen who effected the arrest? Why was the second MLC of 7 June, which would conclusively prove torture, left out in their narration? The nature and location of the injuries show that they have been inflicted in a systematic and planned manner, but the police story does not account for this. However Delhi Police has not even instituted a criminal case

regarding the injuries. The fact that Ajay finally died in Tihar Jail custody makes such an outcome normal. It allows them to guess at causes such as heatstroke. Particularly because Ajay did not die immediately, but survived until he got to jail. The Tihar administration cannot absolve themselves completely of responsibility. While it was known that Ajay had serious injuries, he was not shifted in time to be treated at any better equipped hospital. DDU Hospital is situated barely a kilometre from the main gate of Tihar Jail. A distance that could not have taken more than five minutes to cover. Yet Ajay is reported to have died on the way to hospital. Two other inmates who died on the same day are also reported to have died in those crucial five minutes.

Injuries inflicted through police torture may not have been the immediate or even sole cause of the death of Ajay. Since a large number of people died due to heat conditions this year, heat stroke is an easy alibi. But Ajay was neither ill nor injured at the time he was arrested from his house. Family members and neighbours affirm this. What then could have precipitated death? Long hours in the sun or dehydration? But Ajay was not expected to be in the sun or deprived of food and water. He was in custody during this entire period and was expected to receive medical help if required. The injuries clearly show how Ajay was treated in police custody. From a healthy youth in the prime of life he became a battered, bruised and ailing person. And he was denied medical attention. The living conditions of Tihar can only worsen such a health condition.

Thus two authorities, at the SIU and at Tihar, both responsible in varying degrees for causing death through acts of commission and omission are trying to absolve themselves of their responsibility by putting the blame on each other. Consequently, no criminal proceeding has been instituted to date.

PUDR DEMANDS

1. Criminal charges be filed against the policemen involved in the torture of Ajay.
2. An inquiry be ordered into the failure of jail authorities to reach Ajay to hospital in time.
3. The family be given adequate compensation by the government.
4. The SDM enquiry report be made public.

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