

An Endless Wait

People's Union for Democratic Rights, Delhi

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On 5 June 1990, 22 years old Shammu Khan died in GTB Hospital as a result of wounds sustained in the custody of Delhi police. The post mortem examination and SDM's reports confirmed that he had been tortured to death.

Shammu Khan's mother Fatima, his wife Ajmeri and the Peoples Union for Democratic Rights filed a petition in the Supreme court for criminal prosecution of the guilty policemen and for compensation for Shammu's family.

After almost 7 years the case is still dragging on. Not even an FIR has been filed against the accused policemen. And no compensation has been given for Shammu Khan's murder in police custody.

Long delays of this kind in legal cases are commonplace. But on the members of Shammu's family, after its bread winner has been killed the delay weighs very heavily; and survival itself has been an unrelenting struggle.

Shammu Khan lived in a Jhuggi in New Seemapuri, a resettlement colony in East Delhi. The residents of the colony are mainly migrants, whose prime occupations are petty trade, rag picking, rickshaw pulling, vending and so on. Shammu's family had migrated to Delhi in the early 80s from Allahabad. At the time of his death he was working in a cycle repair shop, and occasionally used to pull a rickshaw to support a family comprising of his sister, mother, wife and an infant child. On 1 June 1990 at about 10:30 PM Shammu Khan was taken into custody by policemen of Old Seemapuri Police station (PS) for allegedly stabbing Ismail, another resident of the area. Shamim (alias Bhullu), a watchman, was also picked up with Shammu, though he was not connected with the crime. Both of them were beaten by the police repeatedly on the 1 Km long route to the PS. Shammu became unconscious by the time he reached the thana. His mother Fatima, and a few others were witnesses to this. Shammu's condition deteriorated continuously in the PS. At 4:30 AM on 2 June, Shammu and Shamim were taken to the GTB Hospital where Shammu Khan's thumb impression was taken on a blank sheet of paper. Shamim was made to smear ink on the unconscious Shammu's thumb for this purpose. The two of them were then brought back to the PS. The next morning at 10 AM Fatima and some other residents of the colony arrived at the PS and found Shammu lying on the grass in front of the thana building, his face covered with flies. He appeared to have vomited blood. The police asked Fatima to arrange bail for his son. Even as she was returning to the colony, a policeman brought her back to the PS. Then a policeman in plain clothes took Shammu Khan and his mother to the GTB hospital in an autorickshaw. Fatima was warned against telling

the doctor that Shammu had been brought from the PS. The policeman told the doctor that Shammu had consumed poison. Fatima broke down when the doctor enquired about the ink stain on Shammu's thumb, and told him that her son had been beaten by the police.

Shammu Khan was then admitted to the hospital. One policeman was constantly at his side and others came repeatedly to talk to the doctors. Shammu's wife and mother were both made to give their thumb impressions on blank sheet of papers. Shammu's Khan died on 5 June, without gaining consciousness even once. The police were unsuccessful in their efforts to stop Fatima from getting a post mortem examination done. When the body was brought back to the colony on 6 June after the post mortem, thousands of residents gathered there to protest his death. They kept his body at the main road crossing and blocked the road for hours, dispersing only after the Lieutenant Governor and senior police officials assured them that a magisterial inquiry (in any case mandatory under S.176 Cr. PC) would be conducted. This intervention however did not even lead to the registration of an FIR against the guilty. Consequently no police investigation was conducted. The police bolstered their case by further producing 2 'statements' by Shammu Khan's wife and mother that Shammu was addicted to alcohol and had died by consuming a poisonous substance- hence no one was to be held responsible for his death. A Medico legal certificate dated 2 June was also produced by the police supposedly from GTB hospital, stating that when Shammu was brought to the hospital for the first time, he was drunk, disoriented but fit to make a statement. It also stated that he did not have external injuries. The three blank sheets of paper on which Shammu, his mother and wife were made to attest their thumb impression previously were used to fabricate these documents.

The SDM however ordered that a second post mortem be done. While the first post mortem indicated 9 ante mortem external injuries caused by a blunt object, the report of the second post mortem examination categorically stated that the death was caused by a 'shock resulting from multiple trauma'. 'Poisoning' as argued by the police was ruled out on the basis of the Central Forensic Science Laboratory (CFSL) visceral analysis report. The SDM's report concluded that there was circumstantial evidence to prove that multiple injuries were inflicted upon Shammu at the PS and that he died due to injuries caused by blunt objects and due to mental shock. It rejected the story offered by the police that Shammu Khan had beaten by a crowd before he was taken into custody. That the police were deliberately trying to present misleading versions of the incident is thus very clear.

Till today, Shammu Khan's family has been unable to even lodge an FIR against the police. The chronology of the case filed by Shammu Khan's mother, wife and PUDR immediately after the custodial death reveals the systematic delays that have occurred in its course.

Initially the case was filed in the Supreme Court, which in its wisdom, rejected it on 1-11-90. The cause given was that 'the allegations needed further investigation'. It is indeed some what strange that the apex court sees the need to 'investigate' even when it is simply a question of registration of an FIR in a clear

cut case of violation of an individual's fundamental 'right to life' by an agency of state.

The case was thus transferred to the High Court. On 7-12-90 a show cause notice was issued to the respondents, i.e. the Commissioner of Police and Others. On 6-3-91, the police filed in their reply. Seeing the urgency of the matter and the delay on the part of the respondents in replying, the court even ordered that Rs. 1000 be paid to the petitioners as expenses on account of the delay. On 3-12-91 the SDM report was filed. The two judge bench in this hearing said that the "prime cause of death (was) the beating allegedly given to him while in police custody" and ordered that the police should 'show cause' as to why further action should not be taken against them, and adequate compensation given to Shammu's family.

When any petition is filed in court it is initially sent to a two judge Division Bench where it can be admitted for further hearing or rejected. Shammu Khan's case was at this stage till the end of 1991. A case can be decided and final orders issued at this stage itself given the judges' views and orders of 3-12-91, this case too could have been decided at this stage. This however did not happen, instead on 7-1-92 the case was 'admitted', and sent for hearing to a single judge. This meant that it got added at the bottom of a long list of what are known as 'regular matters'. Regular matters are heard by judges only after the cases that are brought for 'admission' are decided upon. This automatically leads to long delays in the hearing of such 'regular matters'.

Soon after the order of 7-1-92 the petitioners filed for interim compensation for which the notice was issued to the respondents on 14-2-92.

In all the subsequent 8 hearing till early 1993, the state counsel either did not appear, or when he did, took adjournment on grounds as flimsy as his 'inability' to locate the concerned file. During this period the state counsel changed and the new counsel also sought extra time. The non-appearance of the state counsel is not mere negligence or carelessness but appears to be a deliberate tactic to shield that guilty. The inability of the judges to ensure prompt response from the state counsel shows a disappointing insensitivity towards an issue as serious as custodial death. Given the continued absence of the state counsel the court could have issued a judgment directing criminal prosecution and granting compensation.

On 12-2-93 the judge issued an order for final hearing saying that the main petition should be listed in the first five cases in the week commencing from 12-4-93. Yet after this order the case did not come up for hearing for two whole years.

On 9-5-95 the judge heard the argument on behalf of the petitioners and observed that the allegation against the police were very serious. Reprimanding the state counsel (in absentia) for not appearing, he ordered that the case be listed as no. 1 subject to overnight part-heard. This meant that the case had the highest priority possible for being heard and the case could come up in front of the same judge.

In the High Court, judges are transferred routinely every 6 months,

hearing company matters, civil matters, criminal matters etc. by turn. By 24-7-95 the judge hearing Shammu Khan's case had been transferred and was not hearing criminal matters any more. The new judge however accepted the prayer of the petitioner that the same judge should continue to hear the case as he had heard the counsel for the petitioner at length. The case then came up before the previous judge for six hearings, in which the state counsel again did not show up. The judge thereafter on 9-5-96 released the matter from being part heard, because he was then hearing the company matters and did not have the time for this case as a result then the case has to be heard again by a new judge, delaying the process further.

The case which could have been decided in 1991 itself carries on like this till date. Such is the fate of a case of custodial death that is rare in many ways. A case in which there are eyewitnesses to the entire incident, even of the actual torture and police cover-up and have ventured to testify. A case in which the death report clearly stated to be an unnatural death by violence, and that the person was allegedly beaten by the police before admission to the hospital. A case in which the post mortem reports also clearly point towards death due to multiple injuries and not poisoning. A case in which the SDM's report also points to custodial death due to torture.

Even this case has not reached anywhere near completion. It has come up as many as 38 times in front of 15 judges. The guilty policemen have not been charged and must be serving in some police station in the city and probably would have been promoted to higher levels. Ismail, who had been stabbed by Shammu recovered within a few days after the incident.

In case of deaths in police custody, police is both the investigating authority as well as the accused. Therefore there is a tendency to shield the guilty, who often are from the same PS. In large number of these cases, no criminal prosecution is initiated by claiming that the death was a suicide, was due to some illness or that the deceased was never detained. Under S. 176 Cr. P.C., an inquiry by a magistrate is mandatory in all custody deaths. But as the law is silent about the aftermath of this inquiry, even these do not ensure registration of an FIR. Shammu Khan's case is an example of this. Inquiries by any independent agency are rare. In this fashion the police is left to judge their own conduct and absolutely free to exonerate themselves.

Since the victims of custodial violence are mostly from the marginalised sections of society, families of very few are able to approach the courts. Given the enormity of the menace of custodial violence it is essential that the judiciary acts promptly so that the guilty are not able to get away scot free.

In this case the judiciary has failed in its task of delivering justice. This failure has helped the police to escape even preliminary criminal prosecution, let alone punishment of any sort.

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