

Police And Courts Thwarting Justice

We reproduce below a report by Sevanti Ninan from The Indian Express of 14.3.83 which shows clearly how the law enforcing agencies of the government use various escape clauses to shield the guilty.

LAST month a key witness in the notorious P. R. Narula case turned hostile. A week earlier a judge acquitted the accused in a wife burning case because the investigating officer had not taken possession of incriminating evidence. The Judge also chose to doubt the veracity of the dying declaration.

Last month a case registered under the Dowry Prohibition Act in the Patiala courts was discharged on technical grounds. And in January, yet another judge, choosing a dying declaration over two earlier incriminating statements, threw a bride burning case out of court on the ground that a prima facie case of abetment to suicide had not been made out.

Even as a woman dies of burns every day in this city, nobody is punished. There are lots of escape clauses—faulty investigation, no “direct evidence of any ocular witnesses”, the refusal to recognize harassment as abetment to suicide, and cases that are “bad in law.” The first is the most common. If a judge is “acquittal minded” where dowry deaths are concerned, he is sure to find a handle in every case, because the police almost never do their job thoroughly.

On March 3, in the state, versus Kuldip Kaur and Harban Kaur case, the judge found that in effect the investigating officer himself had turned hostile! So he granted the accused the benefit of the doubt while taking note of “remissness, callousness and dishonesty on the part of the investigating agency.” In December 1982, additional sessions judge V. B. Bansal rejected the dying declaration of 22 year old Gayatri Devi as insufficient evidence, and acquitted Raj Kumkr of Motia Khan. Criticizing the investigation of the case, he said that it “shows that the investigating officer was either inexperienced or did not do his job in

accordance with the law. There was no proper supervision or guidance of the investigating officer.”

Strictures on the police are nothing new, but a scrutiny of recent judgments regarding dowry deaths shows that the police are effectively thwarting justice in a majority of cases. In the state versus Sushil Kumar, November 1982 case, additional sessions judge S. M. Aggarwal expressed his “concern and anguish at the manner of the police working, even in such heinous crimes as murder, in permitting the accused party to acquire vital information contained in the police diaries.” Other judges in their judgments have also noted tampering with police diaries, such as P.



K. Bahri in the state versus Nagrah case.

The net result is that convictions are rare. In any case, only a small percentage of cases reach the trial courts. Out of 1,133 unnatural deaths of women in a 26 month period between 1979 and 1981, 234 cases

were registered under various sections and only 50 reached the trial stage. In one petition filed regarding 11 cases, 10 were investigated and only one was convicted.

If the numbers of those convicted have increased marginally in the last couple of years, it is because the irony of so many offenders going scot free is finally beginning to make some judges uncomfortable. That is why those who have found the evidence sufficient to warrant conviction, have expressed the desire to award a sentence that would act as a deterrent.

In awarding life imprisonment to Jagdish Lal Malhotra, sessions judge S.C. Jain observed: “In most of these cases culprits escape; the liability for want of evidence and such cases are given the label of suicide or accident. But whenever such a case is proved beyond doubt, the extreme penalty of death should be awarded to culprits who are enemies of society.” But he was making the sentence life imprisonment, he said, because there were three children involved.

Sessions judge S. M. Aggarwal says that a judge’s personal predilection also plays a role in deciding a case. In the case of Veena Nagrah, a sub inspector of police, who burned to death in her house in Timarpur in 1980, the case was dealt with by two sessions judges. Looking at the same evidence, the first, Mr Aggarwal, was convinced “it was a murder. But the second, Mr P. K. Bahri, declared it a suicide. Recently the girl’s father filed an appeal in the high court.

Justice M.L. Jain of the Delhi high court ruled in the death of Shashibala Chadha, that it could not be linked to a dowry demand, because a scooter demanded one year after marriage could not be construed to be a dowry demand. The girl’s mother’s appeal is now before the supreme court.

In the state versus Harbans Kaur and Inder Kaur case, Mr M.L. Jain granted bail to the two women after sessions judge Santosh Duggal had convicted them of the murder of their daughter-in-law. The case is still pending in the high court.

Justice Jain has also granted bail to the accused in the P. R. Narula case. With reference to his stand in all these cases, representatives of some women's organizations asked to meet him last year. The date was set for November 4, 1982, but the meeting never materialized because the judge cancelled it.

Where bail in dowry death cases is concerned, the high court invariably grants it even when lower courts reject it. Women's organizations feel bail in these cases should not be readily granted.

So far there is no punishment in the law book for families that harass a young wife to the point where she decides to

commit suicide. Several judges including Mrs Santosh Duggal and Mr K. B. Andley have cited the same precedent from time to time to assert that maltreating a wife and creating circumstances that drive her to suicide does not amount to abetment within the meaning of the word abetment as defined under section 306 of the Indian Penal Code. The precedent cited is the Gurcharan Singh versus the state case, November 1981. Justice R.N. Aggarwal of the Delhi high court held in that case that harassment did not amount to abetment of suicide. Since instigation or active complicity can almost never be proved, there are few convictions under section 306 of the Indian Penal Code though a large number of cases are registered under this section.

The courts are not unaware of the gravity of the situation. Perhaps concern over the large number of discharges and acquittals prompted the Delhi high court

on October 5, 1982, to direct that all cases pertaining to dowry deaths should be assigned to the court of Mr J. D. Kapoor, additional district and sessions judge. In August and September 1982, Mr Kapoor *had* convicted two parties, one a burning case and the other a strangulation. He now has five such cases pending before him. He suggests that given the frequency with which such deaths are occurring, the police should train special squad to collect the right kind of evidence.

Sessions judge S. M. Aggarwal also makes the surprising point that the dowry demands cited as evidence in these cases often sound cooked up. Women's organizations show not belabour this point, he says. As he sees it, the usual reason for a murder is not that the family wants more dowry from the same girl, but that if they kill her they will get another set of dowry items from the second bride. □

Believe It Or Not— A DTC Complaint Cell That Works!

ONE evening in January a **Manushi** worker was returning to her home in West Delhi. The DTC operated private bus in which she was traveling got emptied of all passengers except herself, one stop before the terminus. When the bus neared the terminus where she was to alight, it picked up speed and drove on instead of stopping. When she remonstrated with the driver he offered a variety of excuses such as the need to buy a tyre and so on, but did not stop the bus. She then called on the conductor to intervene but he replied that he was new to the bus route and did not know where it was to terminate. In spite of her shouting and screaming, the driver continued to drive at a high speed, and also turned off the lights. She shook his seat until he turned on the lights again. She then tried to catch hold of the steering

wheel where upon he slapped her face. She continued shouting, screaming, and scolding both driver and conductor though the latter pleaded helplessness. At last, because of her determined resistance and angry remonstrations the driver turned the bus round. He made an attempt to get the conductor off the bus so that she should be left alone with him. However, she refused to let this happen. Finally, the driver gave up his abduction attempt and drove her back, by which time it was past 10 p.m. Her presence of mind had saved her.

We then wrote a letter to the general manager, DTC, protesting this maltreatment, and demanding immediate suspension of the driver, and cancellation of the DTC contract with the company which had employed him.

In reply, we received a courteous letter and were asked to go and meet the DTC assistant general manager. He did not subject us to questioning, but merely asked if we would be ready to assist in any enquiry which might follow. On our replying in the affirmative, he immediately rang up and gave orders for the cancellation of the DTC contract with the concerned private company. We were also all informed that the company had terminated the services of the driver.

The prompt and sympathetic handling of this case by the concerned officials amazed us, since it was so different from the treatment the public usually receives in a government office. We were informed by the officials that the DTC has opened a special cell to handle complaints from passengers, and that they look into every complaint within 24 hours. They also said that they are specially prompt in dealing with complaints from women passengers. The phone numbers for this cell are : 272603, 275061 (38) □