

(2008) 08 OHC CK 0042

In the Orissa High Court

Chaitanya Behera and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2009) CLT 1663 (Suppl Crl) : (2009) 2 ILR (Ori) 430 : (2009) 2 OLR 613

Hon'ble Judges : I.M. Quddusi, Acting C.J.; Sanju Panda, J

Bench : Division Bench

Judgement

I.M. Quddusi, A.C.J.

1. By means of this writ petition, the petitioners have prayed for issuance of a writ of mandamus commanding opposite party No. 1 to pay them compensation of Rs. 10 lakhs for the murder of their son by another convict in Choudwar Jail.

2. Brief facts of the case of the petitioners are that their son Krushna Chandra Behera having been convicted by the Second Additional Sessions Judge, Cuttack for commission of offences u/s 498-A/304-B of the Indian Penal Code and Section 4 of the Dowry Prohibition Act in S.T. Case No. 375 of 2000 and sentenced to undergo rigorous imprisonment for life u/s 304-B I.P.C., for three years for offence u/s 498-A IPC and rigorous imprisonment for a period of six months for offence u/s 4 of the Dowry Prohibition Act was lodged in Circle Jail, Choudwar to undergo the sentences. He was residing in Ward No. 19 of the said Jail along with some other convicts including one life convict Pratap Khatei. On 9.6.2008 at about 7:40 p.m. Pratap Khatei assaulted Krushna inside the jail as a result of which he sustained serious injuries on the vital parts of his body and was immediately shifted to S.C.B. Medical College and Hospital, Cuttack. It is alleged that due to lack of proper treatment, the health condition of Krushna worsened and ultimately he succumbed to the injuries in the hospital on 10.6.2008. Petitioners have alleged that the opposite parties did not inform them

about the assault on their son as a result of which they could not attend him in the hospital and only after the death of their son his dead body was handed over to them on 11.6.2008. The further case of the petitioners is that their son Krushna had appealed against the judgment of conviction and had a fair chance of success. It is averred that petitioner No. 1 is a physically handicapped person and petitioner No. 2 is seriously ill. The deceased was their only son and was maintaining them and he would have looked after and maintained them till their death. He was residing in Jail Custody and it was the responsibility of the opposite parties to ensure his life and safety inside Jail. His untimely death occurred due to the negligence of the State officials in protecting his life. Therefore, the State is duty bound to compensate the loss sustained by the petitioners. On the aforesaid allegation, they have filed this writ petition praying for a direction to the opposite parties to pay compensation of Rs. 10 lakhs.

3. Counter affidavit has been filed on behalf of opposite party No. 3. The fact of assault on Krushna by another convict Pratap Khatei inside the jail has been admitted in the counter affidavit. It is stated that no ill-feeling between Krushna and Pratap Khatei was ever noticed by the Jail staff and the assault took place while both of them along with other inmates of Ward No. 19 were watching T.V. The deceased was provided immediate medical care in the Jail after the incident and thereafter he was shifted to S.C.B. Medical College and Hospital and was admitted there. During treatment six bottles of blood was given to Krushna, but he succumbed to the injuries in spite of all possible care taken in the hospital. The death was purely accidental and since there were no laches on the part of the Jail Staff, the petitioners are not entitled to any compensation. It is further stated that the petitioners were not dependant on the deceased since 2003. It is further pleaded in the counter affidavit that the petitioners have not given any Bank account or its number in support of their averment that while their son was undergoing the sentence they were managing to make a living with the saving of their deceased.

4. Learned Counsel for the petitioners contended that it is the duty of the State to protect the life and liberty of the citizens in terms of Article 21 of the Constitution. Where the Government fails to protect the rights of the citizens as guaranteed by the Constitution, the Government is liable to pay compensation for loss of life due to its negligence or failure. The fact that the assault could be successful to carry the weapon of offence inside the jail exhibits lack of proper checking inside the Jail and unmistakably points to the negligence of the jail staff. The death of Krushna occurred due to negligence and carelessness on the part of the Jail staffs who are officials of the State. Therefore the opposite parties can be held to have failed in their duty to ensure and protect the life of the deceased. He has placed reliance on various decisions of the Hon"ble apex Court and of High Courts.

Learned Counsel for the State on the other hand contended that there was no negligence on the part of the jail staff in protecting and ensuring the life of the

convict. All possible care and timely action was taken by the jail authority to save the life of the deceased. Since the death was purely accidental, the petitioners are not entitled to any compensation.

5. It is now established that even where a person is convicted and imprisonment under sentence of Court, he does not lose all the fundamental rights belonging to all persons under the Constitution, excepting those which cannot possibly be enjoyed owing to the fact of incarceration, such as right to move freely or the right to practice a profession. In prison he shall not be deprived of his life or personal liberty except according to the procedure established by law. The deceased at the relevant time was in the jail custody and therefore it was the responsibility of the Jail authorities who are no other than officers of the State to protect his life. A similar case involving killing of a convict in jail while serving out his sentence u/s 302 I.P.C. by another convict in Central Jail, Varanasi came up for consideration before the Hon'ble apex Court in Kewal Pati (Smt) Vs. State of U.P. and Others, . The apex Court referring to its earlier decisions in Francis Coralie Mullin v. The Administrator, Union Territory of Delhi AIR 1981 and A.K. Roy and Others Vs. Union of India (UOI) and Others, held that even though the deceased was serving out the sentence, the authorities were not absolved of their responsibility to ensure his life and safety in the jail. The apex Court further held that the deceased was entitled to protection and since the killing took place when the deceased was in jail, it resulted in deprivation of his life contrary to law. Therefore, the Hon'ble apex Court directed the State Government to pay compensation to the wife and children of the deceased.

6. From Annexure-2, the FIR lodged by the Senior Superintendent, Circle Jail, Cuttack at Choudwar, it appears that the co-convict Pratap Khatei attacked and gave two blows to Krushna with a broken part of a big steel spoon inside the Jail on 9.6.2008 at 7.40 p.m. as a result of which he sustained serious injuries and was shifted to the S.C.B. Medical College and Hospital, Cuttack for treatment where he succumbed to the injuries on the next day at about 9.30 a.m. Had there been proper security check, the assailant could not have succeeded in procuring the broken part of a big steel spoon from the kitchen of the jail and utilized the same in inflicting serious injury on the deceased. The convict or the UTPs. remain confined within the four walls of the jail. It is, therefore, the responsibility of the jail authorities to look after their safety and security. Since attack on Krushna which ultimately resulted in his death took place while he was in the custody of the jail authorities, it can not be denied that the jail authorities failed to provide him protection which he was entitled to. Such failure can be attributed to the negligence of the jail authorities. Since the occurrence leading to the death of the deceased occurred while he was serving out his sentence due to failure of the jail authority to provide him the protection, the petitioners are to be compensated for the Joss of their only son who would have nourished and maintained them till their last.

7. We find from the record that petitioner No. 1 is aged about 70 years whereas

petitioner No. 2 is aged about 60 years. Besides, petitioner No. 1 is a physically handicapped person. Both are senior citizens. The deceased was their only son. From the writ application, it appears that they have no other descendants. In such circumstances, payment of lumpsum compensation would not be beneficial for them. It would be just and proper if they are paid some amount every month for their maintenance. We therefore allow the writ petition and direct the State Government to pay Rs. 1500.00 (Rupees one thousand five hundred only) per month to each of the petitioners commencing from this month, i.e., August, 2009 for their maintenance so long as they are alive after being satisfied about their identification. The State Government is directed to ensure that the aforesaid amount is paid regularly to the petitioners by the 10th of the succeeding month.

Sanju Panda, J.

8. I agree.