
(2019) 04 MAN CK 0017
In the Manipur High Court
Case No : Writ Petition (c) No. 517 Of 2013

Domneng Touthang

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 05-04-2019

Acts Referred:

Citation : (2019) 04 MAN CK 0017

Hon'ble Judges : Ramalingam Sudhakar, CJ;Kh. Nobin Singh, J

Bench : Division Bench

Advocate : H. Bisheshwari, L. Shyam Sharma

Final Decision : Dismissed

Judgement

Kh. Nobin Singh, J

[1] Heard Smt. H. Bisheshwari, learned Advocate appearing for the petitioner and Shri L. Shyam Sharma, learned Government Advocate appearing for the respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents for payment of compensation to the tune of Rs. 8,00,000/- (Rupees eight lakhs) only in favour of the petitioner in connection with the illegal and arbitrary killing of her husband, Shri (L) Mangkholun Touthang in the custody of Commando, Imphal East on 01-09-2005.

[3.1] The case of the petitioner as alleged in the writ petition, is that on 01-09-2005 at around 11:00 am, she along with her husband came down to Leitanpokpi to recover some due from the villagers of Leitanpokpi and also to buy a bag of superfine rice, vegetables and some other household items for consumption. After having completed the purchase of essential commodities and while they were waiting for a bus at Leitanpokpi at around 01.20 pm, they met a friend of her husband, late Lallenman DOUNGEL from Wakan Village of Sadar Hills,

Senapati District. Both of them decided to have drinks and accordingly, they went inside the pharmacy owned by Shri Paolam Haokip. At that point of time, the wife of Late Lallenmang DOUNGEL was waiting for her husband at a tea hotel. Suddenly, a team of Manipur police commando, Imphal East, comprising 15 to 20 personnel led by Officer-in-Charge, Shri Mubi Singh in three Gypsy, came to Leitanpokpi Bazar and went towards the pharmacy. As the Manipur police commando personnel were approaching towards the pharmacy, five unknown persons suspected to be the cadre of Kuki National Army (KNA) fled from the pharmacy while the husband of the petitioner and late Shri Lallenmang DOUNGEL were still at the pharmacy unaware of what was happening. But both the petitioner's husband and his friend were taken by the police commando personnel towards Likli river with their hands being tied and the wife of late Shri Lallenmang DOUNGEL along with about 60 persons who were present at Leitanpokpi Bazar, ran towards the petitioner's husband and his friend to ascertain the reason as to why they were being treated as criminal. The request of the wife of late Shri Lallenmang DOUNGEL to leave them, was turned down by the Police Commando Personnel who warned her not to interfere and in front of all the said persons, the police commando personnel started torturing and kicking upon them and shot them with fire arms and thereafter, the petitioner's husband and his friend, with injuries being sustained by them, were carried towards Imphal.

[3.2] On the next day, the petitioner along with her relatives went to the Lamlai P.S, Imphal East and submitted a complaint about the arrest of her husband. Without an FIR being registered on the complaint, the petitioner and her relatives were directed to approach the Imphal P.S where they were informed that the dead bodies of her husband and his friend were kept in the Mortuary, Regional Institute of Medical Sciences, Imphal. The dead bodies were handed over to her without a death certificate and a post-mortem report being issued by the concerned authority. But later, the death certificate was issued only on 15-11-2007.

[4] On the contrary, the case of the police commando personnel is that on 01-09-2005 while they were conducting C.I. operation by crossing Leitanpokpi village, the armed underground members suspected to be Kuki National Army who were already taking position at the Hill slope and Leitanpokpi bazar, fired on them and they retaliated resulting in an encounter wherein the husband of the petitioner and his friend, late Shri Lallenmang DOUNGEL died due to bullet injuries. On the strength of a report submitted by Shri N. Sanajaoba Singh, ASI of CDO Unit i/c, an FIR was registered at Lamlai P.S u /s 121/121-A/307/400 IPC and 25(1-C)A. Act.

[5] Since the allegations made in the writ petition having been denied by the respondents and in order to ascertain the circumstances

leading to the death of the petitioner's husband and his friend, late Shri Lallenmang DOUNGEL, this Court directed the District & Sessions Judge, Imphal-

East to conduct an enquiry and submit a report by passing the following order:

"W.P. (C) No. 517 of 2013

With

W.P. (C) No. 284 of 2013

BEFORE

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE N. KOTISWAR SINGH

01.08.2014

CJ

Heard Ms. H. Bisheshwari, learned counsel appearing on behalf of the petitioner and Mr. R.S. Reisang, learned senior G.A. appearing on behalf of the State respondents.

The prayer in the writ application is for a direction to the State respondents for payment of compensation in favour of the petitioner on the allegations that her husband was lifted by Police Commando Personnel of Imphal East on 01.09.2005 and was killed in presence of the villagers. The allegations made in the writ application are denied by the respondent Nos. 2 and 3 in their counter affidavit. Since the allegations are disputed, it would be appropriate to get an enquiry conducted before deciding of the case. We accordingly, direct the District & Sessions Judge, Manipur East to conduct an enquiry and submit a report before this Court within a period of six months from the date of receipt of the copy of the writ application as well as counter affidavit filed by the respondent Nos. 2 and 3.

Office is directed to transmit the copy of the writ application as well as counter affidavit filed by the respondent Nos. 2 and 3 to the District & Sessions Judge, Manipur East immediately for conducting the enquiry.

Put up this case after receipt of the enquiry report.

JUDGE CHIEF JUSTICE."

[6] The learned District & Sessions Judge, Imphal East submitted its report dated 06-02-2018 and on perusal thereof, it is seen that while conducting enquiry, the learned District & Sessions Judge, Imphal East framed as many as six issues for which it examined five prosecution witness and two respondent witnesses. After considering and appreciating the evidences and the testimonials adduced by the parties, the learned District & Sessions Judge, Imphal East came to the conclusion that the injuries sustained by them were all bullet injuries except one abrasion on the face and all the bullet injuries were stated to be from the fire arms fired from a distant range. There was no external bullet injury on the

stomach. After analyzing the evidence and testimony of the respondent witnesses, it has been observed that the I.O. of the case who concluded the investigation, was not examined and the important procedures to be followed to establish the facts of the case, had not been followed and that it is an admitted fact by both the parties that the instant petition was filed only after 7 years of the incident. Accordingly, the learned District & Sessions Judge, Imphal East came to the conclusion that the respondents were unable to prove that the deceased, late Mallenmang Touthang was a member of the Kuki National Army nor was the petitioner able to adduce evidence that the deceased was picked up from the pharmacy by the police commando except for their oral deposition. The relevant paragraphs of the report are reproduced herein below:

"Analysis of the deposition and evidence in favour of the respondents".

XI. On the other side, the respondents alleged that the present victim was a member of the KNA and was a participant of the U.G. team which laid ambush on the team of Commando Force, Imphal East on 01/09/2005 in and around Litanpokpi Bridge. Further the present victim was injured and subsequently died after he was hit by bullets on retaliation by the team of Manipur Police Commando, Imphal East and that a 9mm pistol loaded with 2 live rounds in the magazine were recovered from near his dead body, which were seized vide a seizure memo.

XII. R.W. No. 1, Ningthoujam Sanatomba Singh, who was present in the said Commando team on 01/09/2005, which was allegedly ambushed at Litanpokpi Bridge, however, never stated in his statement given before this Court that the present victim was a member of the proscribed KNA. Also, none of the personnel in the team of commando involved in the said alleged encounter of 01/09/2005 at Litanpokpi sustained any injury, despite being ambushed by the assailants, who had already taken position. Further, none of the vehicles used by the commando personnel on that day was reported to have sustained damages, bullet or otherwise. Further, during cross examination, the witness agreed that there were no independent witnesses to the seizure memos made for seizure of weapons from near the dead body of either Mangkholun Touthang or Lallenmang.

XIII. R.W. No. 2, Robinson Shimray, the first I.O. of the case, in his examination stated facts showing mere formality being followed by an I.O. in such a case. However, in his cross-examination, he admitted that he did not submit a copy of the report for the said FIR to the concerned court and that there was no independent witness when he re-seized the seizure memos and articles. The I.O. also did not send the seized weapons, ammunition and wearing apparels of the victims to Forensic Expert to establish whether the seized arms were fired from, whether the wearing apparels of the victim had gunshot residue etc. All the witness said was that the next I.O., to whom the case was re-endorsed, might have done it.

XIV. On analyzing the evidence and testimonies of the defendant witnesses, it is seen that the I.O. of the case who concluded the investigation was not examined. Further, important procedures to be followed to establish the facts of the case have not been done.

XV. It is an admitted fact by both parties that the complaint of the present case was only filed after 7 years of the incident.

In the result of the foregoing discussions, this court is of the opinion that the defendants have not been able to provide ample proof that deceased Mangkholun Touthang was a member of Kuki National Army. Hence, Issue No. 1 is seemingly in favour of the petitioner.

With regard to issues No. 2 and 3, the petitioners have not been able to provide ample evidence in this regard, save for their oral depositions. Hence, the said two issues No. 2 and 3 and consequently, issue No. 6 have not been proved.

With regard to issues No. 4 and 5, evidence provided by prosecution witnesses No. 1, 2 and 3 that the victim was kicked on different parts of the body and late shot at the belly has been negated by findings and opinion of prosecution witness No. 5, Dr. Th. Meera Devi. Dr. Meera stated that (a) there was no external bullet injury on the abdomen of the deceased and (b) there was no other injury mark except for the bullet injuries and abrasion on the left side of forehead on the body of the deceased. Hence, issues No. 4 and 5 are evidently in favour of the respondents."

[7] We have gone through the report submitted by the learned District & Sessions Judge, Imphal-East and it may be noted that this Court is not sitting as an appellate Court to appreciate the evidence and examine the correctness of the findings of the learned District & Sessions Judge, Imphal West but to examine whether the conclusion arrived at by the learned District & Sessions Judge is based on the evidence. This Court is of the opinion that the conclusion of the learned District & Sessions Judge cannot be said to be without any basis. The reasons given by the learned District & Sessions Judge do not seem to be unreasonable under the facts and circumstance of the case and hence, this Court has no reason to disagree or come to a different conclusion. Therefore, we are of the view that the petitioner has failed to establish her prima facie case that the police commando personnel are responsible for the death of her husband. In this view of the matter, this court is not inclined to allow the petition and award compensation to the petitioner.

[8] For the reasons stated hereinabove, the instant writ petition is dismissed with no order as to costs. But it is open to the petitioner to approach any appropriate forum for redressal of her grievance including the claim for payment of compensation, in the event of the respondents being found to be guilty of killing her husband after the criminal trial is over.