
(2001) 09 GAU CK 0010
In the Gauhati High Court
Case No : WP (C) No. 4567 of 1999

Enu Begum and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 10-09-2001

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226

Citation : (2003) 1 GLR 659

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : T.N. Phukan, B. Islam and A. Ali, for the Appellant; H.K. Mahanta, Government Advocate, for the Respondent

Judgement

D. Biswas, J.—The petitioners are the wife and children of late Ahmed Ali allegedly killed in police custody on 27.11.1998. They filed this petition claiming compensation of Rs. 10 lakhs.

2. Petitioners' case in brief is that Ahmed Ali was arrested by the police personnel on 27.11.1998 in connection with Dispur Police Station Case No. 1078 of 1998. It was a case of dacoity. He was shot at by the police and killed. It is alleged he was tortured while in custody and shot at by the police intentionally.

3. This Court while issuing Rule by the order dated 8.9.1999 directed the Learned District Judge, Kamrup, Guwahati to conduct an enquiry and submit report. Accordingly, the District Judge submitted a report vide forwarding letter dated 22nd December, 2000. Altogether seven witnesses were examined by the District Judge including the police officials. The relevant part of the report is quoted below:

".....The admitted position of the fact is that Ahmed Ali was hit by bullet on" being fired upon by Shri Trailokya Nath Bora who was the S.I. of police at the relevant time. Apparently, Ahmed Ali was under hand-cuff and he was said to be running with the hand-cuff on being chased by the police personnel who opened

fire at him. This shows that Ahmed Ali died during police custody. During post mortem examination two bullet injuries on the chest of Ahmed Ali was found. The bullets were fired from the back side one of which pierced through the chest of Ahmed Ali resulting exit wound in the area of the chest. The bullet injuries sustained by Ahmed Ali including one on his chest have not been disputed by the respondents is that there was no alternative left with the police but to open fire at Ahmed Ali in order to prevent him from fleeing and as such, the firing was never intentional nor were they negligent. However, on a careful perusal of the evidence and considering the circumstances under which the firing was made. I am unable to be convinced with the contention of the learned Govt. Pleader, because even if it is assumed that Ahmed Ali tried to escape from the custody by running away after overpowering the police head constable, it cannot be said that the police were justified in shooting Ahmed Ali down by firing at the back of his chest. The evidence on record and the other facts and circumstances do not disclose that the police were left with no other alternative but to open fire aiming at the back of the chest of Ahmed Ali. They could have definitely fired aiming at other parts of the body, i.e., on the legs so as to prevent him from escaping from the custody, but that was not done and to that extent they were negligent and the firing can be said to be intentional. It has to be borne in mind that at the relevant time, Ahmed Ali was admittedly under hand-cuff and in that position, he tried to escape from the custody by running away and then he was shot at by the police aiming at his back of the chest and that bullets pierced through the back making exit through the chest wall causing his death as a result of the injuries sustained. It, therefore, appears clear that late Ahmed Ali died during the police custody. It also can be held under the circumstances that the police were negligent in their acts. The police could have stopped Ahmed Ali from escaping by firing at some other parts of his body instead of firing at the back of the chest and to that extent the firing at Ahmed Ali can be said to be intentional for causing the death of Ahmed Ali by inflicting bullet injuries."

4. The aforesaid report was furnished to the learned counsel for both the parties as per direction given by this Court. The opinion tendered by the learned District Judge shows that the police were negligent in taking resort to firing as they could have easily apprehend Ahmed Ali on his heels to escape. Ahmed Ali was under handcuffs and was in the company of a good number of police personnels. He made the attempt to escape while they were approaching Pachim Boragaon by a path with jungles on both the sides. The report submitted by the District Judge that firing was not the only alternative left with the police party to stop and apprehend Ahmed Ali running with handcuffs appear to be the Inevitable conclusion in the given circumstances of the case. No man of prudence in such a situation guarded by 5/6 armed police personnel would dare to make an attempt to flee with hands cuffed with shackles. The post mortem report shows that Ahmed Ali sustained four bullet injuries. The report of the doctor who had performed the autopsy is quoted below:

"(1) One bullet entry sound with abraded margins, tattering present around the

wound in the left side of the back 19.3m below the 7th urvicel vertebra 8m Ukml to the mid plane of the body, measuring 1.3cm x 1.3cm x thoracic chrity deep, directed inwards and upwards.

(2) One bullet entry wound with abraded margins, tattering present around the wound, measuring 1.2cm x 1.2 thoracic carity deep directed inwards and downwards in the right side of the back 6cm lateral to the ground plane of the body 25cm above the right iliac crost X.

(3) One bullet exit wounded with evsrted and learned margins on the right side of the chest wall 1.5 cm x 1.5 x 3 cm lateral to the mid plane of the body 6.5 cm before the sternal notch.

(4) One bullet exit would with ourted and ladrited margin 1.5 cm x 1.5 cm in the left side of the chest walls for later to the midplane of the body 24 cm above the left inside crest.

(5) Contusion 1.8 cm x 0.8 cm in the left side back 10cm above the left iliac crest 2 cm lateral to midplane of the body.

(6) Contusion present in the right side of the chuck 3cm x 6 cm lateral to the midplane of the body 1cm below the lateral angle of the right eye."

5. The injuries quoted above clearly establish that Ahmed Ali sustained multiple bullet injuries caused by the police personnel accompanying him towards Pachim Boragaon. A man in handcuffs is not in a position to run fast to make good his escape from the clutches of a police party. That apart, Ahmed Ali must have fell down when he was hit by the first bullet. The subsequent firing was, therefore, not called for. The police definitely have the powers to open fire in the given circumstances, but this power does not permit desperate shooting spree. The force applied by the police has been definitely in excess of what was necessary. Therefore, they were negligent and guilty of misconduct in causing the death of a man in custody. I find no reason to disagree with the learned District Judge.

6. The law relating to the liability of the State Government as employer of the offending police officials is well settled. The decision in D.K. Basu Vs. State of West Bengal, and Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, and the ratio available therein are applicable in the instant case. The state cannot avoid its liability for the misconduct of its employees which resulted in the death of a person in custody, howsoever grave the offences the deceased might have been charged with. Law does not permit any authority, even if duly authorized, to deal with such offences beyond the parameters prescribed. The police officials accompanying Ahmed Ali abuses their powers on excess of what was necessary and, therefore, his death which has ushered in abysmal miseries to the wife and children has to be compensated by the State.

7. The petitioners have given the income of the deceased Ahmed Ali in the writ petition and the hardship they are facing on death of their only earning member. Considering the circumstances of the case, I think compensation of Rs. 2 lakhs

would be just and proper in the instant case.

8. In the result, the writ petition is disposed of with a direction to the Respondent State to pay an amount of Rs. 2 lakhs to the writ petitioners as compensation within a period of three months from today. Besides, the respondent State is further directed to take appropriate steps against the defaulting police personnels in accordance with the provisions of law without further delay. Criminal Cases, if any registered with the police, should be investigated thoroughly and the offender should be brought to trial without delay.

No order as to costs.