

(1993) 03 GAU CK 0021

In the Gauhati High Court

Case No : Civil Rule No. 101 (K) of 1991

Geeta Sangma

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 19-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 160, 161
Penal Code, 1860 (IPC) — Section 395, 397

Citation : (1994) ACJ 792

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : S. Dutta, B. Debnath and D.K. Nagi, for the Appellant; D.K. Misra, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—This petition relates to custody death. In this writ petition, the petitioner claimed an award of compensation of Rs. 3,00,000/- for causing the death of the petitioner's husband, late Francis Sangma, in a police lock-up at Dimapur Police Station (West) on 22.8.1989. The petition is preferred by the spouse of late Francis Sangma.

2. On 22.8.1989, the husband of the petitioner was arrested by police personnels led by Police Inspector, K.K. Angami, in connection with Dimapur Police (West) case No. 9(8) of 1989 under Sections 395/397, Indian Penal Code, on suspicion. On the same night, the husband of the petitioner was beaten to death. It is stated in para 4 of the petition that, on the fateful night, the following police personnels were on duty: (1) Nrithung, (2) Paojomong, (3) Benkikaba, (4) Susukamba. Thereafter, the body of the deceased, late Francis Sangma, was carried in a vehicle bearing No. NLN 386 (TATA) from Dimapur to Hojai for burial. A certificate to this fact has been issued by the Officer-in-charge of West P.S. on 23.8.1989 (Annexure 7 to this petition).

3. It also appeal's from Annexure 10 of affidavit-in-reply filed by the petitioner that one T.K. Nagi under whom late Francis Sangma was working by his petition dated 25.8.1989 made a complaint to the Superintendent of Police, Dimapur, for immediate suspension and arrest of police personnels involved in the killing of late Francis Sangma. In the said petition, the names of police personnels who were on night duty on 22.8.1989 were mentioned as (1) Nrithung, (2) Paojomong, (3) Benkikaba, (4) Susukamba. It is alleged that no action whatsoever has been taken by the S.P., Dimapur, on the complaint petition.

4. It also appeal's from Annexure 4 that a legal notice dated 28.9.1989 was addressed to the Home Commissioner and Director-General of Police, Nagaland, Kohima, claiming compensation of Rs. 3,00,000/-. Also it appears from Annexure 11 of the affidavit-in-reply that an application dated 25.8.1989 was addressed to the Addl. Deputy Commissioner, Dimapur, praying for immediate action against the police officers who had killed Francis Sangma on 22.8.1989 in their custody but without any result.

5. A memorandum dated 1st October, 1989, also appears to have been submitted to the Chief Secretary, Government of Nagaland, with a copy to Hon"ble Prime Minister of India, for payment of reasonable compensation and for taking immediate necessary action against the erring police officers and personnels. In the said memorandum, the name of Mr. K.K. Angami, Police Inspector, has been mentioned. The letter addressed to the Prime Minister was acknowledged by the Section Officer of the Prime Minister's Office by its letter dated 25th April, 1990.

6. From the Annexure 5 it appears that Home Commissioner endorsed the letter of the Section Officer to the police to conduct enquiries by its note dated 2.5.1990. Also the file No. CON-13/88 at page 395, produced by the learned Addl. Advocate General at the time of hearing of this writ petition, shows that by an order dated 1.11.1990 the Deputy Secretary, Home, Police Branch, communicated the desire of the Chief Minister to conduct the departmental enquiry. All these exercises appear to have ended in futility because of inaction of the police. From the instances mentioned above, the petitioner has moved from pillar to post to get justice and having failed, approached this court with the present petition.

7. Before I proceed further it may be pertinent to mention herein that the petitioner was appointed by the Superintendent of Police, Dimapur, as constable by its order dated 7.7.1990 (Annexure 1). In the appointment order, the name of Mr. Francis Sangma is wrongly mentioned. However, at the time of hearing of this writ petition it was clarified by counsel of both sides that the appointment was actually made in favour of Mrs. Francis Sangma after the death of her husband. This position is further clarified by the order dated 7.11.1991 (Annexure 8) of affidavit-in-reply which is the termination order of the petitioner's service as constable and which states that "her services" are hereby terminated with effect from 31.10.1991.

8. It is also curious to know that the statement has been made in para 11 of the petition that the petitioner has received altogether Rs. 11,400/- from the S.P., Dimapur, for the death of her husband, i.e., Rs. 5,000/- on 5.5.1990, Rs. 400/- on 18.6.1990 and Rs. 6,000/- on 6.8.1990. In reply to this statement, the respondent in para 12 of the counter had stated that the respondent is not aware of such payment as there is no record available in the office. This is yet another strong circumstance appealing against the respondents.

9. I have heard Mr. S. Dutta, learned counsel for the petitioner as well as Mr. D.K. Misra, learned Addl. Advocate General, Nagaland.

10. In this case, the petitioner, besides others, relied on the medical certificate (Annexure 3) and post-mortem report produced at the time of hearing. Annexure 3 is the death certificate which says that death of late Francis Sangma was caused due to cardio respiratory failure as a consequence of beating (physical assault). Further, the post-mortem report confirmed the above findings. The post-mortem report produced at the time of hearing of this writ petition is dated 23.8.1989. Post-mortem report described the following injuries on the body of the deceased:

Marks of widespread physical assault in the form of linear hemotoma are visible in the entire back, both forearms (front and back). Moreover, the knee and elbow joints were found swollen and oedematous due to physical assault on those regions. Coagulative semi-solid blood was found coming out of nostrils.

In my opinion the cause of death is due to cardio respiratory failure as a consequence of physical assault.

11. Considering the gravity of the allegations made in this petition, this court allowed several adjournments so as to enable the respondent Government to file counter and explain the position. Finally, a counter has been filed by the 3rd respondent. In para 4 of the writ petition, it is specifically stated that four police personnels whose names appeared in the said paras were on night duty. This has been admitted by the respondents in para 6 of the counter.

12. In para 7 of the counter, the respondents have admitted that late Francis was arrested under Dimapur West P.S. Case No. 9(8) 89 under Sections 395/397, Indian Penal Code. The statement in para 6 of the writ petition is that the post-mortem report shows that late Francis Sangma died due to cardio respiratory failure as a consequence of physical assault. This statement was not denied by the respondents in para 8 of their counter.

13. In para 13 of the counter, the respondents have admitted that the petitioner was appointed in the S.P. office as constable to redress her grievances. This apart, a specific statement has been made in para 8 of the petition stating that a pleader's notice dated 28.9.1989 claiming Rs. 3,00,000/- as an ex gratia payment for rehabilitation for causing the death of the petitioner's husband in the police lock-up at Dimapur on 22.8.1989. This statement has not been denied

by the respondents in para 10 of their counter. On the contrary, reading the counter of the respondents as a whole, the respondent has admitted that late Francis Sangma was arrested on 22.8.1989 and that he was done to death in the police lock-up at Dimapur on 22.8.1989 was not denied. The respondents admitted that the petitioner was appointed as constable to redress her grievances. The respondents also admitted that the 4 police personnels mentioned in para 4 of the writ petition were on duty on the fateful night of 22.8.1989. In short, reading the counter of respondents as a whole would show that the respondents not only admitted that late Francis Sangma died in the police lock-up on 22.8.1989, but all the statements made in the counters are also in an involved manner.

14. Of late, custody death has become a rule of the day. It is a heinous crime perpetrated by the police personnel against the society. Section 160 of the Criminal Procedure Code empowers the police officer to secure attendance of witnesses at the time of investigation. Further, Section 161 of the Criminal Procedure Code empowers the police officer making investigation to examine orally any persons supposed to be acquainted with the facts and circumstances of the case. It may be, therefore, a legitimate right of any police officer to interrogate or arrest any suspect on some credible materials but such arrest must be in accordance with law and the interrogation of such person does not mean inflicting physical assault. Such power of interrogation of the accused/ witnesses should be used strictly for the purpose of making the investigation effective.

15. In *Dagdu and Others Vs. State of Maharashtra*, it is observed by the Apex Court in para 88:

The police, with their wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under secluded jurisdiction. That tendency and that temptation must, in the large interest of justice, be nipped in the bud.

16. Further in *Bhagwan Singh and another Vs. State of Punjab*, the Apex Court observed that torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed door precisely what the demands of our legal order forbid.

It is further observed in para 8 of its judgment as under:

(8) It is a pity that some of the police officers, as it has happened in this case, have not shed such methods even in the modern age. They must adopt some scientific methods than resorting to the physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a

poacher.

17. I may also hasten to add that it is more heinous than a treasure guard becoming a robber. By their own admission and considering the entire surrounding circumstances, it has now come to irresistible conclusion that late Francis Sangma was done to death in the lock-up by the police personnels on duty on the night of 22.8.1989.

18. Now the question that arose for consideration is what relief the petitioner is entitled to. It is faintly submitted by Mr. D.K. Misra that this court may not award compensation in exercise of jurisdiction under Article 226 of the Constitution. I am not impressed by this submission. On the other hand, in Smt. Kumari Vs. State of Tamil Nadu and others, the Apex Court has held that the award of compensation is permissible in exercise of jurisdiction under Article 226 of the Constitution in the facts and circumstances of the case. The petitioner stated in para 7 of the petition that late Francis Sangma left behind the petitioner and 3 other minor children aged about 7 years, 5 years and 3 years respectively besides his old mother.

19. The petitioner at present as submitted by the counsel for the petitioner has engaged herself as a contingent paid sweeper in the office of Addl. Deputy Commissioner, Dimapur, out of which she is earning a meagre income of Rs. 450/- per month. In fact, no amount of treasure would be suitable substitution to a loving husband or loving wife. However, considering the plight of the petitioner and the facts and circumstances of this case, it would meet the ends of justice if the Government of Nagaland is directed to pay the petitioner a sum of Rs. 1,50,000/- in the nature of palliative. The aforesaid amount shall be paid by the Government within a period of 3 months from today. In the event if Government fails to pay the amount within stipulated date, the amount shall carry an interest at 12 per cent per annum from the date the payment is due till the amount is paid. It is needless to say that the awarded amount shall be utilised for the upkeep and maintenance of the family and for proper education of the children left behind by the late Francis. It will be open to the respondent Government to realise the aforesaid amount from the erring police personnel/officers, if so advised.

20. Before I part with the record, I may also observe here that considering the gravity of the offence, in the event if the competent authority so decides to institute enquiry into the matter by a superior police officer not connected with the offence alleged in this case, they will definitely be doing in the interest of justice.

With the above direction, this petition is allowed. No order as to costs.