

(1995) 10 GAU CK 0008
In the Gauhati High Court

Case No : Civil Rule No. 64 (K) of 1995 & Civil Rule No.64 (k) of 1995

Ghotovi Sema

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1996) ACJ 996

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

Bench : Single Bench

Advocate : Tali and Imti Imsong, for the Appellant; E. Renthungo, Jr.
Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—Heard Mr. Imti Imsong, learned Counsel for the petitioner as well as Mr. E. Renthungo, learned Jr. Government Advocate.

2. From the office note dated 29.8.95, notice upon the respondent Nos. 5 to 13 has been issued by registered post. Under the Civil Procedure Code, it is presumed to have been served. However, none enters appearance on behalf of the respondents. Mr. E. Renthungo has expressed his inability to file counter on behalf of the respondent Nos. 1 to 4 as no instruction has been received in spite of repeated reminders. However, considering the facts and circumstances of the case, I propose to dispose of this petition on merit as the matter brooks no delay.

3. The case in hand illustrates a classic example as to how the valuable life and liberty of a citizen has been put to an end by an act of barbarism. The deceased stated to be aged about 24 years was detained under the National Security Act some time in April, 1994 and he was detained in Central Jail, Dimapur. The allegation is that, on 7.3.1995 which was a visiting day, some of his friends went to visit him by obtaining a visiting slip after payment of Rs. 5/- as is the practice. All the other visitors were allowed to meet the inmates of the jail, however, the

visitors of the deceased were disallowed by the jail warden. This was resented by the deceased.

4. It is averred in para 10 of the writ petition that, at about 5 to 5.30 p.m., the deceased was inside the cell and the respondent No. 10 came inside the cell by unlocking the door and called out the deceased on the pretext that he was wanted by the Jail Superintendent. However, as soon as the deceased came out of the cell, respondent Nos. 6 to 13 headed by respondent No. 5 started beating the deceased without any reason. Deceased cried for help to other jail inmates to save him, however, except shouting from the small window of their respective cells they could not rescue the deceased from beating by respondent Nos. 5 to 13. Thereafter, the deceased was fatally injured resulting in multiple injuries on his body and he was shifted to the Dimapur Civil Hospital in an unconscious condition. Thereafter, the deceased was declared dead by the doctor in Civil Hospital, Dimapur, at about 8.30 p.m. on 7.3.1995.

5. Post-mortem of the deceased was conducted by the doctor of the Civil Hospital, Dimapur and following injuries were found:

Post-Mortem Report

On examination the following injury marks were observed:

- (1) An abrasion just below the right kneecap and another on the side (inner aspect) of the knee and several small abrasions on the outer aspect of the knee (right side).
- (2) 6 Nos. of abrasions on the right arm.
- (3) 3 Nos. of abrasions on the left leg just below the knee.
- (4) Multiple small abrasions on the outer aspect of the left thigh and 3 Nos. of abrasions on the back side.
- (5) An abrasion on the left side finger and 14 Nos. of abrasions of various sizes on the left arm.
- (6) 2 Nos. of abrasions on the back.
- (7) Bruises all over the right leg extending from ankle to thigh.
- (8) Bruises present from right hand (both sides) to the shoulder.
- (9) Bruises from leg to the thigh more prominent on the back of the thigh.
- (10) Bruises all over the buttock region.
- (11) Bruises extend from left hand to the shoulder.
- (12) Bruises all over the back side with criss-cross liner marks of 1/2 " B x 5" to 6" L were present on the back.
- (13) A lacerated wound of 3/4 " x 1/2 " on the front of the right leg.

(14) 5 Nos. of lacerated wounds of about 1/2 " x 1/2 ", 1" x 1/2 " and 1/2 " x 1/2 " in sizes on the front of the left leg.

(15) 3 Nos. of lacerated wounds with about 1 cm. in diameter on the right side of the chest.

(16) One lacerated wound of 1 1/2 " x 1/2 " on the head in the right parietal region.

(17) Fracture of right parietal bone (skull found fractured with sign of haemorrhage in the brain).

6. The injuries sustained by the deceased cannot be disputed because the deceased was inside the jail under the custody of wardens, respondent Nos. 5 to 13 and the injuries were sustained inside the jail and, therefore, there is no dispute that the injuries sustained by the deceased were perpetrated by the respondent Nos. 5 to 13. That the specific averments made in para 10 of the writ petition are not disputed by the respondents. Therefore, it is accepted as gospel truth that the injuries sustained by the deceased have been perpetrated by the respondent Nos. 5 to 13 resulting in his death.

7. Convict prisoners and under trial prisoners also have right under Article 21 of the Constitution. Article 21 of the Constitution imposes a strict duty upon the State to ensure that the citizen in custody of police or any prison is not deprived of his right guaranteed by Article 21 of the Constitution. In the case in hand, there is no dispute that at the time of meeting his death, the deceased was under the custody of the respondents, particularly respondent Nos. 5 to 13 who are jail wardens.

8. Of late a custodial death has become the rule of the day. It is heinous crime perpetrated by the custodians of law. If custodians of the law themselves indulged in committing such crimes then no part of the society is safe and secured. If the jail wardens whose duties are to provide security and protection to the citizens indulged in such methods instead of providing security and creating a sense of insecurity in the minds of the citizens then the citizens will have no confidence in the custodians of law. Such acts perpetrated by the custodians of law are more heinous than the game keeper becoming a poacher or a treasure guard becoming a robber.

9. By now it is well settled principle of law that if infringement of indefeasible right guaranteed under Article 21 of the Constitution is established, compensation in exercise of our power under Article 226 of the Constitution is permissible. There is no dispute that the deceased died out of beating from the respondent Nos. 5 to 13 inside the jail on 7.3.1995. The postmortem report as quoted above would clearly show that the deceased died out of injuries inflicted by the respondent Nos. 5 to 13. If the above facts are established it is well substantiated that there has been flagrant infringement of indefeasible right guaranteed by Article 21 of the Constitution and in such a situation the citizen

has a right to get exemplary damages.

10. Now what remains to be decided is the quantum of compensation. No amount of treasure on earth can be substituted for the dear and loving one. Any amount of compensation that may be awarded is only in the nature of exemplary damages and in palliative. The deceased was stated to be aged 24 years. If this is so, the petitioner has lost his son at the prime of his life. However, as already observed no amount of compensation can be adequate in terms of valuable and precious life.

11. It is averred in para 14 of the writ petition that the deceased was doing a business and was earning a handsome amount of money. Considering these facts and in view of the aforesaid reasons if an amount of Rs. 2,00,000/- (Rupees two lakh) is awarded to the petitioner as exemplary damages for the loss of his son, it would meet the ends of justice.

12. The respondent Nos. 5 to 13 are the servants of respondent Nos. 1 and 2. Accordingly, the respondent Nos. 1 and 2 are directed to pay a sum of Rs. 2,00,000 as exemplary damages to the petitioner within a period of two months from the date of receipt of this order. It is open to the respondent Nos. 1 and 2 to indemnify the costs of compensation from the respondent Nos. 5 to 13.

13. With the aforesaid direction, the petition is allowed.

14. Before I part with the record, I shall constrain to observe that F.I.R. No. 0024/ 95 dated 8.3.1995 under Sections 302/34 of the Indian Penal Code, 1860, has been lodged against the respondent Nos. 5 to 13. Investigation of such a case brooks no delay as such cases create considerable amount of public awareness. The delay in completing the investigation and submission of charge-sheet in such a case would lose the confidence of the public in the investigating agency. It is expected that investigating agency would pursue the matter vigorously and complete the investigation. If the charge-sheet is not already filed, it must be filed within two months from the date of receipt of this order.

15. Registry is directed to furnish a copy of this order to Superintendent of Police, Dimapur, for necessary compliance and submitting the report.

16. With the aforesaid observation and directions this petition is allowed.