

(2005) 08 GAU CK 0067
In the Gauhati High Court

Hasan Ali

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226
Penal Code, 1860 (IPC) — Section 181, 302, 304A

Citation : (2007) 1 GLT 228

Hon'ble Judges : A. Hazarika, J

Bench : Single Bench

Judgement

A. Hazarika, J.—To begin with, the Supreme Court in D.K. Basil's case has observed that "custodial death is perhaps one of the worst crimes in a civilized society governed by the Rule of Law. The rights inherent in Article 21 and 22(1) of the Constitution required to be jealously and scrupulously protected. We cannot whisk away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become Law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism..." The caution and the guidelines enumerated in the case has been violated in the tiny State of Meghalaya by the Police Personnel in the night of 15.4.2002. The brief facts leading to the filing of the case is narrated hereunder.

2. The father of Islam Ali (since deceased) has approached this Court invoking power under Article 226 of the Constitution of India seeking mandamus praying for adequate compensation for custodial death of his son caused by the Police Personnel on duty on the night of 15.4.2002.

3. The facts depicted in the writ petition is that his son who was 23 years of age at the time when the occurrence took place, a businessman by profession went along with his friends to witness the Rangali Bihu festival on the night of

15.4.2002 held at Dhankheti, Shillong Meghalaya by hiring a taxi. The son Islam Ali on entering the area had touched the helmet on a red Yamaha bike standing thereon as alleged and immediately 6/7 Police Personnel brutally assaulted him and brought to Laitumkhrah Police Station.

4. Since Islam Ali was brought to the police station on the night of 15.4.2004, some friends who accompanied him to witness the festival went to the police station and on enquiry they came to know that Islam Ali had already been transferred to Shillong Civil Hospital. Thereafter they went to Shillong Civil Hospital to meet Islam Ali and found that Islam Ali was vomiting and complained of severe pain at his abdomen region and he succumbed on 19.4.2002 to the injuries sustained.

5. Accordingly, an Ejahar was lodged on 19.4.2002 being Laitumkhrah P.S. Case No. 25(4) 02 u/s 302 I.P.C. which is equivalent to G.R. Case No. 118 (5) 2002 and a complaint was filed to the Deputy Commissioner, East Khasi Hills District, Shillong, Meghalaya. On the same day the petitioner received a presentation certificate of dead body from the Post Mortem conducting officer of the office of the District Medical and Health Centre, East Khasi Hills Shillong with an information of fitness of the dead body with regard to transportation of dead body on 19.4.2002. On the same day he received another letter cum-certificate from the then Additional Deputy Commissioner with an information of assistance for carrying the dead body. On receiving the said communication the dead body was brought to his home town at Nagaon and buried as per customs of Mohammedan Law and hence this writ petition for adequate compensation for the death caused to his son Islam Ali.

6. It may be pertinent to mention that the then Deputy Commissioner, East Khasi Hills, Shillong had issued an order for magisterial enquiry leading to the death of Islam Ali vide Memo No. C&S 9/92-93/ Pt/190 dated 19.4.2002 directing the then A.D.C. Shri S. Jagannathan to enquire into the matter and to submit its report. The term of reference No. 1 was leading to the death of deceased and the 2nd term of reference relates to chronological sequence of events to be pictured in details from the alleged time of the arrest till the time expiry. The third term of reference is to fix responsibility on erring officials and the fourth term of reference to suggest steps and remedial measures so that such incidents do not occur in future. The then ADC, had made the enquiry under reference and submitted its report on 26.4.2002 which would be dealt with in the subsequent paragraphs.

7. Before discussing the evidences adduced by the parties during the inquiry, reference is made to the injuries found on the dead body of Islam Ali during Post mortem. These inquiries are as follows:

(1) Abrasion (4 x 2) c.m. size found over left side of flank of abdomen lying 25 cms to the left of umbilicus obliquely.

(2) Abrasion (13 x 1.5) cm. interrupted in pattern lying 2 cms below wound No.

(1) obliquely.

(3) Abrasion (1x1) c.m. found over the right side of forehead lying 1 cm. above outer third of right eye brow :

(4) Abrasion are also found over outer part of right elbow (1x1) c.m. over left wrist flexor area (5 x 5) c.m. each two in number.

All these abrasions are darkbrown and dark in colour and simple in nature.

In regard to the abdomen the doctor has found the following injuries?

Peritoneum?Congested, patch of dotted haematoma were seen on the anterior (front aspect of peritoneum, coffee-coloured foul smelling, haemorrhagic fluid found in the abdominal cavity.

Small intestine & its contents?Loops of small intestine underneath fronts around umbilical region are contused and abraded partly, a perforation of small intestine over the right side of abdomen found size (1.2 x 1.2) cms edges softened, contents of small intestines. Acced through into the abdominal wall.

Giving more detailed description of injury or disease?The Doctor conducting the post mortem examination has observed that "The dead body is that of an adult male person stout in rigor mortis, sustaining simple injuries externally which do not have corresponding internal injuries, but suffered from internal injuries caused by blunt regular surfaced object with considerable force. Perforation in the small intestine was caused by being pressed the injured part against vertebral column, with considerable force suddenly. The case of death as opined by the Doctor is due to shock and peritonitis following blunt injuries to the abdomen.

8. Now, I may refer to the report dated 26.4.2004 containing the findings in the inquiry conducted by the then ADC, East Khasi Hills, Meghalaya. The Inquiry Report would show that there are two versions in regard to occurrence of events. The version of Shri Anthony Lyngdoh, Shri Samathan Mahantg, Shri Paul L. Tlanglse, Shri Nirmal Agarwal and Shri Chandan Das would show that they met the deceased Islam Ali at Police Bazar and then proceeded to Dhankheti to participate in the Bihu celebrations at Asom Kristi Kendra. Their versions were that approximately 4 to 7 police men assaulted the deceased Islam Ali brutally and then Lt. Islam Ali was taken to Laitumkhras Police Beat House by local taxi accompanied by a single police man.

9. The other version of the occurrence was that Islam Ali (unidentified) was found lying unconscious on the road side near Asom Kristi Kendra, Dhankheti and was taken to Laitumkhras Police Beat house in a Local taxi No. ML. 05 A 5290 by A.S.I.J.S. Gill and handed over to ASIM. Rymbai, the Officer, on night duty at Laitumkhras Police Beat house. The enquiry conducted would show that as per entry No. 404 dated 15.4.2002 at 10.45 p.m. records that ASI J.S. Gill produced unknown person and reported the said person, whose name was not known, was

found lying on the road at Dhankheti near Asom Kristi Kendra, Shillong, seem to be under influence of liquor in unconscious state. However, the said person had been sent for medical treatment under escort of H/C. G. Sangma and staff. The Doctor A. Warr, Medical and Health Officer on emergency/night duty at Civil Hospital who records that patient (unknown then), Islam Ali has strong smell of Alcohol in breath and patients admitted to Male Medical Ward-II. As per Bed-Head ticket of inpatient (Islam Ali), he complained of stomach pain on 16.4.02 and treatment given. On 16.4.2002 complained of stomach pain and vomiting with tenderness in (Supra) abdominal area. No bowel evacuation, case is referred to Dr. Lamare on 17.4.02. Patient examined and X-ray, taken aspiration through Nasogastric tube done and treatment continued. On 18.4.2002, Medical Officer has recorded that patient removed by self (Naso Gastric) tube for aspiration. Blood sample taken for serum analysis on 18.4.2002 at 9.30 P.M. patient expired.

10. The enquiry conducted with reference to fix responsibility of erring officials would show that photo profiles of the police officials who were on duty at the Bihu celebration venue, at Dhankheti and the officials of Laitumkhrah Beat House were taken and these were placed as unnamed photo exhibits marked Ext-1 to 5 for identification of the officials by the complainants. These photos were shuffled randomly and were in different position for each complainant for identification. The statement of Shri Anthony Lyngdoh-UBC 747 Temjen Toshi and ASI P.C. Malngiang assaulted Islam Ali brutally on the night of 15.4.2002. He has confirmed in his statement that he is an eye witness to the fact and has confirmed positive identification from photo exhibits. The statement of Shri Chandan Das UBC 747 Tenjen Toshi had caught hold of Islam Ali and assaulted him. He has also confirmed positive identification from the photo exhibits. The statement of Shri Nirmal Agarwal would show that though he was not positively confirmed of the photo identification but, pointed out to UBC 747 Tenjen Toshi and ASI P.C. Malngiang. The statement of UBC Temjen Toshi, ASI, P.C. Malngiang and ASI J.S. Gill would show that they were on duty at the said venue on 15.4.2002 and proved by the duty detailment register of Laitumkhrah P.S. Therefore, the postmortem report coupled with the statement of eye witness and identification has proved beyond reasonable doubt of the involvement of the two officials in the assault of Islam Ali resulted in death and recommended for initiation a criminal proceeding u/s 304-A IPC and Section 181 of the Indian Penal Code and recommended for remedial measures in the light of the observation of Apex Court in order to avoid custodial excess committed by the police force.

11. Two affidavit-in-opposition have been filed in the instant writ petition. The affidavit-in-opposition filed by the Superintendent of police on behalf of Respondent No. 1, 2 and 8 left much to be desired. It discloses no material in regard to the cause of death of Islam Ali. However, the detailment of police party has not been denied. The affidavit is misleading as it has stated that the said police party came back to Laitumkhrah P.S. at 10.30 P.M. after executing law and

order duty from the said venue at Dhankheti and reported that no untoward incident took place at the said place. The affidavit-in-opposition further discloses that at about 10:40 P.M., Islam Ali was brought to Laitumkhrach P.S. by an ASI who reported that the said person was found lying on the road in an unconscious state at Dhankheti near Assam Krishi Kendra and sent for medical treatment and brutality on the body of deceased has been denied. At the same time it has been averred that ASI P.C. Malngiang and UBT 747 Tenjen Joshi were placed under suspension vide order dated 27.11.2002 and departmental proceedings being No. 20/2002 and 21/02 have been drawn up against both of the erring officials. The affidavit further disclosed that Laitumkhrach P.S. Case No. 25 (4) 2002 registered u/s 302 I.P.C. was earlier registered against unknown persons and the investigation officer has been instructed to proceed against the abovementioned two officials and the department has moved to change the charge u/s 304-A/181 I.P.C. in place of u/s 302 I.P.C.

Another affidavit-in-opposition has been filed by the Deputy Commissioner, East Khasi Hills, Shillong would show that he has directed a magisterial enquiry to enquire the factum of death of Islam Ali and the enquiry report has been submitted to the Government and the Government of Meghalaya on 23.8.2002 had sanctioned a sum of Rs. 1 (one) lakh for the purpose of ex-gratia payment to the father of the deceased. But the petitioner did not turn up to collect the aforesaid exgratia payment.

12. Heard Shri Dilip K.D. Choudhury appearing for the petitioner and Shri N.D. Chullai, Senior Govt. Advocate representing the State of Meghalaya. Advancing the argument, Shri Choudhury has drawn the attention of the pleadings averred in the writ petition along with the annexures including the affidavit-in-opposition and the enquiry report submitted by the then ADC, East Khasi Hills Meghalaya on 26.4.2002; The enquiry report as it stands proved the brutality of assault on the person of Islam AU (since deceased) which caused his death. The firm foundation of facts pleaded and established that there is a violation of fundamental right by state's instrumentalities and the High Court is not powerless in order to do complete justice and enforcing the fundamental right guaranteed in the Constitution which enable the award of monetary compensation in appropriate cases and it is a fit case where this Court under Article 226 of the Constitution of India issue a direction for payment of monetary compensation worth of Rs. 15,00,000/- (Rupees fifteen lakhs) only.

13. The counsel representing the State of Meghalaya refuting the argument advanced by the counsel of the petitioner has argued that there is a remedy under Private Law and without availing the remedy under Private Law, this Court will not exercise the power under Writ Jurisdiction and prayed for dismissal of the writ.

14. The admitted facts are that the deceased along with his friends went to witness the Rangali Bihu festival on the night of 15.4.2002 wherein he was assaulted brutally by the Police Personnel present at the venue on duty.

Thereafter, he was brought back to Laitumkhrah Police Beat House on the same night and considering the seriousness of his condition he was admitted to Shillong Civil Hospital and treatment was given and ultimately succumbed to the injuries on 18.4.2002. Therefore the burden lies on the State to explain how he sustained the injuries which caused his death.

15. This Court has to see as to whether the burden has been duly discharged by the State. The affidavit filed by the superintendent of Police, East Khasi Hills is not encouraging. Rather it has tried to cover up the story based on falsehood. The enquiry reports goes against the affidavit filed by the Superintendent of Police which is a serious concern. The Post mortem report and the witnesses examined during the enquiry has proved that the deceased was assaulted by the police personnel on duty on 15.4.2002 and the State failed to discharge its burden and is therefore liable for suitable compensation in the facts and circumstances of the case.

16. This Court while considering the case in hand has gone through the judgment reported in D.K. Basu Vs. State of West Bengal, Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, Rudul Sah Vs. State of Bihar and Another, and State of Maharashtra Vs. Christian Community Welfare Council of India and Another, The decisions as aforesaid have dealt with violation of Article 21 by the instrumentalities of State resulting in death, Police excess/atrocities etc. and adequate compensation has been paid to the aggrieved party and therefore this Court has no hesitation to pass similar order awarding adequate compensation in the instant case since there is a violation under Article 21 of the Constitution of India.

17. Having regard to the fact based on evidence recorded by the enquiry officer that there was atrocities committed by the police which resulted in the cause of death. The State of Meghalaya has already provided exgratia payment of Rs. 1 (one) lakh to the petitioner for the death of his son and hence this Court is inclined to pass a monetary benefit of another one lakh fifty thousand to the petitioner and the total amount of rupees two lakhs fifty thousand is directed to be paid to the petitioner. The payment shall be made by the Commissioner and Secretary to the Government of Meghalaya, Home Department within a period of two months from the date of receipt of the certified copy of the order. It is further directed that petitioner shall obtain the certified copy of the order and shall produce the same to the Commissioner and Secretary to the Government of Meghalaya, Home Department for doing the needful as indicated above. With the above directions the writ petition is disposed of.