
(2000) 11 DEL CK 0113

In the Delhi High Court

Case No : C.W. Petition No. 300 of 1995 and Criminal M. No. 4158 of 1995

Iqbal Begam

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) ACJ 2033 : (2001) 3 RCR(Criminal) 455

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Wills Mathews, for the Appellant; Mukta Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.S. Sodhi, J.—This writ petition is directed against the behavior of the police who, according to the petitioner, took into custody her husband, Sayyad Masoom Ali, a retired Government servant, aged 68 years on 29.8.1994 and brutalized him which ultimately resulted in his death. The petitioner prays for an appropriate order or direction to the effect to call for the post mortem report as also the report of the SDM and thereafter direct appropriate criminal proceedings against the erring officers. Another prayer, amongst others, is for payment, of ex gratia compensation to the tune of rupees ten lacs.

2. Brief facts of the case are that on 27.8.1994 at around 5.00 p.m. the petitioner's husband was summoned to the Police Station, Seelampur. Suffice it to say that during interrogation, it appears, the petitioner's husband met his end. A magisterial inquiry u/s 176 of the Code of Criminal Procedure was held and the Magistrate submitted his report vide which he found that on the basis of all evidence on record and all versions, the death of Sayyed Masoom Ali occurred while in police custody.

3. He was taken into custody vide DD No. 608 of Police Station Seelampur (on the basis of FIR No. 475/94) at 7.50 p.m. on 27.8.1994. He was taken to GTB

Hospital at 11.30 p.m. on 27.8.1994 vide DD No. 758 in police custody. At the hospital the MLC of Sayyed Masoom Ali records brought by ASI Ratan Lal, Police Seelampur and brought dead at 00.40 hrs. on 28.8.1994. Thus from the time Sayyed Masoom Ali was put inside the lock up i.e. 7.50 p.m. on 27.8.1994 to the time he was declared dead i.e. 00.40 hrs on 28.8.1994, he was in continuous police custody. Therefore, the fact of Sayyed Masoom Ali being in custody of police when he died is clearly established.

4. From the post mortem report it is evident that the following injuries which were ante-mortem were found on the person of the deceased :

"A reddish brown abrasion L shaped of size 2x0.7 cms. present over right side forehead placed 1 cm. lateral to midicine and 4.5 cms. above the right eye brow.

A reddish abrasion almost triangular in shape size 1.5x1.0 cms. placed 3.5 cms. outer to outer angle of right eye and 4 cms. above and in front of right ragusin right orbital region.

A reddish abrasion of size 1.2x0.5 cms. irregular in shape present over Rt.outside in ear 1 cm. below the helix anteriorly.

An oval abrasion reddish in colour of size 0.7x0.4 cms. present over base of big toe on left side placed 7 cms. proximal to the tip of the nail on dorsal surface.

An oval reddish abrasion of size 0.7x0.4 cms placed 4.5 cms below the lower border of patella on right side leg.

An oval reddish abrasion placed on outer aspect left leg 6 cms. below the lower border of patella 0.6x0.3 cms. size.

A headed surgical paranodian scar in abdomen 8 cms. long A linear her ald rear 2 cms. long in Rt. Hypochondria."

5. The cause of death, according to Dr. A.K. Tyagi, Member, Board of Doctors, was, as stated in his statement, as follows :

"He conducted the post mortem of Sayyed Masoom Ali on 28.8.1994 along with Dr. S.K. Verma. The details of injury are given in post mortem report. The cause of external injury except old surgical scar i.e detailed at No. 8 and No. 9 are all injuries by blunt force impact. The rest of seven injuries are abrasions which are superficial and have been caused by any rough and hard surface and object. The internal examination reveals that there are evidence of earlier myocardial scars i.e. earlier heart attack. In presence of precipitating factors the condition of heart could prove fatal. The precipitating factor could be any trauma-psycological, physical, physiologi cal, exercise, mental tension, increased blood pressure etc. The external in juries could be reason for having a precipitating factor in death of SayyedMasoom Ali. With the kind of condition of heart Sayyed Masoom Ali had it is possible that he succumbed to death due to the precipitating factors."

6. Therefore, from material on record it is clear that the death of the husband of

the petitioner, Sayyed Masoom Ali, can be termed as "custodial death" and even if the deceased was suffering from heart problem, the brutality inflicted upon him only precipitated the condition which proved fatal. .

7. I am given to understand that the erring officers are being prosecuted and, Therefore, it would not be proper for me to dwell at length upon the individual acts of the policemen. Suffice it to say that prima facie on the material placed before me, the State/its functionaries have caused the death of the deceased, Sayyed Massom Ali, while he was in their custody and in a manner that the law has deprecated time and again. This, Therefore, brings me to the question of dealing with the prayer of the petitioner regarding ex gratia compensation. Learned counsel for the petitioner has drawn my attention to the judgments of the Supreme Court in Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, , Ms. Sudlia Rasheed and Ors. v. Union of India, 1995 (1) SCALE 20 and Geeta and Another Vs. Lt. Governor and Others, . In yet another judgment of the Supreme Court in Ajab Singh and Another Vs. State of Uttar Pradesh and Others, , the Supreme Court thought it fit that a sum of rupees five lacs would be adequate ex gratia compensation which compensation was without prejudice to the rights of the legal representatives of the deceased to claim compensation in private law proceedings. The Supreme Court also in yet another judgment in Karlra's case thought it fit to award compensation of rupees ten lacs. The reason for my drawing attention to the judgments and various pronouncements of the Supreme Court is to show that it is not necessary the criteria laid down in fatal accident cases and allied matters for awarding compensation should be followed by courts in awarding ex gratia compensation in custodial death case. Such an interpretation would lead to treating citi/.cns differently based on their economic strength when rights are violated by the State. The State and its agencies are bound to protect and safeguard the rights enshrined in the Constitution. The Constitution guarantees equality before law, economic strength of the deceased cannot be the sole criteria of awarding ex gratia compensation. If may, however, be a guiding factor.

8. Without further burdening this judgment with authorities suffice it to say the Delhi High Court in Smt. Geeta's case (supra) had, while considering various judgments of the High Court, awarded a sum of Rs. 5.50 lacs.

9. In this case, the petitioner has already received a sum of Rs. 50,000/- by an order of the National Human Rights Commission which, according to me, is grossly inadequate. In any case, it cannot be argued that merely because the National Human Rights Commission has awarded a sum that it thought fit, the High Court in its powers under Article 226 of the Constitution cannot arrive at a different decision. The powers of the High Court under Article 226 are far greater than that of the National Human Rights Commission and that the High Court is duty bound to enforce the constitutional guarantees being the guardian of these rights. I, Therefore, in the facts and circumstances of this case, consider it appropriate to direct the 1st respondent the State, to pay a sum of Rs. 3,50,000/-

(rupees three lacs fifty thousand) to the petitioner as compensation for the custodial death of her husband, Sayyed Masoom Ali. This is however, without prejudice to the rights of the legal representatives of the deceased, Sayyed Masooi i Ali, to claim compensation in private law proceedings, if so entitled in law against those found responsible for his death. The amount of Rs. 50,000/- (rupees fifty thousand) already paid can be deducted from the above amount of Rs. 3,50,000/-. The payment to be made to the petitioner within a period of four weeks from today and compliance reported to this Court.

10. The writ petition stands allowed.