
(2002) 09 GAU CK 0054
In the Gauhati High Court

Jagat Dhar Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Arms Act, 1959 — Section 27
Constitution of India, 1950 — Article 21, 226
Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 3 ACC 455

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Judgement

D. Biswas, J.—The petitioner aged 65 years has filed this petition under Article 226 of the Constitution claiming compensation for death of his son, Kalyan Sarma, aged 29 years, working as Junior Engineer in the Assam Tourism Development Corporation. At about 7 p.m. on 24.10.1997, Kalyan went out for an evening stroll and was hit by a bullet fired by a policeman. Kalyan was taken to Gauhati Medical College Hospital where the authorities refused to admit him. Thereafter, he was rushed to Down Town Hospital. The petitioner and his wife on getting the information rushed to Down Town Hospital where they found Kalyan lying dead.

2. The petitioner's case is that while Kalyan along with his friends was standing on the footpath on the western side of R.G. Baruah Road, Guwahati, a person came and told them that a policeman was chasing him to shot. The man was advised to take shelter in a nearby PCO. The policeman in uniform appeared and the people started running and the policeman fired a shot which hit Kalyan who fell on the footpath and died, as stated above. Geetanagar Police Station Case Nos. 97 of 1997 and 98 of 1998 were registered under various provisions of law. The policeman in an inebriated state while on duty committed the offence. The family of the deceased is shocked and bewildered beyond description and rendered helpless on the death of Kalyan. The State did not come forward to render any assistance to the petitioner's family and nothing tangible came out of

the police investigation in the aforesaid cases registered at the Geetanagar Police Station.

3. The State in their affidavit submitted as follows:

(6) That with regard to the statements made in paragraphs 5 and 6 of the writ petition, the deponent admits that on 24.10.1998 at about 9.45 p.m. ABC 264 Naren Deka was on duty at the Guwahati Doordarshan Kendra. along with his party, Rifle No. 1384 (sic) was in his custody for his duty. It revealed on inquiry that during that time on his duty a nearby teastall-keeper came to him and asked Deka about the immoral proposal made by him to his wife and on that point a quarrel broke up between the two and on provocation, the ABC 264 Naren Deka opened a blank fire, on hearing that sound the teastall-keeper ran away and entered into a public call booth to inform the matter to the police. Then Naren Deka again opened the 2nd round fire aiming at the teastall-keeper and unfortunately the bullet hit Kalyan Sarma who was standing near the PCO owned by one Nayanjyoti Pathak. As a result of being hit by the bullet, Kalyan Sarma sustained grievous injury on his person and succumbed to the injuries on way to the Down Town Hospital for his treatment. This case has been registered in Geetanagar Police Station as Geetanagar P.S. Case No. 97 of 1997 u/s 302, Indian Penal Code and read with Section 27(3), Arms Act.

(13) That the deponent denies the statements made in para 13 of the writ petition and states that the authority never allowed intoxicated armed policeman to remain on duty and to use and handle the arms in any manner. As such the deponent denies the allegation of the petitioner and states that the State as well as the concerned authority, viz., respondent Nos. 1, 2, 3, 4 and 5 are not responsible and liable for killing of the person.

(15) That with regard to the statements made in para 15 of the writ petition, the deponent states that the allegations of the petitioner are baseless and wrong. The deponent strongly denies that criminal act of the respondent No. 6 resulted from the neglect and lack of supervision and control of the other respondents. The deponent also denies that there was any neglect or lack of supervision and control of the other respondent in the suddenly occurred incident caused by the respondent No. 6 and as revealed on inquiry the said respondent No. 6 on provocation shot aiming at the person of the teastall-keeper and Accidentally the bullet hit the person of Kalyan Sarma.

(16) That with regard to the statements made in paras 16,17 and 18 of the writ petition, the deponent says that the State and the respondent Nos. 1, 2, 3, 4 and 5 have neither violated any law nor taken away/denied any right of the petitioner or of his son in any way for the killing of Kalyan Sarma caused by respondent No. 6 and as such the State along with the respondent Nos. 1,2,3,4 and 5 are not liable to pay any compensation to the petitioner or to his family.

4. The stand taken by the respondent authority clearly shows that they admit the death of Kalyan Sarma caused by gunshot fired by ABC 264 Naren Deka who was

on duty near Guwahati Doordarshan Kendra armed with rifle No. 1384. It is also clear that Naren Deka had fired two gunshots, one of which hit Kalyan Sarma causing his death.

5. Mr. A.K. Bhattacharyya, the learned Senior Counsel raised two-fold issues. At the first instance, it is argued that the offender Deka has to be brought to trial and on the second count it is argued that the State cannot avoid its liability/responsibility in the matter and has to pay adequate compensation. The learned Counsel relied upon the decision in D.K. Basu Vs. State of West Bengal, and Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, in order to bring home that the State in the given situation is not exempt from its liability.

6. It is admitted fact that Kalyan Sarma was killed by gunshot fired by ABC 264 Naren Deka on duty. The gunshot was fired in a crowded place with the full knowledge that he was likely by such act to cause fatal injuries to the members of the public. Such reckless act resulted in deprivation of precious life. The degree of offence committed by the policeman on duty is extremely grave. Article 21 provides that no person shall be deprived of his life and personal liberty except in Accordance with the procedure established by law. This is a case of desperate exuberance of a policeman on duty with arms indulging in a shooting spree without least care of the consequences. The State is obliged to protect the life and liberty of the citizens and cannot shake off its hands on the ground that it was a case of exception where a policeman under grave provocation acted violently causing death. The State, being the employer liable for the misconduct of its employees which ended in deprivation of the precious life of an engineer. The affidavit by the State shows that Naren Deka was on duty with his party. No other member of the party also tried to desist Deka though it was incumbent on them to restrain Deka even if necessary by application of force. All of them failed in their duty. The (sic) available in D.K. Basu, and Nilabati Behera, would be apt in the circumstances of the given case. The petitioner in the instant case is, therefore, entitled to appropriate relief. Insofar as the criminal cases at Geetanagar Police Station are concerned, in the absence of any statement about the status thereof it has to be presumed that the offender is yet to be brought to trial. This Court considers that directions to complete the investigation within a time schedule and to compensate the family are necessary not only to vindicate the grievances of the petitioner, but also to ensure that the Government exists for the people.

7. It is on record that the deceased was a Junior Engineer having an annual income of Rs. 46,704/- which, would have risen to Rs. 72,000/- in due course. He had 29 years left to attain the age of superannuation, the computation on the basis of annual income and the future prospects in service career would mean something enormous. Considering all these facts, this Court is of the opinion that the State has to compensate the bereaved family for loss of an earning member killed young. For this purpose a sum of Rs. 5,00,000/- is considered just and proper.

8. In the result, the writ petition is allowed. The respondent No. 5 is directed to complete the investigation in the abovementioned two cases within a period of three months from today, if not already done, and submit the report before the appropriate Court in Accordance with the provisions of law. Respondent No. 4, the Superintendent of Police (City), Guwahati is directed to ensure that this order is carried out by the officer-in-charge of Geetanagar Police Station within the period as mentioned above, respondent Nos. 1, 2 and 3 are directed to pay the compensation of Rs. 5,00,000/- to the petitioner within a period of three months from today failing which the petitioner will be entitled to recover the amount with interest at the rate of 9 per cent per annum from the date of default. The State is further directed to recover this amount from Deka and other members of the party who did nothing to prevent the murderous attack and failed in their duty. The exercise in this behalf shall be completed within a period of 6 months. Respondent Nos. 3 and 4 are directed to initiate appropriate inquiry/proceedings to comply with this direction.

9. The cost of the petition is quantified at Rs. 10,000/- to be paid by the State within three months.