
(2010) 04 GAU CK 0012
In the Gauhati High Court
Case No : Writ Appeal No. 131 of 2002

Jitendra @ Jatindra Debnath	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) 3 GLT 422

Hon'ble Judges : Maibam B.K. Singh, J; Amitava Roy, J

Bench : Division Bench

Advocate : S. Deb, for the Appellant; D. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

Maibam B.K. Singh, J.—Heard Mr. S. Deb, learned senior counsel spearing on behalf of the Appellants and Mr. D. Sarkar, learned P.P. appearing on behalf of the Respondents.

2. This appeal has been preferred against the judgment, dated 27.08.2002, of the Learned Single Judge of this Bench passed in Civil Rule No. 220 of 1993 by which the writ petition, filed by the Appellant for issuing direction to the Respondents to pay adequate compensation in connection with the death of his son Sudhir Debnath due to injury having been sustained while in police custody alleging that his said son had been murdered in the custody, was dismissed.

3. There is no dispute in respect of the following facts:

The said Sudhir Debnath was arrested on 16.4.1991 in connection with the West Agartala P.S. Case No. 8(4) 1991 u/s 302/34 IPC on the allegation that he had killed his wife Smt. Jugal Debnath. He was produced before the learned Chief Judicial Magistrate, West Tripura, Agartala and on the basis of the prayer of the police, he was remanded to the police custody for five days. While he was in the police custody, he was taken to hospital with injury in his abdomen and he died

at the hospital. AGD. case No. 2(3) of 1991 u/s 174 Code of Criminal Procedure was registered and post mortem was also conducted over the dead body. Dr. P.K. Das, who conducted the post mortem examination on the dead body found the following:

1. "Incised penetrating injury sharp cut margin in the umbilical region direct in umbilical point 1/2" x 1/2" X 3" (Abdominal cavity).
2. Echymosis below Lt. eye.
3. No gross injury was found in any part of the part except the umbilical region.

As per opinion of the doctor, the death was due to shock and haemorrhage due to grievous abdominal injury. In the inquest report, apart from the abdominal injury, finding of a minor cut injury on the right palm with blood marks on both the hands is mentioned.

4. As there was a dispute in between the writ Petitioner and the Respondents on the question if the said Sudhir Debnath had died as a result of severe torture and inhuman atrocities having been committed by the police personnel or if he committed suicide in the police custody, the Learned Single Judge vide order dated 27.08.2002 passed in Civil Rule No. 220 of 1993 directed the District Judge, West Tripura, Agartala to conduct an enquiry in the matter of the said custodial death.

In pursuance of the said direction, the learned District Judge, West Tripura conducted the enquiry. Two witnesses (PW 1 and PW 2) were examined on the side of the writ Petitioner and eight witnesses (O.PWs 1 to 8) were examined on the side of the Respondents. On 04.10.2001, Mr. R.K. Ghose, District Judge, West Tripura, Agartala submitted his enquiry report with the following findings:

From the aforesaid evidence it is clearly found that the accused Sudhir Debnath himself committed suicide while in police custody and while he was in S.B. Lock up by causing injury himself in his abdomen by a piece of glass and that glass was procured by him on breaking the window glass by fist blow. Nowhere it is found that the said Sudhir Debnath was killed/murdered by anybody or by police while he was in police custody.

In conclusion it is held that Sudhir Debnath committed suicide while in police custody and he was not killed/murdered by police.

5. On perusal of the impugned judgment dated 27.08.2002, we have ascertained that the learned Single Judge after due hearing of the parties, having regard to the said enquiry report submitted by the learned District Judge, West Tripura, Agartala which was not controverted by the writ Petitioner by filing any objection, and also after consideration of the findings of Mr. A.K. Chakraborty, Executive Magistrate in his enquiry as well as the absence of any possible motive on the part of the police for elimination of the said Sudhir Debnath in the facts and circumstances of the case, dismissed the writ petition as having no merit. Basing

on the said report of the learned District Judge and also on the materials available on record, the Learned Single Judge was of the view that the writ Petitioner had failed to establish that the death of the said Sudhir Debnath had been due to negligence or any overt/covert act of the police officials and that there had been any contravention of the fundamental rights of the said Sudhir Debnath.

6. Being aggrieved by and dissatisfied with the said judgment of the Learned Single Judge this appeal has been filed.

7. One of the grounds submitted by the learned Counsel of the Appellant is that the said Sudhir Debnath, who was remanded to the police custody in connection with the said case of West Agartala Police Station and who was supposed to be kept in the West Agartala Police Station, was taken to S.B. Cell by the Respondent No. 4 and interrogated there with mala fide intention and without any lawful authority. According to the learned Counsel of the Appellant, the said Sudhir Debnath was murdered by the Respondent No. 4 along with the help of other Respondents. There is, however, nothing to show that the said Respondent No. 4 was a person having enmity with the said Sudhir Debnath or having any personal interest in connection with the said West Agartala Police Station case in respect of which the said Sudhir Debnath was remanded in police custody. On perusal of the counter affidavit of the Respondents filed in the writ petition, we have ascertained that the investigation of the case was transferred to CID by the concerned authority, and as such, the Respondent No. 4 took up the investigation of the case as it was endorsed to him for investigation. It is also stated in para No. 19 of the said counter affidavit of the Respondents that on 18.04.1991, as ordered by the authority for close and continuous interrogation of the said accused Sudhir Debnath by a team of officers of CID organization, the accused was brought to the S.B. Lock up. A chart is also found to have been given in the said para of the counter affidavit of the Respondents indicating the dates, the time of interrogation and the officers by whom the said interrogation were made and to be made. The Respondent's case is to the effect that the said Sudhir Debnath was interrogated as per office order of the S.P. (CID). In the facts and circumstances, we cannot accept the submission of the learned Counsel of the Appellant that the said Sudhir Debnath was interrogated at S.B. Cell with mala fide intention. Even though there is nothing to show that any permission had been taken from the Chief Judicial Magistrate, West Tripura, Agartala before taking the said accused from West Agartala Police Station to S.B. Cell for interrogation, the said taking of Sudhir Debnath was not done by the Respondent No. 4 at his own instance or without any authority and knowledge of his higher officers. Merely on the basis of the said taking of Sudhir Debnath from West Agartala Police Station to S.B. Cell for interrogation without any formal order of the Chief Judicial Magistrate, West Tripura, we cannot conclude that it was done with the intention of or for the purpose of murdering him. The impugned judgment is not warranted to be interfered with merely on the basis of the said fact.

8. Another point submitted by the learned Counsel of the Appellant is that the existence of a window in the S.B. Cell or S.B. Lock up is doubtful inasmuch as the learned District Judge did not find any such window having glass pane with iron rod when he visited the place of occurrence. According to the learned Counsel of the Appellant, in the absence of any window having glass pane in the said Cell or Lock up, there was no opportunity on the part of the said Sudhir Debnath for getting any broken piece of glass by his own effort to use for committing suicide. The learned District Judge visited the place of the occurrence only on 15.09.2001, i.e. after about 4/5 months, and as such, merely on the ground that the learned District Judge did not find the window when he visited there, we cannot reject the findings made in the enquiry report of the learned District Judge based on the testimonies of the witnesses.

9. The last point submitted by the learned Counsel of the Appellant is that the post mortem report in respect of the said Sudhir Debnath nothing is mentioned about any injury received by him in his hand, and as such, it is doubtful if he had committed suicide using broken piece of glass. According to the learned Counsel of the Appellant, had the said Sudhir Debnath committed suicide by piercing his abdomen using broken piece of glass, injury would have been severely caused in his hand. It has been ascertained that as per inquest report, a small blood less cut mark was seen on the palm of the right hand of the deceased. It is also stated in the inquest report that there were stains of blood on both hands. There is no reason to doubt the genuineness of the said inquest report which was purportedly prepared in the presence of the Executive Magistrate, Sadar. It is quite possible that the doctor, who conducted the post mortem examination failed to notice the injury on the right palm of the deceased inasmuch as his attention was most probably drawn to the major injury at the abdomen of the deceased. The said doctor was not examined. The writ Petitioner could have also requested the learned District Judge for examination of the doctor but that was not done. In any case, the said point submitted by the learned Counsel of the Appellant is not sufficient to interfere with the impugned judgment which has been passed after due consideration of all the materials in the record as well as the facts and circumstances of the case.

10. In the light of the above discussion, we do not find any acceptable ground for interfering with the impugned judgment passed by the learned Single Judge. There is also no illegality or perversity in the findings of the learned Single Judge which are found to have been based on materials in the record. The impugned judgment is found to have been passed on the basis of the materials in the record after taking into consideration of all the relevant facts and circumstances.

11. In the result, this appeal is dismissed as having no merit. No order as to costs.