
(2011) 12 GAU CK 0080
In the Gauhati High Court
Case No : Writ Petition (C) No. 147 of 2005

K.L. Thariktha

APPELLANT

Vs

State Of Manipur and Others

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Arms Act, 1959 — Section 25(1B)
Constitution of India, 1950 — Article 21, 226, 32
Penal Code, 1860 (IPC) — Section 121, 121A, 307, 34

Citation : (2013) 1 ACC 390 : (2012) 2 GLT 977

Hon'ble Judges : T. Nandakumar Singh, J; Maibam B.K. Singh, J

Bench : Division Bench

Advocate : L. Sharat Sharma, for the Appellant; R.S. Reisang, GA. Advocate, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—By this writ petition, the petitioner, wife of the deceased, Sankhil Khunting @ Koko @ George of Lamkang Khunthak Thamla Khullen Village, Chandel District, Manipur, makes a claim under the public law remedy for compensation for the death of her husband; further such claim is based on strict liability by resorting to constitutional remedy provided for the enforcement of fundamental right. Heard Mr. L. Sharat Sharma, learned counsel appearing for the petitioner and Mr. RS Reisang, learned G.A. appearing for the respondents.

FACTUAL MATRIX

2. Petitioner's husband late Sankhil Khunting @ Koko @ George was a contractor while he was alive. In the morning at 7.30 AM of 30.9.2003 the petitioner's husband went to Singjmei side for engaging some labourers for his contract work and on his return journey to home, he was stopped by a team of Manipur Police Commando personnel near Singjamei Bazar and immediately taken to Singjamei Police Station. There was also hot exchange of words between the petitioner's

husband and the police party.

3. On the next day, i.e. 01.10.2003 while the petitioner was eagerly waiting for his safe release from the police custody, she had been informed that her late husband's bullet ridden dead body was lying in a pool of blood on the table of RIMS Morgue for post mortem. Immediately the petitioner rushed to the RIMS Morgue and found the lifeless body of her husband guarded by police personnel who informed the petitioner that her husband was killed in an ambush laid by underground elements while he was in the custody of police personnel.

4. In order to cover up the brutal killing of petitioner's late husband while he was in the custody of the police personnel, a false criminal case being FIR No. 240(9)2003 under Sections 307/34 IPC and 25(1-B) Arms Act was registered against the petitioner's husband. In the enjhar of the FIR, it is stated that petitioner's late husband was interrogated at 1.30 AM of 30.9.2003 soon after he was arrested by the police personnel and petitioner's late husband disclosed that some sophisticated arms like AK 47 Rifle with magazine and one Carbine with huge ammunition were kept concealed somewhere at Langol Games Village. On receiving such information, the petitioner's late husband was made to lead the team of police personnel led by N. Lokhon Singh, Inspector O/C CDO of Imphal West and proceeded towards Langol Games Village for recovering arms and ammunitions which were kept concealed at the Langol Games Village. But the petitioner's late husband could not identify the exact house at the Langol Games Village where the arms and ammunitions were kept concealed. Then the petitioner's late husband again led the police party to the Langthabal Chingthak Kabui Village saying that the arms and ammunition were kept concealed in the hilly area. On reaching the Langthabal Chingthak Kabui village police vehicles were parked at a distance of about one furlong from the place where the arms and ammunition were kept concealed and proceeded on foot for recovery of the arms and ammunition at the instance of the petitioner's late husband. While proceeding, an ambush was laid on the police party from the top of the hill by the unknown underground elements at 1.30 p.m. The police personnel also retaliated by firing and an encounter took place between the police party and the extremist for about 5 minutes. In the said encounter the petitioner's husband had suffered injury and succumbed to the bullet injuries at the spot. Thereafter, the dead body was evacuated to the RIMS morgue.

5. In the writ petition, it is stated that the said facts mentioned in the O.E. of the said FIR are false. It is also further stated that the police party should not have taken the petitioner's husband while in their custody to a unsafe place and the police party had to protect the life of the petitioner's late husband while he was in their custody. The custodial death of the petitioner's husband was because of failure on the part of the duties of the police personnel to protect the life of the petitioner's husband while he was in their custody.

6. It is also stated in the writ petition that had the petitioner's late husband not been detained by the police party, he would not have been taken to the unsafe

site where the petitioner's late husband was killed.

7. At the time of death of the petitioner's late husband, he was aged about 34 years and had he not been killed in the said incident, he would have lived upto 70 years. The petitioner's husband was earning Rs. 60,000/-per annum. The monetary amount of compensation for the death of the petitioner's husband would be:- 60,000/-X 36 and less 1/3rd standard deduction=Rs. 14,40,000/- and loss of company, love and affection, anguish, mental torture etc. Rs. 2,00,000/-. Accordingly, in the writ petition the amount of compensation claimed under the public law remedy for the death of petitioner's husband payable by the respondents is Rs. 16,40,000/- along with interest pendent elite till final payment @ 10% per annum.

8. The respondents, i.e. State of Manipur represented by the Chief Secretary, Govt. of Manipur, the Director General of Police, Government of Manipur, the Officer in-Charge, Singjamei Police Station, Shri Ng. Romen, Sub Inspector of Police, Manipur Police Department, Commissioner cum-Secretary (Home), Govt. of Manipur and Deputy Commissioner, Imphal West District, Manipur had filed joint affidavit in-opposition wherein it is stated that the petitioner's husband was arrested on 30.9.2003 at about 9.30 A.M. from Singjamei Mayengbam Leikai by Shri N. Lokhon Singh, Inspector, O.C. Commando Unit, Imphal West and recovered.38 pistol along with 4 live rounds of ammunities in the magazine and Kinetic Honda and later on ascertained that he was S/S 2nd Lt. of NSCN (K) and also a Chief Organizer of the organization. Thereafter, a case under FIR case No. 239(9)2003 Singjamei PS u/s. 25(I-B) Arms Act and 7 Cril. Law Act was registered against him and investigation was started immediately.

9. During the course of investigation, it was ascertained from the petitioner's husband that some sophisticated weapons like A.K. 47 rifle with magazines and one Carbine with huge quantity of ammunities were kept concealed somewhere in Langol Game Village in a quarter-Block-A, Langol. He also stated that he would be able to point out the place. For recovery of the arms and ammunities, the I.O of the said criminal case along with the OC of the Commando Unit led by the petitioner's husband proceeded to the Langol Game Village; but petitioner's husband could not find out the exact place and thereafter petitioner's husband again led the police party towards Langthabal Chingthak Kabui Khul in order to recover the arms and ammunities from the place which petitioner's husband could point out.

10. After reaching the Langhthabal Chingthak Kabui Khul, police vehicles were parked at the some distance and proceeded on foot and while proceeding along with the petitioner's husband for recovery of the arms and ammunities, an ambush was laid upon the police party from the top of the hill by some unknown underground elements at 1.30 p.m. as a result an encounter took place between the police party and extremist for about 5 minutes. In the encounter the petitioner's husband sustained bullet injuries and he succumbed to his injuries at the spot. In the joint affidavit in-opposition, it is stated that there is no

negligence on the part of the police in the said incident and for that unfortunate incident, a case, i.e. FIR Case No. 240(9)2003 Singjamei P.S. was registered.

11. The petitioner filed reply affidavit to the said joint affidavit in-opposition filed by the respondents wherein the petitioner categorically denies the case of the respondents in their joint affidavit that there is no negligence on the part of the police in the incident where the petitioner's late husband was said to have been killed in the encounter between the police party and extremist.

12. As there are contradictory facts leading to the death of the petitioner's late husband, this Court passed an order dated 21.1.2010 in the present writ petition directing the Addl. District & Sessions Judge (Fast Track Court) Manipur East having the jurisdiction over the place where the occurrence took place to inquire into the said disputed question of facts. The disputed question of facts for which the inquiry was to be made by the learned Addl. District & Sessions Judge (Fast Track Court) are mentioned in the said order of this Court dated 21.1.2010; those are:-

Firstly, as to the facts and circumstances under which the petitioner's husband was killed;

Secondly, as regard the question if the concerned police personnel, in whose custody the husband of the petitioner was, took proper and reasonable care so as to avoid untoward incident like attack from unknown persons while going to the said place for recovery of arms and ammunitions; and

Thirdly, as regard the question if the deceased husband of the petitioner was the member of underground organization whose name is mentioned at Sl. No. 43 of the Order being No. 1 (6)/80-H(Pt-1) dated 4th April, 1994 issued by the Joint Secretary/Home Department, Manipur or not.

13. Both the parties appeared before the learned Addl. District & Sessions Judge (Fast Track Court) Manipur East and in support of their case they produced the witnesses and the documents. From the side of the petitioner, 3 (three) witnesses namely, Smt. KL Thariktha (Petitioner), Mr. Rengphung Shilsi, former Chief of Old Lamkang Khunthak and Smt. Th. Meera Devi, Senior Tutor, RIMS, were examined and from the side of the respondents only 2(two) witnesses namely, Shri Th. Amalkumar Singh, Deputy Secretary (Home), Government of Manipur and Shri Ng. Romen, the I.O. of FIR case No. 239(9) 2003 Singjamei P.S. were examined.

14. This Court also has carefully perused the statements of the witnesses, who were examined before the learned Addl. District & Sessions Judge, (Fast Track Court) Manipur East.

15. The learned Addl. District & Sessions Judge, (Fast Track Court) Manipur East, after completing the enquiry, submitted report dated 30.12.2010 along with the records. This Court also perused the said report of the learned Addl. District & Sessions Judge (Fast Track Court) Manipur East dated 30.12.2010. The learned

Addl. District Judge made a finding in his report that the petitioner's late husband was in the custody of the police personnel when he was killed and also the police personnel had led the petitioner's husband at the relevant time of the incident in which the petitioner's husband was killed and also made a finding that the petitioner's husband is not a member of the extremist whose name is listed at Sl. No. 43 of the list of extremist mentioned in the order being No. I(6)80/-H(Pt-I) dated 4th April, 1994 issued by the Joint Secretary (Home) Govt. of Manipur. The relevant portion of the findings of the learned Addl. District & Sessions Judge, (Fast Track Court) Manipur East in his report dated 30.12.2010 read as follows:

16. Therefore, as regard the question whether the concerned police personnel, in whose custody the husband of the petitioner was, took proper and reasonable care so as to avoid untoward incident like attack from unknown persons while going to Langthabal Chingthak Kabui Khul for recovery of arms and ammunitions, it is answered as hereunder that:

(1) numerical strength of the security personnel involved at the relevant time in question, as already defined above, were more (sic) sufficient enough to protect the petitioner's husband from any untoward incident like attack from unknown persons on their way to the above said place;

(2) however, keeping in view the findings made while answering the first question concerning with the fact and circumstances under which the petitioner's husband was killed, it has decided that he was left unprotected at the relevant time in question; and

(3) even though it appears that Respondent No. 6 had acted insubordination to the Officer in-Charge, commando Unit, Imphal, circumstances strongly suggested that he was ignorant of the ulterior motives so had by the security personnel under the command of the said officer in charge, commando Unit, Imphal.

17. The last matter in controversy relates to the question whether the husband of the petitioner was a member of underground organization whose name is found mentioned at Serial No. 43 of the order being No. I(6)80/-H(Pt-I) dated 4th April, 1994, issued by the Joint Secretary (Home), Govt. of Manipur or not.

It was very specifically pleaded by the Respondents in the proceeding of the corresponding Writ case that the name of the petitioner's husband is found listed at Sl. No. 43 of the aforesaid Order thereby carrying a cash reward of Rs. 20,000/- on his arrest and upon furnishing information leading to his arrest. In support of such plea, D.W. No. 2 deposed that it was revealed during his investigation into FIR case No. 239(9)2003 of Singjamei P.S. that the petitioner's husband was arrested earlier and detained in judicial custody for a certain period in connection with FIR case No. 21(2)97 of City Police Station on suspicion of his involvement as finance secretary, Ammamcht region of NSCN (K) and he secured bail later.

18. The document at Ext. D/1 is the certified to be the true copy of FIR No. 239(9)2003 of Singjamei P.S. u/s 25(1-B) Arms Act and section 7 of the Criminal Law Amendment Act, which was registered against the accused Mr. Sankhil Khunting @ Koko @ George Lamkang, aged 40 years, son of S.K. Kocheh Lamknag Khunthak Thamlam Khulen, Chandel District, and Ext. D/2 is another certified to be the true copy of the FIR No. 21(2)97 of City P.S. under Sections 121/121-A IPC and section 13 UA(P) Act, which was registered against the accused Kumthing Lamkang @ Nok @ George @ John, age 31 years, son of Kachai Lamkang of Thamlam Khulen, Chandel District. Considering similarities in the names of the accused persons recorded in both the above mentioned FIR, the names of their fathers and their residential addresses being found resembling each other, it has decided that the petitioner's husband was the same person involving in both the above said FIR cases.

However, even assuming that the petitioner's husband was the prime suspect in both the above mentioned FIR cases, it shall not be proper to transform him to be member of an underground organization only on the basis of such suspicion. The particulars of the person listed at Sl. No. 43 of the above said order is carefully examined. It is found recorded as "Khumthing Lamkang of Koro Ching, Chandel District" and neither age of the person concerned nor name of his father or mother were found recorded in the said list. In such situation, it may not be proper to have a conclusive presumption of the fact that the above said particulars could be of the petitioner's husband.

In view of the findings made herein above, it has decided that the husband of the petitioner was not the same person whose particulars are found listed at serial No. 43 of the order, more fully mentioned above.

16. Since the act of dehumanizing assault and torture of a citizen of India are committed by the protector of law in uniform in their custody where nobody is allowed to enter except with their permission, it would be next to impossible to have direct evidence to prove as to who the offenders are. Disturbed by this situation, the law commission in its 113th report recommended amendment to the Indian Evidence Act, 1872 so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period while the person was in police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. We may here recall the observations of Mr. Justice Arjit Pasayat in *Munshi Singh Gautam (D) and Others Vs. State of M.P.*, that:

8. Keeping in view the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the

recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.

17. This Court is not sitting as an appellate authority of the said report of the learned Addl. District & Sessions Judge (Fast Track Court) Manipur East dated 30.12.2010. No doubt, this Court has to interfere with the findings of the learned Addl. District & Sessions Judge (Fast Track Court) Manipur east only when the findings are based on no evidence and perverse. For that limited purpose this Court has given anxious consideration of mind to the testimonies of the witnesses and the documents produced by petitioner vis -a- vis the witnesses and documents produced by the Respondents and the report of the learned Addl. District & Sessions Judge,(Fast Track Court) Manipur East and is of the view that the findings of the learned Addl. District & Sessions Judge in his report are based on evidence. Since this Court is endorsing the findings of the learned Addl. District & Sessions Judge (Fast Track Court) Manipur East in his report dated 30.12.2010, it is not required to give reasons or justification for endorsing the said findings.

18. The Apex Court in Rudul Sah Vs. State of Bihar and Another, had considered the important question as to whether the Apex Court in exercise of its jurisdiction under Article 32 can pass an order for payment of money as compensation for deprivation of fundamental rights; and answered the question, thus, while allowing award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. The ratio laid down in Rudul Sah's case (supra) was also followed in Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, .

19. The Apex Court in Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, held that "the public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by (the Supreme Court) or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizens that they live

under a legal system which aims to protect their interests and preserve their rights. Therefore, when the Court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary award" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort.

20. Again the Apex Court in D.K. Basu Vs. State of West Bengal, held:

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for Redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at the perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim who may have been the breadwinner of the family.

21. It is now well settled that award of compensation is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, of the Constitution of India. This Court also considered some of the important cases wherein the Apex Court exercising its jurisdiction awarded compensation, i.e. D.K. Basu Vs. State of West Bengal, , Sube Singh Vs. State of Haryana and Others, .

22. Now the question is what would be the quantum of compensation to be awarded for the death of the petitioner's husband.

23. The Apex Court in a catena of cases held that even in the absence of evidence to show the earning of the deceased, the Court has to apply some hypothesis, some guesses as well as human consideration in determining the quantum of compensation. Regarding this point, it may refer to the decisions of the Apex Court in Ashwani Kumar Mishra Vs. P. Muniam Babu & Ors.: (1994) 4 SCC 22 and R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, . This Court also has taken into consideration of the normal life span of a citizen of India, more particularly, the life span of the residents of Manipur, while calculating the amount of compensation to be awarded by this Court and for that purpose this Court is of the considered view that the normal life span of the residents of the State of Manipur is about 70 years. It is also admitted case of both the parties that the minimum wages for the unskilled workers is Rs. 120/- per day for the State of Manipur.

24. In the present case, the petitioner does not produce any material to support her case that her late husband was earning Rs. 60,000/- per annum as a contractor, but both the parties admit that the minimum wages for the unskilled worker is Rs. 120 per day for the State of Manipur. For the case of this nature, this Court, after taking into consideration of the earlier judgments and orders of this Court, is of the view that amount of compensation under the Public Law Remedy for the death of the petitioner's late husband would be Rs. 5 lakhs (Rupees Five Lakhs) and the respondents are jointly and separately liable to pay the compensation. Accordingly, the respondents are directed to pay the compensation of Rs. 5 lakhs (Rupees Five Lakhs) to the petitioner within 3(three) months from the date of receipt of this judgment and order. However, it is made clear that this amount of compensation is in addition to the other remedies in civil and criminal proceedings against the police personnel.

For the foregoing observations and discussions, this writ petition is allowed of.