
(2019) 04 MAN CK 0011

In the Manipur High Court

Case No : Writ Petition (c) No. 840, 841 Of 2014

Laishram And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 21
Indian Penal Code, 1860 — Section 34, 307
Unlawful Activities (Prevention) Act, 1967 — Section 20
Arms Act, 1959 — Section 25(1C)

Citation : (2019) 04 MAN CK 0011

Hon'ble Judges : Ramalingam Sudhakar, CJ;M.V. Muralidaran, J

Bench : Division Bench

Advocate : M.Rakesh, S.Samarjeet, K.Jagat

Final Decision : Allowed

Judgement

R.S., CJ

[1] The prayers in WP(C) No. 841 of 2014 are as follows

"i) to admit this petition and issue Rule Nisi;

ii) to issue a writ in the nature of Mandamus directing the Respondents to pay Rs.20,00,000/- (Rupees twenty lakhs) only as compensation to the Petitioner for their illegal act of abduction and subsequent killing of her husband Laishram Keshorjit Singh without assigning any lawful reason, which is an established infringement of fundamental right under Article 21 of the Constitution of India;

iii) to issue a writ in the nature of Mandamus or any other appropriate writ or order or direction directing the Respondent No.4 to 6 to hand over the investigation into the killing of the Petitioner's husband Laishram Keshorjit Singh to an independent investigating agency like Central Bureau of Investigation (CBI) so that it could proceed with the investigation and make all attempts to book the culprits, who were involved in abduction and subsequent killing of the petitioner?

s husband Laishram Keshorjit Singh and his friend Seram Priyokumar Meitei in a fake encounter;

iv) to issue any other appropriate Writ or order or direction which the Hon?ble Court deems fit and proper in the facts and circumstances of the case.

v) in the interim to issue a direction directing one of the District Judges or any other Senior Subordinate Judicial Officer of Manipur to cause a fact finding inquiry into the illegal action of capturing and subsequent killing of the Petitioner? s husband Laishram Keshorjit Singh his friend Seram Priyokumar Meitei without assigning any lawful reasons."

[2] The prayers in WP(C) No. 840 of 2014 are as follows

"i. to admit this writ petition and issue Rule Nisi;

ii) to issue a writ in the nature of Mandamus directing the Respondents to pay Rs. 20,00,000/- (Rupee twenty lakhs) only as compensation to the Petitioner for their illegal act of abduction and subsequent killing of her husband Seram Priyokumar Meitei without assigning any lawful reason, which is an established infringement of fundamental right under Article 21 of the Constitution of India;

iii) to issue a writ in the nature of Mandamus or any other appropriate writ or order or direction directing the Respondent No. 4 to 6 to hand over the investigation into the killing of the Petitioner?s husband Seram Priyokumar Meitei to an independent investigating agency like Central Bureau of Investigation (CBI) so that it could proceed with the investigation and make all attempts to book the culprits, who were involved in abduction and subsequent killing of the Petitioner? s husband Seram Priyokumar Meitei and his friend Laishram Keshorjit Singh in a fake encounter;

iv) to issue any other appropriate Writ or order or directions which the Hon?ble court deems fit and proper in the facts and circumstances of the case.

v) In the interim to issue a direction directing one of the District Judges or any other Senior Subordinate Judicial Officer of Manipur to cause a fact finding inquiry into the illegal action of capturing and subsequent killing of the Petitioner? s husband namely Seram Priyokumar Meitei and his friend Laishram Keshorjit Singh without assigning any lawful reason."

[3] The facts in both the writ petitions are as follows:-

The Petitioner in WP(C) No. 841 of 2014 got married to the deceased Laishram Keshorjit Singh about 14 years ago and they were blessed with two sons namely Laishram Badan Singh and Laishram Wanglen Singh and the petitioner in WP(C) No. 840 of 2014 got married to Seram Priyokumar Meitei about 17 years ago and they were blessed with three sons, namely, Seram Yuremba Meitei, Seram Omenjit Meitei and Seram Henthoi Meitei. The deceased husbands were the sole earning member of families and the deceased in WP(C) No. 841 of 2014 was running a grocery shop and the deceased in WP(C) No. 840 of 2014 was a mason.

[4] On 1st June, 2009, the husband of the Petitioner in WP(C) No. 841 of 2014 left home with a sum of Rs. 20,000/- (Rupees twenty thousand) for buying certain household articles from Moreh town in the early morning along with one of his local friends namely Seram Priyokumar Meitei by boarding a passenger bus from Lilong Bazar. The Petitioner was told by her husband before leaving for Moreh Town that he would come back on 2nd June 2009. However her husband did not come back, the Petitioner became impatient.

In the meantime, the Petitioner came to know from the 7.30 p.m. AIR news bulletin of 2nd June 2009 that two unknown individuals were killed by the Assam Rifles personnel in Chandel district and on the next day i.e. 3rd June 2009, the Petitioner came to know from local newspaper about deposition of two dead bodies at the mortuary of Regional Institute of Medical Sciences, Lamphelpat.

[5] The Petitioner's husband wore a pair of slippers, black cargo pant, black half sleeved T-Shirt, white vest, black underwear and beaded necklace around the neck when he left for Moreh Town and the said local newspaper further disclosed about the wearing apparels of the said two deceased, which resembled with the wearing apparels of the Petitioner's husband and his friend. As such in order to ascertain the identity of the deceased, the elder brother of the Petitioner's husband, visited at the mortuary of Regional Institute of Medical Sciences, Lamphelpat and he found the dead bodies of Laishram Keshorjit Singh and his friend Seram Priyokumar Meitei there.

[6] On 3rd June 2009, the incident of killing of the Petitioner's husband and his local friend Seram Priyokumar Meitei by the personnel of 20th Assam Rifles has moved the sentiment of the local populace and as such in the morning of the same day a public meeting was held at Urup Litan Makhong Bazar and a Joint action committee was formed in order to seek justice and reparations. The Joint Action Committee submitted a Memorandum dated 3rd June 2009 to the then Hon'ble Chief Minister, Manipur thereby demanding to punish the errant personnel of 20th Assam Rifles, who were involved in the killing of innocent individuals and also to award ex-gratia payment of Rs. 5,00,000/ each to the next of kin of the two deceased persons.

[7] On 4th June 2009, a post mortem examination over the dead body of Laishram Keshorjit Singh was conducted at the RIMS mortuary at Lamphelpat and after completing the post mortem examination, the dead body was handed over to the Petitioner's family for performing of last rite of the departed soul. The doctor, who performed the post mortem examination over the dead body, has opined that the cause of death of the Petitioner's husband was due to injuries to the vital organs produced by firearm injuries on the chest and abdomen, homicidal in nature. According to the Postmortem examination report, the Petitioner's husband sustained several bullet injuries to his body.

[8] The Petitioner came to know that on 15th June 2009, her husband and his local friend Seram Priyokumar Meitei were intercepted and abducted by the

personnel of 20th Assam Rifles while they were travelling in a Moreh bound passenger bus along Indo-Myanmar road and thereafter they were killed in a fake encounter somewhere at Maipi and Angbreshu track in Chandel District Manipur. After eliminating them, one Major Abhisek Bharti of 20th Assam Rifles had lodged a false and concocted written report with the Officer-in-charge, Kakching police station on 2nd June 2009 at 12.30 P.M. thereby stating that on 1st June 2009 on receipt of specific information about the movement of some armed valley based underground cadres via axis of Maipi and Angbreshu, they had laid an ambush to counter their movement. At about 2015 hours on 1st June 2009 two suspiciously moving individuals were seen moving on the track. On being challenged by the troops to stop, the said two individuals brought down heavy volume of automatic weapons fire on the Assam Rifles personnel, who were laying ambush there and they also retaliated. In the encounter, which lasted for about 35 minutes both the underground carders were eliminated and on searching the encounter site and area around, (i) one 3-G assault rifle with one live round in the chamber; (ii) two magazines of G-3 assault rifle; (iii) 19 rounds of G-3 assault rifle; (iv) one lathode with one bomb in the chamber and (v) one live bomb of lathode were recovered. Basing on the report, the Officer-in-charge, Kakching Police Station has registered a criminal case under FIR No. 87(6)2009 KCG P.S. U/S 307/34 IPC, 20 UA(P) Act, 25(1-C) arms Act, 5 Expl. Subs. Act for investigation. However, as the place of occurrence falls under the Tengnoupal Police Station, the said FIR case had been transferred to the Tengnoupal Police Station for further investigation. Accordingly, Tengnoupal Police Station re-registered a criminal case under FIR No. 36(6)2009 TPL P.S. U/S 307/34 IPC, 20 US(P) Act, 25 (1-C) Arms Act, 5 Expl. Subs. Act for investigation

[9] During the course of investigation, the concerned I.O. of the case visited the place of occurrence; however nothing has been recovered/seized from the place of occurrence. The Investigating officer sent the seized arm and ammunitions to the Manipur State Forensic Science Laboratory, Pangei for expert opinion and the concerned Ballistic Expert opined that the seized G-3 rifle is not serviceable due to defective of return spring and non alignment of bolt extension and bolt extension housing. At the same time one of the seized magazines was also found not serviceable due to the absence of floor plate.

[10] On 22nd April 2014, the Petitioners have submitted an application addressed to the Deputy Commissioner, Chandel District, Manipur for seeking ex-gratia payment for the unjustified killing of their husbands. Subsequently the Deputy Commissioner, Chandel District, Manipur has sought for a detail report from the Superintendent of Police, Chandel District and the Superintendent of Police, Chandel District has submitted a report dated 22nd July 2014 stating inter alia that during the course of investigation, hectic efforts have been made to establish the involvement of the two deceased in underground activities and their membership in any underground organization but no specific information could be collected till date by the Investigating Officer of the case except the allegations of the Assam Rifles. Over and above, after collecting information from

all the District Superintendent of Police in Manipur including SsP/CID(SB) and (CB), Manipur, it is ascertained that late Laishram Keshorjit Singh and late Seram Priyokumar Meitei were not involved in any extremist related case during their life time.

[11] Further the Petitioners came to know that on 19th June 2009 one Tenjang Chakma, Researcher of National Campaign for Prevention of Torture, West Delhi, has filed a complaint before the National Human Rights Commission, regarding killing of the Petitioners' husbands by the personnel of 20th Assam Rifles in a fake encounter. Consequent upon the said complaint the National Human Rights Commission inquired into the matter and as such in the month of September 2014 the Commission has concluded that the Assam Rifles personnel were not fired at by any of the two deceased persons and that no evidence is found to even faintly suggest that the deceased persons were involved in underground activity. The Commission further opined that the two persons were spotted at a desolate track and they were shot dead on the basis of unfounded suspicion and as such it appears to be a case of extra judicial killing. Therefore, a notice was issued to the Ministry of Home Affairs, Govt. of India to show cause why monetary relief of Rs. 5,00,000/- each be not recommended to be paid to the next kin of the two deceased persons.

[12] The respondent Nos. 1 to 3 had filed their counter affidavit and they denied the case of the petitioner and the brief of their case is follows as:

(i) On 1st June 2009 at about 1815 hours input was received from reliable source that some valley based insurgents were likely to infiltrate through track Maipi RM 6931-Angbreshu RM 6434. Immediately column was launched from Bn HQ and COB Larong. At about 2130 hrs the ambush party observed two individuals moving on the track Maipi-Angbreshu. On being challenged, the individuals fired on the spot. The column had to retaliate by fire in self defence. During exchange of fire for about 35 minutes, both the underground cadres were eliminated. After the fire-fight stopped, encounter site was searched and during the search 1 G-3 assault Rifle, 2 magazine of G-3 Rifle, 20 live rounds of G 3 Rifle, 1 Lathode Gun and 2 live bomb of Lathode were recovered near the slain bodies and same were deposited to the Kakching Police Station vide report filed under FIR No. 87(6)2009 KCG P.S. US 307/34 IPC, 20 UA (P) Act.

(ii) The case was further transferred to Tengnoupal Police Station as the same was under the jurisdiction of Tengnoupal Police Station under FIR No 36(6)09/TPL-PS U/S 307/34 IPC, 20 UA(P)A. Act, 25 (1-C) A. Act. Later on, during the investigation by police, the two dead bodies were identified as Laishram Keshorjit Singh, husband of the Petitioner and Seram Priyokumar Meitei, the friend of the Petitioner's husband

[13] The Respondents No. 1 to 3 denied the pleas of the Petitioner made in her writ Petition and stated that the said two individuals were killed during encounter. A strict list of Do's and Don'ts while providing aid to civil authorities is issued to

paramilitary personnel and to refute false allegations on paramilitary force steps had already been implemented. The personnel of 20th Assam Rifles has not violated Article 21 of the Constitution of India and no fake encounter was ever carried out.

[14] The Respondent Nos. 4 and 5 also filed their counter affidavit stating that on the death of the Petitioner's husband, Laishram Keshorjit Singh an FIR was registered by the Tengnoupal Police Station under FIR 36(6)2009 TPL P.S. U/S 307/34 IPC, 20 UA(P) A. Act, 25(1-C)A. Act & 5 Expl. Subs. Act on the basis of the report made by one Major Abhishek Bharti, A-Coy of 20 Assam rifles stating that on 1-6-2009, based on a specific information about the movement of some armed valley based UG cadres via axis of Maipi and Angbrashu from International boundary to hinterland to create unrest in the valley, the troop of 20th Assam Rifles led by the complainant (Abhishek Bharti) laid an ambush on the said axis/track to encounter their movement. At about 2015 hrs, the troops had seen two suspiciously moving individuals on the said track Maipi-Angbreshu. On being challenged by the troops to stop, the two unidentified suspected persons to be UG brought down heavy volume of automatic weapon fire upon the troops. Subsequently, the troops also retaliated and in the encounter which lasted about 35 minutes, both the suspected UG cadres were eliminated. After the encounter, on search of the encounter site and the area around, one G-3 assault rifles with live round in the chamber, two magazines of G-3 assault rifle, 19 rounds of G-3 assault rifle, one lathode with live bomb in the chamber, and one live bomb of lathode, were recovered from near the slain bodies. The two slain UG cadres along with seized items were handed over to O.C. Kakching Police Station and registered an FIR being No. 87(6)2009 KCG P.S. under section 307/34 IPC, 20 UA(P) A. Act, 25(1-C)A. Act & 5 Expl. Subs. Act, on the basis of the report made by the said Major Abhishek Bharti of 20th Assam Rifles and same was transferred to the Tengnoupal Police Station as the place of occurrence falls within the jurisdiction of the Tengnoupal Police Station.

[15] During the course of investigation the complainant Abhishek Bharti and other two witnesses were examined and recorded their statements. The seized articles were forwarded to the FSL, Pangei for examination and the two lathode bombs were demolished with the permission of the Chief Judicial Magistrate, Chandel. The demolished bomb and soil of the bomb demolition site were collected for sending to CFSL, Kolkata for examination.

[16] During the course of investigation, hectic efforts have been made to establish the involvement of the two deceased persons in UG activities and their membership in UG organization, but no specific information and evidence could be collected till date except the allegation by the complainant (Abhishek Bharti) that both the deceased persons were UG cadres. The investigation of the said FIR case is still in progress.

[17] Pursuant to the order of this Court dated 26.8.2015, an enquiry was conducted by the learned District Judge, Thoubal and he submitted his report

dated 21.4.2018 separately in both the case covering almost identical issue except the fact that the petitioner in W.P(C) No.841 of 2014 is the wife of Laishram Keshorjit Singh of Urup Litan Makhong and petitioner in W.P(C) No.840 of 2014 is the wife of late Seram Priyokumar Meitei of Urup Litan Makhong.

[18] In WP(C) No. 841 of 2014, the following issue was framed as follows:-

"Whether the husband of the petitioner namely, Laishram Keshorjit Singh was killed by the personnel of 20th Assam Rifles on 1st June, 2009 at Maipi Angbreshu after abduction as alleged by the petitioner?

Or

Whether the husband of the petitioner namely Laishram Keshorjit Singh was killed in an encounter with personnel of 20th Assam Rifles on 1st June, 2009 at Maipi Angbreshu ?

[19] In WP(C) No. 840 of 2014, the following issue was framed as follows:-

"Whether the husband of the Petitioner namely Seram Priyokumar Meitei was killed by the personnel of 20th Assam rifles on 1St June 2009 at Maipi Angbreshu after abduction as alleged by the Petitioner?

Or

Whether the husband of the Petitioner namely Seram Priyokumar Meitei was st killed in an encounter with personnel of 20th Assam Rifles on 1 June 2009 at Maipi Angbreshu?"

[20] In the examination of enquiry, both the petitioners and respondents produced witnesses. The petitioners produced 6(six) witnesses and documents at Exts. 1 to 9. Respondents No.1, 2 and 3 produced two witnesses and the respondents No.4 to 6 produced two witnesses and on behalf of the respondents, exhibit documents Sl.No. No.1 to 7 were presented. In para No.7 of the report, there is a specific finding based on medical evidence that the deceased in both cases died as a result of bullet injury inflicted and the bullets were relatable to 20th Assam Rifles personnel. The Enquiry Report has come to the conclusion that the deceased had no criminal antecedents. However, on the basis of the evidences of the witnesses and the cross-examination, the Enquiry Court after analysing all the evidences of the petitioners? side, who justified the unlawful killing by way of ocular testimony and medical evidences to say that it was a case of fake encounter. The respondents on the other hand, justified stating that an encounter took place and in that encounter, two insurgents were eliminated and a cache of arms and ammunitions were recovered. They also justified the killing at the site of the encounter stating that these two persons killed are part of an illegal armed group. Enquiry Court after analyzing the evidence of the petitioners as well as the respondents came to hold that the deceased in both cases were abducted and taken away by the personnel of 20th Assam Rifles C/O 99 A.P.O. and were killed by the 20th Assam Rifle in a fake encounter at Maipi-

Angbreshu track on the same day. The Court has given the finding that the petitioners' husbands died of bullet injuries on 01.06.2009 by bullet injuries was caused by the personnel of 20 AR and there is no question of them being killed during exchange of firing or encounter as suggested by the Court. The relevant paragraph No.9 to 15 are extracted as below.

"9. I have heard the learned counsel for both sides. The learned counsel for the petitioner submits that in all preponderance of probabilities, the plea of the petitioner is completely supported by ocular evidence as well as circumstantial evidence whereas the plea of the respondents is full of contradictions, improbabilities and unbelievable.

10. The counsel of the respondent Nos. 1 to 3 submits that the Assam Rifles Personnel did not accompany with the civil police on the said day because of urgency to conduct the operation immediately and the place of occurrence is a far area and not inhabited as such necessity of the civil police does not arise. The witnesses of the petitioner did not mention the exact time for boarding the bus by the two said individuals, and registration number of the bus as such the statement of the witness about the boarding of the bus by the said two individual is doubtful.

The Counsel of the Respondent Nos. 1 to 3 further submitted that the surrounding area of the place of occurrence is very much insurgency affected area where a good number of firing incidents or ambushes had taken place between the security forces and insurgents as stated in the statement of the R.W. No. 1 and 2. It is also further submitted that the defect of the G-3 rifles which was stated by the P.W. No. 5 could have been caused during the course of firing. The place of occurrence is very much dangerous area and as such the Assam Rifles personnel/ambush party had taken the dead bodies and seized articles from the place of occurrence and they quietly moved out from the place for reporting the matter to the civil police.

The counsel of the Respondent Nos. 1 to 3 further stated that Petitioner did not show any photograph of the deceased person to the P.W. No. 6 to confirm their identities even if the attires of the two individuals, she had seen, who boarded the bus and getting down at the check post, might be matched with dresses of the two deceased persons. As such the statement of the P.W. No. 6 did not support the plea of the Petitioner. And the P.Ws. are not eye witnesses whereas the R.W. No. 1 and 2 are eye witnesses and as such the evidence given the army personnel are more reliable. If the said two persons were actually arrested and killed subsequently after torturing them in the custody, there must have been torturing marks over the dead bodies but no such torturing marks are found and only the body injuries are found. The burden of proof lies on the Petitioner and she could not prove her case. The Petitioner filed the present case to malign the image of the security forces and prayed for submitting the report against the petitioner.

11. The counsel of the State Respondent Nos. 4 to 6 submitted that on receiving the report the Officer-in-charge Kakching Police Station registered an FIR case being No. 87(6)09KCG U/s 307/34 IPC, 20 UA (P) A. Act)4, 25 (1-C) A. Act, 5 Expl. Sub. Act and later on the case was transferred to the Tengnoupal Police Station on the question of jurisdiction. The officer-incharge, Tengnoupal Police station registered an FIR being No. 36 (6009 TPL U/s 307/34 IPC, 20 UA (P) A. Act)4, 25 (1-C) A. Act, 5 Expl. Sub. Act and case was endorsed to Maibam Rameshwor Singh, the then SDPO, Moreh for investigation. The 1.O. of the case investigated into the case and during investigation the 1.O. of the case visited the spot and prepared a rough sketch map. The statement of the witnesses were recorded, the post mortem of the dead bodies were done at RIMs morgue and report was also collected. The seized arm and ammunitions were sent to the Forensic Science Laboratory, Pangei for examination and report of the same was also received. He further submitted that the investigation is in progress and the same is pending.

12. In reply to the submission of the Respondents the counsel of the Petitioner submits that from the statement of the Respondent Nos. 1 to 3 and submissions of their counsel it may be presumed that the area of the place of occurrence is a dangerous one firing incident is likely to happen any time and occasion. However even after receiving about the movement of such alleged insurgent, only 15 jawans, which is very small formation for such an alleged operation had gone for such an ambush and that too without informing civil police in such a dangerous area is not reliable and trustworthy at all. As such the statement about the ambush is not reliable and it is more suitable that the personnel had gone to eliminate the said abducted two individuals in such a secluded place and they eliminated the two individuals. From the statement of the R.W. No. 3, 1.O. of the case it is clear that nothing is recovered from the place of the occurrence except those arms and ammunitions which were handed over by the informant of the FIR case and his party and not a single empty cartridge is found from the place even it is said that the alleged encounter lasted about thirty five minutes, as per the report lodged by them. Over and above the R.W. No. 1 and 2 who directly participated in the said alleged ambush did not see anything and they heard the sound of shouting and gun firing only as per their statements and as such happening of alleged encounter is very doubtful. In this regard, it is submitted that they deposed false evidence and they are not willing to depose the actual incident which was happened on the said particular day. It is also further submitted that any individual could not have any encounter with a such defective weapon like alleged seized weapon i.e. G-3 rifle which return spring is defective one and its bolt extension and bolt extension housing is not aligned.

It is further submitted that in *Munshi Singh Gautam and ors-versus - State of Madhya Pradesh* ((2005) 9 SCC 631) the Supreme Court has held that Direct ocular evidence of the complicity of the police personnel is rarely available in case of police torture or custodial death. They alone can explain the circumstances in which a person in their custody had died. Bound as they are by

the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues. Further Hon^{ble} Supreme Court has held that 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 when the person was in the 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 officer proved to the contrary. The onus to prove the contrary must be discharged by the police official concerned.

In other words in cases of police torture or custodial death the burden of proof to prove to the contrary to the plea of the Petitioner must lie to the Respondents. However, in the present case the respondents have miserably failed to prove the contrary.

It is also submitted that the R.Ws. have testified about alleged seizure of arm and ammunitions from the alleged place of encounter. However, these seized arms and ammunitions are not exhibited before the court at any point of time and as such their theory of seizing the same cannot be considered to be essential regarding the present case.

13. The crux of the issue to be determined is whether the husband of the Petitioner namely Laishram Keshorjit Singh was killed by the personnel of the 20th Assam Rifles on 1st June 2009 at Maipi Angbreshu after abduction or whether the husband of the Petitioner namely Laishram Keshon'it Singh was killed in an encounter with personnel of 20th Assam Rifles on 1st June 2009 at Maipi Angbreshu.

The statements deposed by the P.W.s are corroborated to each other as well as the documents produced by the Petitioner fully supported the plea of the Petitioner. From the statement of the P.W. Nos. 1 to 3, it is transpired that the husband of the Petitioner and his friend Seram Priyokumar Meitei had left their respective houses for Moreh on 1st June 2009 and they boarded a Moreh bound passenger bus from Lilong Bazaar and that from the statement of the P.W. No. 6, R.K. Sunita it is proved that the said two individuals had boarded the passenger bus from Lilong Bazaar and they were lastly seen in the custody of the army personnel on the said particular day i.e. on 1st June 2009 at Tegnoupal Check post, when the bus was stopped for checking and all the male passengers were asked to get down from the bus and the Army personnel, who were performing the said checking, checked the individuals one by one. Thereafter, all the male passengers boarded into the bus except the said two persons, who boarded from the Lilong. Subsequently she witnessed that the said two persons were standing near the army personnel, who had checked the passenger of the bus as if they were detained. And the bus drove towards Moreh. Thus, from the above stated evidence, it is transpired that the husband of the Petitioner namely Laishram Keshorjit Singh and his friend Seram Priyokumar Meitei were abducted by the personnel of the 20th Assam Rifles from the bus while they were travelling along

Imphal Moreh road. The statements of the P.W. 1 to 3 have proved that the husband of the Petitioner and his friend Seram Priyokumar Meitei had gone to Moreh by boarding a Moreh bound passenger bus from the Lilong Bazar and they were killed by the personnel of 20th Assam Rifles and that a JAC was formed against the brutal killing, the JAC had submitted a memorandum to the then Chief Minister, Manipur.

From the statement of the P.W. No. 4, Dr. Memchoubi Ph, the doctor who performed post mortem examination over the dead body of the deceased husband of the Petitioner as well from the Post mortem report i.e. Ext. A/3, it is transpired that there were several bullet injuries on the body of the husband of the Petitioner namely Laishram Keshorjit Singh and all the firearm injuries were on the upper part of the body except the injury no. (xiv). If an individual got any of the injuries mentioned as injury nos. 1,2,3,4,5,6,7,8,9,10,11,12, he should have fallen down and would not have not been in a position for getting another such injury and he would not be alive any more. In other words a person could not get such an injury in such incident as pleaded by the Respondent Nos. 1 to 3. Such injuries could be made only when a person was standing, laying in supine or kneeling position. The stomach and its contents were also found empty which means that the person did not eat anything for a long period.

From the statement of the P.W. No. 5, Kh. Ruhindro Singh, Scientific expert who examined the alleged seized incriminating articles as well as gave the examination report i.e. Ext. A/8, it is crystal clear that the weapon which was allegedly used while firing towards the Assam Rifles Personnel is not serviceable one due to defective return spring and non-alignment of bolt extension and housing. The ballistic expert further opined that the seized lethode gun is a 40 mm calibre grenade launcher and its firing mechanism was working properly. If the grenade launcher was not used and 7.62 mm rifle was not serviceable, how could it be imagined that the personnel of the 20th Assam Rifles were fired at by the deceased persons and that there was imminent danger to their lives.

Thus it is quite unbelievable and illogical that deceased persons ever fired upon the A. R. Personnel by means of the said defective/unserviceable weapons and consequently the statements given by R.W. 1 and R.W. 2 in this regard would not be reliable and trustworthy more so when the R.W. 2 during his cross examination deposed that on the said night he did not witness anything what actually happened at the relevant time as he only heard the sound of gun firing and being a sepoy he always obey the orders of his superior officers.

None of the army personnel engaged in the ambush got injured even though when they were allegedly fired/attacked upon by the insurgents from the Maipi direction. There was every likelihood for the said army personnel to sustain injuries if they were tired upon. In the circumstances, I am constrained to hold that the personnel of 20th Assam Rifles were never fired at by the deceased persons.

14. From the statement of the R.W. No. 33, Maibam Rameshwor, the 1.O. of the case as well as the report dated 22nd July 2014 submitted by the superintendent of Police, Chandel District to the Deputy Commissioner, Chandel District, Manipur it is clear that the husband of the Petitioner and his friend were innocent, they were not involved in any pre-judicial activities and they are not members of any underground organization as alleged by the Respondent Nos. 1 to 3.. From all the statements of the P.Ws. it is clear and proved beyond doubt that the husband of the Petitioner and his friend Seram Priyokumar Meitei were innocent and were not involved in any underground organization and activities of underground. On the said particular day they had left their houses for Moreh and they were abducted by the personnel of 20th Assam Rifles on their way and they were killed in a fake encounter and the complainant lodged a false report alleging that they were underground activists and they were killed in an encounter.

Issues are accordingly decided in favour of the petitioner.

5. In view of brief discussion above, I. am constrained to hold that the testimonies of the P.W.s are more convincing and trustworthy than those of the R.W.s. Thus, it is held that deceased Laishram Keshorjit Meitei, the husband of the petitioner was abducted/taken away by the personnel of 20th Assam Rifles C/ o 99 A.P.O. along with his local friend namely Seram Priyokumar Meitei along Imphal-Moreh road at Tengnoupal Check Post and he was killed by the personnel of 20th Assam Rifles in a fake encounter at Maipi-Angbreshu track on the same day. The husband of the petitioner died of bullet injuries on 01/06/2009 caused by the personnel of 20th Assam Rifles and he was not killed during exchange of firing or encounter.

The judicial (Inquiry) no. 1 of 2015 is disposed of. Signed, sealed and delivered on this 21st day of December, 2018.

As per direction, this report be submitted to the Hon?ble High Court of Manipur forthwith. B.C. is to take steps."

[21] From this, it is evident that this report, though objected to by the respondents, prima-facie established that the deaths of the two persons were at the hands of the respondents allegedly in a fake encounter.

[22] In the course of proceeding, it is recorded that a third party has moved the National Human Rights Commission for compensation and the villagers have also moved the Hon?ble Chief Minister, Manipur for ex-gratia payment of Rs.5 lakhs. Mr. Rakesh, however, fairly states that in both cases, a sum of Rs.5 lakhs had been granted on the basis of the order of the National Human Rights Commission to the next of kin of the deceased persons. He further prayed for further compensation. He relied upon a decision of the Hon'ble Supreme Court in the case of Rohtash Kumar vs. State of Haryana, (2013) 14 SCC 290.

[23] It has to be noticed that in the first case i.e. WP(C) No. 841 of 2014, as per post mortem report, the aged of the deceased is 41 years and he is survived by

his wife and two sons and he was running a grocery shop at Urup Litan Makhong. In the second writ petition, WP(C) No. 840 of 2014, the deceased was aged about 41 years, survived by his wife and three sons and he was a mason by profession. Since the deceased in both the cases are the sole bread winners and the fact that the deceased had to maintain their families and to bring up the children, which will cause hardship and agony to the widow ladies, this Court is of the view that adequate compensation should be granted by way of monetary compensation to the spouses so as to enable them to educate the children and also taking care of other family needs. As stated earlier, the petitioner's counsel has fairly stated that a sum of Rs.5 lakhs had already been paid by the National Human Rights Commission and therefore, in order to ensure just compensation and equitable compensation to the next of kin of the deceased persons, the Court is inclined to order for payment of further amount of Rs.5 lakhs each to the spouses of the two deceased persons in both cases. While granting further compensation, we are inclined to follow the principle laid down by this Court in WP(Cril.) No.2 of 2016 by order dated 13.02.2019.

[24] The further sum of Rs.5 lakhs each shall be paid by the respondents No.1 and 3, i.e. the Union. As requested by Mr.S.Samarjeet, learned CGC, the balance amount shall be deposited to the account of the Registrar General of this Court within a period of 8(eight) weeks from the date of receipt of a certified copy of this order. On such deposit, the petitioners will be also entitled to make an application for withdrawal of the amount.

[25] These writ petitions stand allowed as above. No costs.