
(2014) 12 MAN CK 0014
In the Manipur High Court
Case No : Writ Petition (C) No. 304 of 2004

Meinam Ongbi Bina Devi

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Arms Act, 1959 — Section 27
Army Act, 1950 — Section 3, 3(i), 69, 70
Constitution of India, 1950 — Article 20, 21
Criminal Procedure Code, 1973 (CrPC) — Section 357A, 357B
Penal Code, 1860 (IPC) — Section 376

Citation : (2014) 12 MAN CK 0014

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : Ch. Ngongo, Advocate for the Appellant; S. Rupachandra, ASG, Advocate for the Respondent

Judgement

N. Kotiswar Singh, J.—Heard Mr. Ch. Ngongo, learned counsel for the petitioner and Mr. S. Rupachandra, learned Asstt. Solicitor General for the respondents.

2. The present writ petition has been filed seeking for a direction for payment of compensation of 10(ten) lakhs on account of the petitioner being raped by a personnel of the 12 Assam Rifles at Mantripukhri on 6.10.2001.

3. Facts of the case in brief, as narrated by the petitioner, are that while the petitioner was inside her small hut along with her husband, preparing the evening meal, at around 7.00 pm, they heard the sound of a gun shot. Being apprehensive of trouble, both the petitioner and her husband remained inside the hut, which is located adjacent to the western compound wall of 12 Assam Rifles at Mantripukhri. All of a sudden, while they were inside, an armed personnel of the Assam Rifles in civilian dress (the Respondent no. 5 herein) banged upon their door and forcibly entered the house. He caught hold of the hand of the petitioner and dragged her out. When her husband tried to resist the said forcible act, he was hit by the rifle butt by the petitioner. When the sister-in-law of the

petitioner, who also stays nearby, rushed to help her, she was also hit by the said personnel. Thereafter, the petitioner was dragged into a bush near a pond where the Respondent no. 5 committed rape on her. While he was perpetrating the crime, some other personnel of the Assam Rifle jumped across the wall shouting "Ram Singh" "Ram Singh" and the said personnel was caught red-handed by the other personnel and taken away.

The next day, the petitioner's husband filed a complaint under section 376 IPC and 27 Arms Act before the Heingang Police Station regarding the said incident. After lodging of the FIR, the respondent no. 5 was arrested by the police from the campus of 12 Assam Rifles Battalion and was produced before the learned Chief Judicial Magistrate, Imphal on 8.10.2001 who was remanded to police custody for four days and was thereafter remanded to judicial custody by the Court.

The petitioner further stated that on 30.10.2001, one Captain K. Rama Krishnan of 25th Assam Rifles I.C. No. 52928-Y filed a Criminal Misc. Application, which was registered as Cril. Misc. Case No. 100 of 2001 before the Court of Chief Judicial Magistrate, Imphal praying for custody of the accused under the provisions of the Army Act, 1950 along with relevant case file and documents for proceeding in a Court Martial under Army Act. After considering the matter, the learned CJM vide order dated 30.10.2001 handed over the accused person along with the relevant case file and documents to the Assam Rifles.

It has been stated that after completing summary evidences and other procedure for the Court Martial under Army Act, a Summary General Court Martial (hereinafter referred to SGCM) was ordered against the accused which was conducted at 20th Assam Rifles Somrai, Ukhrul in which both the petitioner and her husband gave their evidences.

The petitioner further stated that a press release of PIB Defence Wing was issued on 2nd November, 2003, in the local dailies, in which it was confirmed that the accused, the Respondent no. 5 was found guilty of rape and was convicted by the SGCM and was sentenced to seven years rigorous imprisonment.

4. On the basis of such conviction, the present writ petition has been filed seeking for damages for violating the modesty of the petitioner as well as her right to life as guaranteed under Article 21 of the Constitution of India by the Respondent no. 5 and claiming an amount of Rs. 10 lakhs as compensation against the respondents.

5. The respondents have filed their respective affidavits-in-opposition resisting the writ petition. In the affidavit-in-opposition filed on behalf of the Assam Rifles respondent Nos. 2 to 4, it has been admitted that one rifleman/General Duty, Ram Singh Rawant (No. 2501528Y) (the Respondent no. 5) committed the offence of rape and he was convicted by the SGCM and accordingly sentenced to 7 years of imprisonment along with dismissal from service. It has been also stated that the respondent No. 5 died at District Jail, Dhemaji (Assam) on

29.6.2004 while serving out his sentence.

It has, however, been contended that Article 20 of the Constitution of India enjoins that no person shall be persecuted and punished for the same offence more than once and since the respondent No. 5 had been already sentenced to imprisonment and dismissed from service, no further action would lie in respect of the offence committed by him.

It has been also contended that vicarious liability flows from an act or omission on the part of the employee committed in exercise of performance of duties for his employer. Therefore, unless an act or omission had taken place during the course of employment, the employer cannot be held liable for any wrong committed by the employee in his individual capacity. It has been contended that in the present case, the crime was committed by the respondent No. 5 after he had illegally absented from the Unit on the fateful evening and committed the crime for which the Unit or the Union of India cannot be blamed or penalised. Accordingly, it was submitted that no case has been made for award of compensation by the respondents authorities for the crime committed by the respondent No. 5 in his individual capacity.

6. The State respondent also has filed their affidavit-in-opposition and the State of Manipur has taken a similar plea that the rape committed by the respondent No. 5 upon the petitioner was an individual act and not connected with the affairs of the State for which he had been individually penalised by way of imprisonment and dismissal from service. Since the act committed by the respondent No. 5 was not during the course of discharge of his lawful duties for maintaining law and order in the State, the State of Manipur also cannot be liable in any manner. It has been also stated that the Assam Rifles had been deployed by the Central Government for the maintenance of law and order including insurgency in the State and as such, the petitioner has no right to claim for payment of compensation against the State.

7. Heard the learned counsel for the parties and also perused the materials on record.

8. The fact that the petitioner was raped by the respondent No. 5 on 6.10.2001 has not been denied by any of the respondents. In fact, rape perpetrated by the respondent No. 5 on the petitioner has been confirmed by the conviction and imprisonment of the respondent No. 5 by the SGCM and his dismissal from the service as stated in the affidavits-in-opposition of the respondents. Therefore, the only question which arises for consideration before this Court is whether the respondents authorities would be liable to pay any compensation to the petitioner for the offence of rape committed on her by the respondent No. 5, who was under the employment of the respondents No. 2 to 4. It is the case of the petitioner that the respondent no. 5 being an employee of the respondents No. 2 to 4 at the relevant time, the respondents are liable to pay compensation for the rape committed on her by the Respondent no. 5. On the other hand, it is the

stand of the respondents that the said act was an individual act, not connected with the affairs of the State or in discharge of his official duties and as such, the employers of the respondent No. 5 cannot be held liable for the individual criminal act of the respondent No. 5. Moreover, since the respondent No. 5 had been already convicted and punished, no further penalty could be imposed in respect of the said offence committed by the respondent No. 5.

9. It is true that if an offence is committed by an employee purely in his individual capacity and not connected at all with the official duties or in performance of duties related to his employment, the employer cannot be fastened with any liability.

Therefore, we have to examine whether such principle will be applicable in the present fact situation. It has been claimed by the respondents authorities that the said offence of rape was committed by the respondent No. 5 while he had illegally absented himself from the Unit. Even though the respondents authorities have taken the plea that the respondent No. 5 had committed the crime on his own and not while discharging his official duties, the fact remains that he was tried by the Summary General Court Martial under the Army Act.

10. It has not been denied by the authorities that the authorities of the Assam Rifles had applied before the Court of Chief Judicial Magistrate, Imphal which was dealing with the case at the relevant time for transferring the FIR case along with the accused with the relevant documents to the Army authorities to be tried by Court Martial under the Army Act. The said application was filed by one Captain K. Rama Krishnan of 25th Assam Rifles I.C. No. 52928-Y. The application filed by the Assam Rifles authorities was allowed by the Court of Chief Judicial Magistrate, Imphal vide order dated 30.10.2001. This order, in the opinion of this Court, will be highly relevant for determining the issue involved in this writ petition and accordingly, the same is reproduced herein-below:-

"EXTRACT COPY OF THE ORDER PASSED ON 30-10-2001

1. This is to dispose an application filed by I.C. 52928-Y Captain K. Ramakrishnan of 25 Assam Rifle C/O 99 A.P.O. praying for transferring the above referred FIR case along with the accused with relevant Original document to the Army authority to facilitate the speedy trial and disposal as the Army authority is desirous of trying the said case by a competent Court Martial under the Army Act.

Register, it as Cril. Misc. Case No. 100 of 2001.

2. Fact leading to the present application in brief is that:

That on 7th October, 2001 at about 8"10 a.m. one Shri Meishnam Tomba Singh S/O late M. Chaoba Singh of Matei Mamang Leikai lodged an Ejahar with Heingang P.S. that on 6.10.2001 at about 7"50 PM he heard the sound of some shooting and suddenly one Rifle man suspected to be personnel of 25 Assam Rifles broke open his door by holding arm. The Army personnel on entering his house assaulted him and forcibly taken away his wife Smt. Bina Devi, who was

cooking at that time and committed rape on her at the bank of the pond of Laishram Chaoba Singh. On the strength of that report, the O.C. Heingang P.S. registered an FIR Case No. 51 (102001 HNG P.S. U/S. 376 IPC & 27 A. Act and investigation was launched.

3.(i) Trial of Civil offence committed by a person subject to an Army Act is dealt with Under Section 69 and 70 of the said Act.

(ii) On the fact of the present case, it falls within the scope of Section 70 of the Army Act.

4. Section 70 of the Army Act stated as follows:-

Offence not triable by Court Martial-A person subject to Act who commits an offence of murder against the Military, Naval or Airforce Law or culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a Court Martial unless, he commits any of the said offence:-

(a) While in Active service or

(b) At any place of India or

(c) At a frontier post specified by the Central Government on his behalf.

5. Coming back to the present case, the accusation against the accused is that of an offence of rape committed on the person of Smt. Bina Devi W/O Maishnam Tomba Singh of Matai Mamang Leikai by holding service arm, who is not subject to Military, Naval or Airforce law as per provision of Section 70 of the Army Act. The present case of such nature shall be tried by a Court Martial only, when the said offence is committed by a person subject to the Army Act, while on an active service as provided by the Proviso under Clause (a) of Section 70 of the said Act.

6. The application is accompanied by the Ministry of Defence Notification No. SRO 17 E. Dated 5th Sept. 1997. The relevant portion of the said notification in the present case is stated below:-

"MINISTRY of Defence Notification No. S.R.O. 17 E dated 5th Sept. 1997-In exercise of the Power conferred by Section of the Army Act 1950 (46 of 1950) and in supersession of the notification of the Government of India in the Ministry of Defence No. 3RD 6-E, dated the 28th November, 1962, the Central Government hereby declares that all persons subject to that Act who are not on active service under clause (i) of section 3 thereof shall, while serving in the areas specified below be deemed to be on active service within the meaning of that Act for the purpose of the said Act or any other law for the time being in force:-

(a) The States of:-

i) Jammu and Kashmir

- ii) Manipur
- iii) Nagaland
- iv) Tripura
- v) Sikkim

On perusal of the above notification, I am satisfied to hold that the accused Army Personnel who is posted in the relevant time in Manipur State shall be deemed to be on active service.

7) On the basis of the facts discussed above, I am satisfied that the FIR case referred above may be tried by the Army Authority in a Court Martial.

Accordingly, under my hand and the seal of the Court, I hereby order that all the relevant documents in connection with the above referred case and the accused be handed over to the Army authority as soon as possible.

The Addl. S.P./Central Jail Sajiwa, Manipur and the O.C. Heingang P.S. are to hand over the accused Ram Singh Rawat and all the relevant connected documents to the petitioner I.C. 52928-Y Captain K. Ramakrishnan of 25 Assam Rifle C/O 99 APO on production of this order.

Send a copy of this order to:-

- 1) Inspector General,
Assam Rifles (North) C/O 99 APO.
- 2) The Director General of Police,
Government of Manipur.
- 3) C.O. 25 Assam Rifles, C/O 99 APO.
- 4) S.P., Imphal East, Manipur.
- 5) Addl. S.P. Sajiwa, (Central Jail), Manipur.
- 6) D.C. Heingang Police Station.
- 7) I.C. 52928-Y Captain K. Ramakrishnan,
25 Assam Rifles, C/O 99 APO.

Sd/- (Shri Mangtinlen Haokip) Chief Judl. Magistrate, Imphal, Manipur.

Memo No. CJM/IMPH/2001/1081-7 Dated the 31.10.2001.

Copy to:-

- 1) Inspector General Assam Rifles (North), C/O 99 A.P.O.
- 2) D.G.P. Govt. of Manipur.

- 3) C.O. 25 Assam Rifles, C/O 99 APO.
- 4) S.P., Imphal East, Manipur.
- 5) Addl. S.P., Sajiwa, Central Jail, Manipur.
- 6) O.C. Heingang Police Station.
- 7) I.C. 52928-Y, Captain K. Ramakrishnan, 25 Assam Rifles, C/O 99 APO.

(Shri Mangtinlen Haokip) Chief Judl. Magistrate, Imphal, Manipur."

11. From the aforesaid order dated 30.10.2001 passed by the learned CJM, Imphal, the following facts could be ascertained:-

(i) The Assam Rifles authorities decided to try the respondent No. 5 by a competent Court Martial under the Army Act for which they made the necessary application before the Court of Chief Judicial Magistrate, Imphal,

(ii) The Assam Rifles authorities invoked the provisions of Section 70 of the Army Act for making such an application to try the accused under the Army Act, as he was considered to be in active service when he committed the crime.

(iii) The Assam Rifles authorities submitted a notification issued by the Ministry of Defence under No. SRO 17E. dated 5th September, 1977 as quoted above, which provides that all persons subject to the Army Act who are not on active duty as defined under Section 3(i) shall, however, be deemed on active service within the meaning of the Act for the purpose of the Act or any other law for the time being in force if a person is posted in the States of Jammu & Kashmir, Manipur, Nagaland, Tripura and Sikkim.

(iv) Since the respondent No. 5 was posted at the relevant time in Manipur, in terms of the aforesaid notification, he shall be deemed to be in active service.

(v) Considering the request made by the Assam Rifles that the respondent No. 5 shall be deemed to be under active service, the said respondent No. 5 was handed over to the Assam Rifles authorities by the Court of Chief Judicial Magistrate for the trial in accordance with the Army Act.

12. The aforesaid order dated 30.10.2001 therefore, conclusively establishes that the petitioner was in active service at the relevant time for which he was prosecuted and convicted by the Summary General Court Martial. Therefore, this Court is of the view that if that be the stand of the Assam Rifles authorities that at that relevant time the respondent No. 5 was in active service, as also mentioned in the Ministry of Defence Notification dated 5.9.1977, there is no reason why the respondent No. 5 could not be said to be in active service for the purpose of consideration of the liability of the Assam Rifles authorities.

13. It may be observed that merely because the respondent No. 5 had remained absented illegally from the Unit during which time he perpetrated the crime of rape on the petitioner, in the opinion of this Court, will not make any difference

inasmuch he remained in active service and he was using his service rifle while committing the crime as mentioned above. As far as the petitioner is concerned, the respondent No. 5 was for all practical purposes, a personnel of the Assam Rifles on active duty and the fact that he might have absented illegally from the Unit would make no difference as far as the petitioner is concerned as regards the liability of the Respondent no. 5 as well as his employees.

14. We may examine this issue from another perspective. It is now well settled that the public law remedies have been also extended to the realm of tort and the Court can award compensation to petitioners who suffer personal injuries amounting to tortious acts at the hand of officers of the Government as has been held by the Hon"ble Supreme Court in *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, . In the aforesaid case, the Supreme Court examined the issue relating to payment of compensation to a woman coming from Bangladesh, who was subjected to rape by 4 (four) employees of the Indian Railways in a room of Rail Yatri Niwas belonging to the Railways. In the said case, the Supreme Court held that rape is an offence which is violative of the fundamental right of a person guaranteed under Article 21 of the Constitution as observed in *Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty*, where the Supreme Court observed as follows:-

"Rape is a crime not only against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is violative of the victim's most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21."

The Supreme Court also in the said case of *Chandrima Das* (supra) held that rape not only amounts to violation of Article 21 of the Constitution of India but also Article 2 of the Declaration on the Elimination of Violence against Women as adopted by the General Assembly of the United Nations on 20.12.1993 and accordingly, the Supreme Court proceeded to award a sum of Rs. 10 lakhs (Rupees ten lakhs) as compensation against the Railways payable to the aforesaid rape victim for the rape committed by the employees of the Indian Railways by invoking the principle of public law remedy and holding the Indian Railways to be vicariously liable for the tortious act committed by its employees to pay compensation.

The Supreme Court in the said *Chandrima Das* (supra) also dealt with the similar contention raised by the respondent herein and repelled the contention that the liability under law of torts would arise only when the act complained of was performed in the course of official duty and observed as follows:-

"38. Learned counsel for the appellants then contended that the Central Government cannot be held vicariously liable for the offence of rape committed by the employees of the Railways. It was contended that the liability under the

law of torts would arise only when the act complained of was performed in the course of official duty and since rape cannot be said to be an official act, the Central Government would not be liable even under the law of torts. The argument is wholly bad and is contrary to the law settled by this Court on the question of vicarious liability in its various decisions.

39. In *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, it was held that the Government will be vicariously liable for the tortious act of its employees. This was a case where a claim for damages was made by the heirs of a person who died in an accident caused by the negligence of the driver of a government vehicle. Reference may also be made to the decisions of this Court in *State of Bombay (Now Gujarat) Vs. Memon Mahomed Haji Hasam, and Smt. Basava Kom Dyamogouda Patil Vs. State of Mysore and Another*, . These principles were reiterated in *N. Nagendra Rao and Co. Vs. State of Andhra Pradesh*, and again in *State of Maharashtra and Others Vs. Kanchanmala Vijaysing Shirke and Others*, ."

In the present case, the rape was committed by an employee of the Union of India though the accused employee might have been not on duty, but on unauthorised leave, as claimed by the respondent authorities. Nevertheless, he remained in active service and under roll of the Assam Rifles and while being posted in Manipur. As per the Ministry of Defence notification dated 5.9.1997, the persons serving in Manipur and other states mentioned therein will be deemed to be in active service not only within the meaning of Army Act, but any other law for the time being in force. The deeming provision that the respondent no. 5 will be in active service is not only for the purpose of invoking the provisions of Army Act, it will be applicable for invoking other laws, i.e. also laws dealing with the liability of the respondent no. 5 as well as his employers under the public law liability. Therefore, the liability of the employers flowing out of the vicarious acts of the employees will also be attracted. Accordingly, the Central Government will be vicariously liable for the offence of rape committed by the respondent no. 5, an employee of the Assam Rifles. The accused respondent No. 5 was detailed for duty in the State for maintenance of law and order and the said respondent No. 5 abused his position as an armed personnel of the Assam Rifles which is evident from the fact that he had used his service weapon to perpetrate the crime, though he may have been technically on leave at the relevant point of time which, however, will not make any difference to the petitioner. Therefore, by invoking the principle of vicarious liability under the public law domain, the respondent authorities cannot escape from the liabilities for payment of compensation to the petitioner for the illegal act committed on her by the Respondent no. 5.

15. Having held that the respondent authorities are liable to pay compensation to the petitioner as discussed above, the next issue that arises for consideration is to the quantum of compensation that may be granted to the petitioner.

16. In this regard, it may be observed that there can not be any hard and fast formula to determine the quantum of compensation as has been held by the

Supreme Court in D.K. Basu Vs. State of West Bengal, , Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others, and quantum would depend on the facts and circumstances of each case. However, having said so, we may seek some aid from the already decided cases in arriving at a just compensation in the present case. In the aforesaid case of Chandrima Das (supra), the Calcutta High Court had awarded a sum of Rs. 10 lakhs (Rupees ten lakhs) to a foreigner who was raped by the Railway employees which was not disturbed by the Supreme Court. In the case of Mohd. Haroon and Others Vs. Union of India (UOI) and Another, , the Supreme Court awarded the compensation of Rs. 5 lakhs (Rupees five lakhs) to the victim of rape in riots in and around the District of Muzaffarnagar, Uttar Pradesh, over and above the liability of the State to pay compensation under Section 357-A of the Cr. P.C. holding that rape is a heinous crime. In In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News, considering the heinous nature of the crime of rape, the Court awarded the sum of Rs. 5 lakhs (Rupees five lakhs) as an interim compensation in addition to the benefits provided under section 357-A and 357-B Cr. P.C.

In the present case, considering the facts and circumstances of the as revealed above, more particularly the fact that Respondent no. 5 had wrongfully intruded into the dwelling house of the petitioner, dragged her out and physically assaulted others who had come to rescue her with his service weapon and committed rape on the petitioner, this Court is of the view that it would meet the ends of justice, if a sum of Rs. 2 lakhs (rupees two lakhs) is awarded to the petitioner for the ignominy of rape suffered at the hand of the respondent No. 5 who was serving under the Respondents no. 2, 3 and 4 at the relevant time.

17. The learned Government Advocate has produced a Notification dated 1.08.2011 issued by the State of Manipur stating that the State Government in exercise of the powers conferred under Section 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), has prepared a scheme called the Manipur Victim Compensation Scheme, 2011 in which a rape victim would be entitled to the compensation of Rs. 20,000/- (Rupees twenty thousand). Since this compensation amount of Rs. 2 lakhs (rupees two lakhs) has been directed to be paid under the public law remedy, this amount shall be independent of and in addition to the aforesaid amount which the petitioner will be entitled under the Manipur Victim Compensation Scheme, 2011.

18. Accordingly, in the result, for the reasons discussed above, the present writ petition is allowed with a direction to the respondent Nos. 2, 3 and 4 to pay a compensation of Rs. 2 lakhs (Rupees two lakhs) to the petitioner within a period of 4 (four) months from today which will carry interest @ 6% per annum if payment is delayed beyond the said 3 (three) months period.

The Respondent no. 1 shall pay a sum of Rs. 20,000/- (Rupees twenty thousand) from its fund to the petitioner in terms of the Manipur Victim Compensation Scheme, 2011 within a period of 4 (four) months from today.