
(2011) 07 GAU CK 0062
In the Gauhati High Court
Case No : Writ Petition (C) No. 6426 of 2002

Musstt. Anowara Begum

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 176
Penal Code, 1860 (IPC) — Section 399

Citation : (2012) 1 GLD 58

Hon'ble Judges : Madan B. Lokur, C.J.; H. Baruah, J

Bench : Division Bench

Advocate : A.K. Bora, for the Appellant; B. Goyal, G.A. Assam, for the Respondent

Judgement

H. Baruah, J.—Petitioner, Musstt. Anowara Begum is the wife of Late Javed Ali, a resident of village Gariapara, P.S. Mangaldoi, District-Darrang, Assam. While petitioner's husband Late Javed Ali was alive, on 13-7-1999 at about 2 p.m. some police personnel with arms under the supervision of Md. Jalil Ali, a Sub-Inspector of police then posted at Mangaldoi police station came to their house and mercilessly beaten her husband Javed Ali and her brother-in-law, Tamzid Ali causing serious injuries to their person and took both of them to the Mangaldoi police station. At about 6 p.m. on the same day some villagers informed the petitioner that her husband died as a result of assault by the police personnel at the police station and her brother-in-law. Tamzid Ali was admitted in Mangaldoi Civil Hospital in serious condition. Post mortem on the dead body of the petitioner's husband was conducted on 14-7-1999 at about 3 p.m. and thereafter handed over the dead body to his family members for burial. It is contended that the petitioner's late husband was a rickshaw puller and was the only bread winner of his family. On account of death of Javed Ali for police atrocities, the villagers of Gariapara village on 14.7.1999 submitted a representation before the Deputy Commissioner, Darrang that Late Javed Ali, husband of the petitioner died as a result of assault by police personnel, who

went to the house of the petitioner under the supervision of Md. Jalil Ali, Sub-Inspector of Police, Mangaldoi Police Station and requested an enquiry against the police personnel who resorted to assault on Javed Ali. Thereafter, the petitioner herein also on 16.7.1999 submitted an application before the Deputy Commissioner, Darrang informing inter alia that on 13.7.1999 at about 2 p.m. her husband Javed Ali and brother-in-law Tamzid Ali were arrested by police personnel who had been to their village under the supervision of Md. Jalil Ali, Sub-Inspector of Mangaldoi Police station in connection with Mangaldoi P.S. Case No. 54 of 1998 and in the process her husband and her brother-in-law were mercilessly beaten by the police personnel, as result of such beating both sustained injuries on their person and her husband while under police custody died at Mangaldoi Civil Hospital while under going treatment. Her brother-in-law Tarzid Ali was, however, admitted in the Mangaldoi Civil Hospital in serious condition. The petitioner, therefore, requested the Deputy Commissioner to make an enquiry for her husband's death during the police custody at Mangaldoi Civil Hospital. However, on her representation application no action was taken by the Deputy Commissioner, forthwith. It would be apposite to state at this stage that the petitioner through her representation also claimed compensation on account of death of her husband in police custody due to police atrocities. Having not provided with compensation on account of death of her husband, her husband's elder brother Md. Mansur Ali, submitted a representation before the Human Rights Commission, Assam narrating the facts on 18.7.1999. Said Md. Mansur Ali also submitted an application on 31.7.1999 before the Chief Judicial Magistrate, Darrang intimating the death of his younger brother, Javed Ali while in police custody at Mangaldoi Civil Hospital on 13.7.1999 and requested to provide him with a copy of the post mortem report. It is also contended by the petitioner that as per direction of the Chief Judicial Magistrate, Darrang a copy of the post mortem report was supplied to them wherefrom discovery of some injuries by the doctor conducting the autopsy on the dead body of Late Javed Ali has been indicated. The post mortem report indicates discovery of 8(eight) numbers of injuries on the dead body of Javed Ali. It is contended that discovery of the injuries on the dead body of Javed Ali indicates inhuman physical torture on Javed Ali while was in police custody, which resulted in his death.

2. On 13.1.2000 a notice was hanged in the Office of the District Magistrate, Darrang under the hand and seal of Sub-Divisional Magistrate, Mangaldoi indicating therein that an inquiry into the cause of death of Javed Ali u/s 176, Cr. P.C. would be conducted and asked persons having knowledge as to the cause of death of Late Javed Ali to appear before him on 29.1.2000 to give evidence. Inquiry was, however not conducted on 29.1.2000. It was refixed on 14.2.2000. On 7.11.2000 the petitioner again submitted a representation before the Deputy Commissioner, Darrang to take early action as to cause of death of her husband in police custody on 13.7.1999. But the Deputy Commissioner, Darrang, despite receipt of the representation did not take any appropriate action. Petitioner thereafter, on 8.8.2002 submitted another representation before the

Commissioner and Secretary, Home Department, Government of Assam referring the earlier representations submitted before the Deputy Commissioner, Darrang but no appropriate action was taken by the Commissioner and Secretary, Home Department, Government of Assam.

3. The petitioner feeling aggrieved of the inaction on the part of the respondents has approached this court by filing this writ petition seeking a direction to the respondents to pay Rs. 5,00,000/- (rupees five lakhs) as compensation to the petitioner for death of her husband, Javed Ali while in police custody on 13.7.1999.

4. The respondents resisted this petition by filing counter affidavit. Respondent No. 3, the then Superintendent of Police, Darrang, Mangaldoi contended in his counter affidavit that the Officer-in-Charge of Mangaldoi police station on 13.7.1999 received a confidential information that Md. Javed Ali (since deceased) along with some other dacoits were planning for commission of dacoity and to that effect making G.D. Entry No. 306 dated 13.7.1999, a group of police personnel under the supervision of Md. Jalil Ali, Sub Inspector was detailed to apprehend the dacoits and in the process two dacoits namely, Javed Ali (since deceased) and Tamzid Ali, both brothers, with the help of public were apprehended. During operation it is contended that dacoits had scuffled with public while trying to flee away from the spot and as a result sustained injuries on their person. Both the apprehended dacoits as named hereinbefore were brought to Mangaldoi police station and thereafter admitted in Civil Hospital. It is contended that the other dacoits managed to escape. He also stated that the Officer-in-charge of Mangaldoi P.S. while submitting report also narrated that the two apprehended dacoits received several injuries while scuffling with local people at the time of apprehension. Though both the dacoits were admitted in Mangaldoi Civil Hospital in injured condition on the same day at about 6.20 p.m., dacoit Javed Ali died at hospital due to his injuries. It is also contended in the counter that police recovered "22 bore pistol with one cartridge from the custody of Javed Ali (since deceased). The report as indicated was submitted to him in connection with Mangaldoi p.s. Case No. 186 of 1999 registered u/s 399 IPC. In paragraph-8 of the counter it is stated that both Javed Ali and Tamzid Ali, sons of Nuruddin Ahmed were rescued by the police party from the clutch of the mob consisting of 200 people at least. Both were manhandled by the mob. It is contended further in paragraph-9 that on 13.7.1999 both Javed Ali and Tamzid Ali were apprehended by public and severely assaulted as a result of which Javed Ali succumbed to his injuries in the hospital. The Superintendent of Police, respondent No. 3 in his counter also contended that a Magisterial Inquiry was conducted by one Faijul Hussain, the then Sub-Divisional Magistrate, Mangaldoi as per order of the then Deputy Commissioner, Darrang, Mangaldoi as to the cause of death of Javed Ali. Copy of the inquiry report is annexed to the counter affidavit as Annexure-1.

5. Respondent No. 2, the then Deputy Commissioner, Darrang, Mangaldoi in his

counter affidavit also contended that on 13.7.1999, the Officer-in-Charge of Mangaldoi police station having had the information of conspiracy of commission of dacoity by a gang of dacoits, deputed Md. Jalil Ali, Sub-Inspector of police to nab the dacoits with several other police personnel. When the police party under the leadership of Md. Jalil Ali, Sub-Inspector of Police reached Gariapara, found a mob gheraoing the dacoits. On the arrival of police party dacoits tried to run away from the place. However, Md. Javed Ali (since deceased) and his brother Tamzid Ali were apprehended with the help of the public. The public manhandled both Javed Ali and Tamzid Ali. Both sustained grievous injuries and accordingly shifted to Mangaldoi Civil Hospital for their treatment. He also contended that Javed Ali succumbed to his injuries while undergoing treatment at the hospital. Respondent No. 2 also contended in his counter affidavit that a magisterial inquiry was ordered to inquire into the cause of death of Md. Javed Ali, the husband of the petitioner and magisterial inquiry was conducted by Md. Faizul Hussain, the then Sub-Divisional Magistrate, Mangaldoi and submitted report.

6. We have heard Mr. A.K. Bora, learned counsel for the petitioner as well as Mrs. B. Goyal, learned Govt. Advocate, Assam for the respondents.

7. From a close reading and scrutiny of the contents of the writ petition and the statements made in the counter affidavit by the respondent Nos. 2 and 3, it appears to us that both the party stand at two opposite pole in respect of death of Javed Ali, the husband of the petitioner. The claim of the petitioner is that a police party under the supervision of Md. Jalil Ali, Sub Inspector of Mangaldoi police station came to their village and apprehended her husband, Javed Ali and his brother Tamzid Ali and after apprehension both were mercilessly beaten by the police personnel with the help of rifle butt and various other weapons like branches of trees. It is also the case of the petitioner that both Javed Ali and Tamzid Ali were taken to police station in injured condition. On the day of apprehension i.e. on 13.7.1999, Javed Ali succumbed to his injuries. On account of death of Javed Ali, the petitioner herself and some of the villagers submitted representations to inquire into the cause of death of Javed Ali. It is contended by the petitioner that Javed Ali died as a result of merciless beating by the police personnel when he was under arrest. Though Tamzid Ali, brother-in-law of the petitioner received serious injuries on account of assault by the police personnel, after treatment he recovered. The petitioner, the wife of the Late Javed Ali, therefore, on account of death of her husband in police custody on account of police atrocities by filing this instant petition seeks for a direction to the respondent authorities to provide compensation amounting to Rs. 5,00,000/- (rupees five lakhs) to her.

8. The stand of the respondents is that Javed Ali and his brother Tamzid Ali were veteran dacoits and on 13-7-1999 having received secret information that they along with other dacoits were conspiring to commit dacoity in different localities, a police party under the supervision of Md. Jalil Ali, Sub Inspector of police was deputed for their apprehension. When the police party arrived at the village

Gariapara, found a mob gheraoing the dacoits. On seeing police party the dacoits tried to flee away from the place but Javed Ali and Tamzid Ali could be apprehended with the help of the public. Other dacoits however, managed to flee away from the spot. While trying to flee away Javed Ali and Tamzid Ali received injuries on their person and over and above they were manhandled by the public. Both sustained injuries and were shifted to Mangaldoi Civil Hospital where Javed Ali died while under going treatment. Respective party to the proceeding, therefore, appear to have taken two divergent stand. Therefore, the issue before us would be whether Javed Ali died as a result of assault by the police personnel after his apprehension. We have already come across from the counter affidavits filed by the respondent Nos. 2 and 3 that a magisterial inquiry was ordered to inquire into the cause of death of Javed Ali. We have also come across that one Md. Faizul Hussain, the then Sub Divisional Magistrate of Mangaldoi conducted the inquiry and submitted the report. Under the facts, it would be appropriate for us to make a survey of the inquiry report submitted by the then Sub Divisional Magistrate, Mangaldoi. The aforesaid inquiry report is annexed to the counter affidavit as Annexure-2. From the report it appears to us that all together 23 (twenty three) witnesses were examined from public including the petitioner herself and her brother-in-law Md. Tamzid Ali, while 4 (four) other witnesses were examined from the State side. They are S.I., Abdul Jalil, S.I., Jitendra Kr. Singh, S.I, Mridul Barua and Constable 1345, Dukho Ram Boro. From a perusal of the, evidence of the witnesses, namely, Md, Tamzid Ali, Smt. Anwara Begum, Md. Naruddin Ahmed, Md. Khairat Ali, Md. Jamiruddin Ahmed, Md. Faizu Hoque, Md. Farid Ali, Md. Sayedur Rahman, Smti Abida Khatun, Smt. Anwara Begum, Smt. Monowara Begum, Smt. Tasiran Begum and Md. Farzan Ali, it would appear to us that police party under the supervision of S.I. Jalil Ali apprehended Md. Javed Ali (since deceased) and Tamzid Ali and assaulted both of them severely with the help of rifle butt and various other weapons. From the evidence it would also appear to us that both Javed Ali (since deceased) and Tamzid Ali were severely kicked by the police personnel. These witnesses nowhere stated in their evidence that Javed Ali (since deceased) and Tamzid Ali-were ever manhandled by the public during the process, of apprehension. These witnesses also stated in their evidence that both Javed Ali and Tamzid Ali were taken to police station by the police in injured condition in their vehicle. However, Javed Ali, the husband of the petitioner while under going treatment in hospital succumbed to his injuries. Though Tamzid Ali, the brother-in-law of the petitioner did receive injuries on his person as a result of assault, he however, recovered after treatment.

9. It would also appear to us that some of the witnesses examined during inquiry by the Inquiry Officer did state that police on various occasions were after Javed Ali and Tamzid Ali on account of their involvement in several dacoities. Witness Md. Sahir Ali, Md. Harmuj Ali, Md. Tayebuddin Ahmed, Md. Majbil Ali and Md. Aijuddin Ahmed, who hailed from Gariapara village also stated in their evidence that Javed Ali (since deceased) and Tamzid Ali, both brothers were entangled in several criminal cases. They also stated in their evidence that they and other

villagers were worst sufferers of the activities of both Javed Ali (since deceased) and Tamjid Ali. But the over all evidence appearing in the face of the inquiry from public go to show that on 13.7.1999, a police party under the supervision of S.I. Jalil Ali of Mangaldoi Police Station apprehended both Javed Ali (since deceased) and Tamjid Ali and after their apprehension both were severely assaulted by the police personnel with the help of rifle butt and other weapons including branches of trees and the police personnel also severely kicked Javed Ali. Both were taken to police station in injured condition.

10. A perusal of the evidence recorded by the Inquiry Officer of witnesses, namely S.I. Abdul Jalil, S.I. Jitendra Kr. Singh, S.I., Mridul Barua and Constable Dukho Ram Boro, it would appear to us that before their arrival at the scene, a mob gheraoed the dacoits and on their arrival when they tried to flee away from the place, both Javed Ali and Tamjid Ali sustained injuries. They also stated in their evidence that both Javed Ali and Tamjid Ali were manhandled by the public as a result they received serious injuries on their person. It is also in their evidence that they rescued both Javed Ali and Tamjid Ali and took away both of them to police station. Both were admitted in Mangaldoi Civil Hospital for their treatment, but Javed Ali succumbed to his injuries at the hospital. They also stated in their evidence that some of the dacoits managed to flee away from the spot. A-22 bore pistol with ammunition was stated to have been recovered from Javed Ali in presence of the witnesses.

11. A careful reading of the evidence of the witnesses recorded during inquiry by the then Sub Divisional Magistrate, it would appear to us that the witnesses from the State side tried to put blame on the public in the context of assault on both Tamjid Ali and Javed Ali. They also tried to put before the Inquiry Officer that they rescued both Javed Ali and Tamjid Ali from the clutch of the mob who gheraoed them including several other dacoits. From their evidence and other documents proved before the Inquiry Officer also go to show that on 13.7.1999 a police party under the supervision of S.I. Jalil Ali had been to Gariapara village for apprehension of dacoits after being received a secret information that dacoits were conspiring themselves to commit dacoity in the locality. Evidence of the State Officers also go to show that both Javed Ali and Tamjid Ali were apprehended by them and taken to police station and admitted in the hospital for treatment on account of receipt of injuries by them. The witnesses while deposing before the Inquiry Officer tried to put impression that both Javed Ali and Tamjid Ali were severely beaten by the public and not by the police party accompanying Abdul Jalil. However, a contrary fact from the evidence of the witnesses, from the public comes on to the surface that the police party under the supervision of S.I. Abdul Jalil on their visit to Gariapara village apprehended both Javed Ali (since deceased) and Tamjid Ali from two different houses not belonging to them and thereafter severely assaulted both of them by police personnel with the help of rifle butt and various other weapons. Their evidence also go to show that police personnel also severely kicked both Javed Ali and Tamjid Ali. The Inquiry Officer also took into consideration the post-mortem

report in respect of deceased Javed Ali. The doctor who conducted autopsy on the dead body of Javed Ali discovered the following injuries.

- (1) One bruise on right shoulder 2 cm x 1 cm;
- (2) One linear bruise on the left shoulder 4 cm X 3 cm;
- (3) One haematomatous swelling on lower part of right arm;
- (4) One contusion on left shoulder 2 cm x 1/2 cm;
- (5) One haematomatous swelling on lower end of left leg;
- (6) Multiple haematomatous patch and bruises of various size and shape on the back;
- (7) One haematomatous patch on the chest on middle portion slightly towards the right side;
- (8) The 4th rib fractured; and
- (9) The thoracic cavity is full of blood clot.

The doctor, who conducted the postmortem examination on the dead body of Javed Ali opined that cause of death is due to haemorrhage and shock as a result of injury sustained on the lung.

12. The Inquiry Officer after consideration of the evidence of both sides and the documents proved recorded his findings as follows:

FINDINGS: In view of the observations made as above, it appears that on that day a police raid was conducted at Gariapars village after getting informations from confidential sources that notorious dacoit Javed Ali and Tamzid Ali camping at Gariapara along with some other dacoits. Getting the information a strong police force under the leadership of S.I. Abdul Jalil was send to apprehend the dacoits. But in the meantime the dacoits were gheraoed by some people when police reached the place of occurrence the dacoits tried to fled away and in the process injured and the people apprehended and manhandled them and handed over to police. It cannot be ruled out totally that, the dacoits after taken into custody of the police were not beaten as section of the people providing evidence said in their statement. If their statements are to be believed the police party send for capturing the dacoits cannot be given a clean chit. However, both the dacoits received grievous injuries during the process of taking into custody as a result of which one of them Javed Ali succumbed to injuries at the Hospital. With this I conclude my report.

13. From the above findings of the Inquiry Officer it would appear to us that the Inquiry Officer did not rule out police atrocities and beating after arrest of Javed Ali (since deceased) and Tamzid Ali and for that he the I.O. has not given of a clean chit to the police party involved in the arrest of Javed Ali (since deceased) and Tamzid Ali. From the findings it would appear that the Inquiry Officer

inquiring into the cause of death of Javed Ali did not absolve the police personnel responsible for arrest of Javed Ali and Tameez Ali, who received injuries on their person.

14. In our considered view the findings of the Inquiry Officer is not liable to be thrown out since his findings are based on both oral and documentary evidence. Further respondent authorities did not deny apprehension of Javed Ali (since deceased) and Tameez Ali from the village Gariapara and also receipt of injuries on their person and their admission in the Mangaldoi Civil Hospital. The respondents are also not denying the arrest of Javed Ali (since deceased) and Tameez Ali in connection with Mangaldoi P.S. Case No. 54 of 1998 and visit of the police party under the leadership of S.I. Abdul Jalil to Gariapara on the basis of G.D. Entry No. 306 dated 13.7.1999, G.D. Entry No. 307 dated 13.7.1999, G.D. Entry No. 309 dated 13.7.1999 and lodgment of an FIR by S.I. Abdul Jalil on the basis of the G.D. Entry No. 306 of 13.7.1999. Therefore, apprehension of Javed Ali (since deceased) and Tameez Ali appears to be an admitted fact. Sustention of injuries by both Javed Ali and Tameez Ali and their admission in the Hospital also appear to be admitted facts. The Inquiry Officer recorded his findings on the basis of the oral evidence and documentary evidence as well of either party that the police beating after their apprehension cannot be ruled out and for that no clean chit can be recorded in their favour.

15. Taking all the facts and circumstances of the case appearing in the face of the record and the findings of the Inquiry Officer, who conducted the inquiry as to the cause of death of Javed Ali, we are of the considered view that the respondents herein are required to be saddled with compensation. Accordingly we consider it appropriate to order payment of compensation amounting to Rs. 1,50,000/- (rupees one lakh fifty thousands) which would meet both the ends. Respondents are accordingly directed to pay compensation to the tune as indicated above to the petitioner herein, the wife of the deceased and to release the same within a period of 2(two) month from the date of receipt of the copy of the judgment and order. With the above direction this petition stands disposed of. No costs.