

(1994) 02 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 149 (K) of 1992

Nagatangkhui

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 11-02-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 41
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1995) CriLJ 347

Hon'ble Judges : W.A. Shishak, J

Bench : Single Bench

Advocate : C. Jajo, for the Appellant; Govt. Advocate, for the Respondent

Judgement

W.A. Shishak, J.—The petitioner herein is the father of one Thotmaya aged about 19 years who died while in custody in Sub-Jail, Dimapur on 13-9-92.

2. The petitioner resides with his family at Diphupar, Dimapur. The deceased was the eldest son of the petitioner.

3. The said son of the petitioner was missing from his home since 30-8-92. The petitioner tried to find out the whereabouts of the son. It was on 2-9-92, the petitioner came to know that his son was lodged in Sub-Jail, Dimapur. After obtaining permission from a local Magistrate at Dimapur, the petitioner met his Son on 2-9-92. It is averred in this petition that on 2-9-92 when the petitioner met his son in Sub-Jail, Dimapur he was in good health and the son did not complain of any problem. The petitioner was however, requested by his son to see that he was bailed out. He was also informed by his son that no ground of detention was disclosed to him. On 12-9-92 at about 11 A.M. the petitioner went to Sub-Jail to give his son some clothing, soap and food etc. It was a Sunday. Without permission from Magistrate, the petitioner was not allowed to meet his son that day. While the petitioner was still lingering at the Jail Gate, he overheard some under-trial prisoners who saw him standing at the Gate saying that his son was in a very serious condition and might not service. Being alarmed, the

petitioner approached the Jailor to allow him to meet his son. He was, however, told that if it was a case of sickness, the petitioner should meet the Compounder. The petitioner met the compounder and requested him to let him know if his son was sick. The Compounder denied that his son was sick. The Compounder went to the Sub-Jail and demanded to know as to who had alleged that the petitioner's son was ill. The petitioner told the Compounder that he was informed of the serious condition of his son by the two persons who were still sitting near the Jail Gate. At that time the Compounder stated that he had already conducted the morning check on all the prisoners and there was no sign of any sickness of any of the prisoners including the petitioner's son.

4. On 13-9-92. the petitioner received a chit bearing his son's name delivered by an unknown persons The chit was written on the letterhead of Respondent 3, the Senior Superintendent of Jails Sub-Jail Dimaur. On the said chit, the name of the petitioner and the name of his son were written, but no information as such was given. On receipt of the said chit, the petitioner rushed to Sub-Jail and on arrival he was told that his son had died and his body had been taken to the Civil Hospital, Dimapur. From Sub-Jail, the petitioner rushed to Civil Hospital and he found fresh-gaping wounds and other injuries on the body of his son. Some photographs were taken of the dead body of his son. The petitioner was convinced that it was an unnatural death caused due to injuries inflicted on the body. Autopsy was done by the Assistant Surgeon which was countersigned by the Civil Surgeon. A copy of the Post Mortem Examination was obtained by the petitioner on 12-10-92. The body was said to have been despatched on 13-9-92 and the Post Mortem was actually done at the death house on 14-9-92 at 10.45 A.M. The following injuries were found on the body of the deceased:--

1. Multiple dried blisters of various sizes (1/4 to 3/4") on the face.
2. A lacerated wound on the back (1" x 1").
3. 9 nos of dried blisters on the left arm.
4. A lacerated wound of 1/4 "X1/4 on the left shoulder towards the frontal part i.e. supra clevicular region.
5. An old infected wound of 1 1/2 "XI" on the left shoulder towards the back side.
1. One old bruise of about 2 "x 1/2" on the left leg.
2. One bruise of 3/4 "on the left thigh.

It is also stated that a lacerated wound on the left shoulder towards the back side was also found. The Doctor is of the opinion that the death of the deceased was caused due to Cardiac Respiratory failure. It is further averred that the petitioner in fact saw several injuries on different parts of the body of his son. The petitioner further states that before the death of his son, no such injuries were on his body.

5. The petitioner further made enquiry from the local Police as to how his son came to be arrested. This he did after obtaining a copy of the accused forwarding report made by the Police to the Judicial Magistrate dated 30th August, 1992. It is stated in this forwarding report that Thotmaya was arrested u/s 41 of Cr. P.C. as he is a drug addict and suspected to be involved in many crimes. The petitioner states that his son was not a drug addict.

6. The petitioner submitted a representation to the Governor of Nagaland requesting the Governor to give a direction to enquire into the circumstances leading to the death of his son inasmuch as it was a death in State custody and in suspicious circumstances.

7. It may be stated that no case was registered against any person regarding the death of the son of the petitioner. No enquiry whatsoever was made by the Government of Nagaland in spite of request made in this regard. The chit delivered to the petitioner has been filed in this case and I have perused it. I have also seen the accused forwarding report dated 30th August, 1992. It is stated that the accused "be forwarded to Judicial custody for drug-de-addiction treatment". At this stage it may be stated that there is nothing to show in the counter filed on behalf of the Government that there was a finding that petitioner's son was a drug addict. There is also no finding by a competent Medical Officer in this regard. Even assuming that the deceased was a drug addict, there is no Medical opinion that one would have died in the circumstances narrated in the present case. In the affidavit filed on behalf of respondent 2, the injuries detected in the Post Mortem Examination are nowhere denied. It may also be stated that nowhere it is stated in the forwarding report that the son of the petitioner in any way exhibited sign of being an addict. Since the petitioner has denied in para 7 of the Writ Petition that his son was an addict, it is necessary that Government affidavit should have come out with materials to support the forwarding report of the Police that the deceased was a drug addict. The two affidavits filed on behalf of the Government are by the Home Commissioner (respondent 1) and by I.G. Prisons (Respondent 2). Very strangely indeed no affidavit has been filed by and on behalf of respondent 3, Senior Superintendent of Jails, Sub-Jail, Dimapur under whose direct custody the son of the petitioner died.

8. It is contended on behalf of the petitioner that despite representation made to the Governor of Nagaland which fact has not been denied in the affidavits filed on behalf of respondents 1 and 2 no ex-gratia payment was made to the petitioner for the death of his son in custody. It is submitted that the State has shown a very negative attitude to the loss of life of the son of the petitioner. This attitude of the Government of Nagaland, according to the learned Counsel, is an insult to the Constitution of India which states that the State shall protect the life and property of every citizen of this country.

9. Mr. I. Jamir, learned Senior Government Advocate appearing on behalf of respondents states that in spite of his several requests, respondent 3, the Senior

Superintendent of Jails, Sub-Jail, Dimapur did not care to furnish materials concerning the present case. According to him, he has written as many as three (3) letters to respondent 3 requesting him to meet the allegations made by the petitioner regarding the unnatural death of his son. The learned Senior Government Advocate expresses his helplessness in the present case inasmuch as he receives no assistance from respondent 3. According to him, this is the second time that such death in Jail has taken place in Nagaland. It is stated at the Bar that this Court had decided a case of similar nature in Civil Rule 101 (K) 91 in a petition filed by one Smt. Geeta Sangma. We have read the said judgment together. Learned Senior Government Advocate does not deny that there are absolutely no other materials to show that the deceased was an addict except that it is mentioned in the forwarding report of Police vide Annexure-3 as mentioned earlier.

10. As stated above, affidavits have been filed by the Home Commissioner and the I.G. Prisons whose Offices are located in the State Capital of Kohima. They have no personal knowledge in the nature of such a case where death actually took place inside the Jail at Dimapur under the direct administration and supervision of respondent 3, the Senior Superintendent of Jail, Sub-Jail, Dimapur. In this view of the matter, affidavits filed by respondents 1 and 2 are not of much consequence inasmuch as they have no personal knowledge regarding facts and circumstances leading to the death of the deceased. At the same time, I am surprised that sources of information did not understand why the higher authorities viz., the Home Commissioner and I.G. Prisons could not have asked the respondent 3, Sr. Superintendent of Jails to file detailed affidavit instead of they volunteering themselves to file affidavits on behalf of the State. I am not saying that respondents 1 and 2 cannot file affidavit at all. What I am saying is that their affidavits would be based on information derived only from respondent 3 who is directly concerned with the administration of the Sub-Jail at Dimapur. It appears that the State is not prepared to come out with the facts of the case. It appears, it is because of this negative attitude of the State of Nagaland and respondent 3 whose affidavit is absolutely necessary in this case has not filed affidavit because it appears to me, he does not want to tell the true story. Or could it be that it was respondent 3 himself who was instrumental in the destruction of the life of the deceased? Respondent 3 is a very high ranking and responsible officer of the Government of Nagaland. In my opinion, he cannot avoid responsibility in such a case where death of a human person is involved. In such a situation I am constrained to say that even very high ranking Officers of the Government of Nagaland refuse to comply with the basic principles of administration of Justice.

11. A time has come when Jail administration has to be streamlined. After all inmates of the Jail are human persons created in the image of God like any other persons in the World, except for the fact that they are detained in Jail in connection with some allegations brought against them. Despite the fact that they are in Jail, they do not cease to be human persons. They do not cease to be

citizens of this democratic country of India. The only difference is that once convicted, they will have to suffer for the offence they have committed. We cannot think beyond that. In this view of the matter I must emphasise that we have no right whatsoever to de-humanise the prisoners in any manner. They can only be dealt with in accordance with the provisions of law for the time being in force in the country. Constitutional mandate as regards protection of life and property as enshrined under Article 21 of the Constitution of India is sacred and such mandate must be carried out by officials in high places very conscientiously and religiously.

12. Learned Senior Government Advocate submits that in view of financial constraints with which the Government is faced at the moment, this Court may not fix a huge amount of compensation in the present case. Ms. C. Jajo, learned Counsel for the petitioner refers me to *Shri Pranab Jyoti Gogoi Vs. The State of Assam and Others*, and submits that this case is similar to this. In the case referred to above, death of the persons was not proved. The deceased was picked up by Army and later he was found missing. In spite of the fact that death in the hands of Army was disputed because of the circumstances described in the case, this Court awarded compensation of Rs. 2 Lakhs. Paras 16 and 17 are relevant while considering the amount of compensation payable to the petitioner (at p. 158 of Cri LJ):

Paras 16 & 17.

16. It has already been stated that the cause of the death is disputed. Whatever was the cause of death we are not expressing our opinion about it as it would prejudice the investigation of the case. But, admittedly Dhruba Jyoti died when he was in the custody of the Army. Dhruba Jyoti suffered injuries; He must have suffered continuous pain. At the time of his death, Dhruba Jyoti was a student of Degree Course and was aged 22. Both the parents are alive. The parents of the deceased have been suffering from mental agony. A case has been registered u/s 302 read with Section 34, IPC, as already stated, on the facts and in the circumstances of the case we are of the view that ex-gratia payment (payment without legal consideration) or some monetary payment in the nature of a palliative would be admissible in such a case. Therefore, if the payment of Rs. 2,00,000/- is ordered to be paid to the parents of the deceased Dhruba Jyoti, it would meet the ends of justice.

17. For the foregoing reasons, it is ordered and directed that the case shall be referred immediately to the Central Bureau of Investigation for a thorough and detailed inquiry by it. Copy of the report shall be submitted to this Court for follow-up action, if need be. It is further directed that the Union of India shall pay a sum of Rs. 2,00,000/- (Rupees two lakhs) to the parents of the deceased.

13. Needless to say that the petitioner, his wife and other children have gone through great mental agony and pain because of the loss of a loved one in the family. No amount of money will adequately compensate for the loss of life.

Resurrection of life is not within the power of man. It is possible only with God, the Creator. The life of the son of the petitioner was cut short in very unfortunate circumstances. I have no reason to doubt that the son of the petitioner died of the injuries inflicted on his body as is evident from the Medical Report. The only way to console the petitioner and other members of the family is to grant compensation.

14. In the result, this petition is allowed. The respondents (The State of Nagaland) are directed to pay Rs. 2,00,000/- (Rupees two lakhs) as compensation for the loss of life of the son of the petitioner while in State custody. The respondents are directed to make payment within three (3) months from today.

15. It is open to the State to make necessary investigation and to find out the real culprits responsible for the death of the son of the petitioner and to fix responsibility including recovery of the compensation amount from such person's who are found responsible for the death of the son of the petitioner.

With the above observation and direction, the petition is disposed of. I make no order as to costs.