
(1999) 06 GAU CK 0036
In the Gauhati High Court
Case No : Civil Rule No. 482 of 1998

Narayani Sharma

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 457

Citation : (2000) ACJ 869

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

Bench : Single Bench

Advocate : P.R. Barman, for the Appellant; S. Das, for the Respondent

Final Decision : Allowed

Judgement

W.A. Shishak, J.—Heard Mr. P.R. Barman, learned counsel for the petitioner. Heard also Mr. S. Das, learned Government Advocate. One Krishna Sharma, son of the petitioner while aged about 16 years, a school going boy, was arrested by police on 29.7.1991 in connection with Ambassa P.S. Case No. 9 (7) 91 under Sections 457 and 380 of Indian Penal Code. The said Krishna Sharma was produced before Magistrate and obtained police remand till 2.8.91. On production before the learned Magistrate at Ambassa, the said accused Krishna Sharma complained of police torture while in police custody during the aforesaid period of police remand. I may state here that unfortunately the said complaint made by the accused person was not taken cognisance of.

2. On 2.8.1991 after production before the court, accused was remanded to judicial custody. While in judicial custody, i.e., in jail, the said accused died on 10.8.1991. The dead body of the accused was examined by some doctors and post-mortem report is available at Annexure D. The said post-mortem report was signed by three doctors. Report is as follows:

1. Injury 2. Disease of 3. Fracture 4. Dislocation

deformity _____
_____ (1) Penetrating injuries to tip and nail beds of left middle and index finger and right index and middle finger of around 1/2 cm x 1/100 m collected blood seen below the mentioned nail. These injuries are old ante-mortem in nature and sharp pointed weapon has been used.

(2) Foul smelling discharging sinus at the dorsal aspect right forearm about 72" above the wrist-joint ante-mortem in nature, hard blunt weapon used, old nature of injury is subject to the confirmation of X-ray taken on 6.8.1991.

Sd/- illegible 26.9.1994. _____
_____ MORE DETAILED DESCRIPTION
OF INJURY OR DISEASE _____

(1) Infected sinus at the backside of right forearm around 1/2" above the right wrist-joint. It discharged foul smelling pus on pressure.

(2) Multiple penetrating injuries to the tip and nail beds of fingers mentioned.

(3) Two grayish patches and one such patch in the middle and lower lobes respectively of right lung and several greyish patches involving wide areas of both lobes of left lung. Suggestion of bronchopneumonitis. _____

_____ OPINION OF DOCTOR AS TO CAUSE OF DEATH _____

_____ Cause of death in this patient is cardio respiratory failure in a case of bronchopneumonia which is natural in nature.

Time of death 9.30 a.m. on 10.8.1991 as per bed head tickets.

(1) 1st and 3rd to CMO (N) KLS. 1. Sd/- K. Debnath, (2) 2nd copy to O/C KMP.P/S. 12.8.1991 (3) 4th copy to SDM KNP. Sd/- Dr. Keshol Debnath, (4) 5th copy for office record. 2. Sd/- M.Das, 12.8.1991 Sd/- Dr. M. Mrinmoy Das, M.O. Kamalpur, Sub-Div. Hospital. 3. Sd/- S. Debbarma, 12.8.1991 Sd/- Subhasis Debbarma, Kamalpur Hospital.

3. Counter-affidavit has been filed on behalf of the respondents. The fact that the accused Krishna Sharma complained of torture inflicted on his body by police while in police custody is not controverted. In substance the contention of the Government is that the cause of death as per the finding of the doctors is due to cardio respiratory failure in case of bronchopneumonitis which is natural in nature.

4. Mr. P.R. Barman, learned counsel for the petitioner submits that the injuries inflicted on the body of the accused must have led to the death of the accused, inasmuch as the accused while in judicial custody did not complain of any sickness, nor is it the case of the State Government that he complained of bronchopneumonitis and that he was given treatment in jail. In other words if

the accused while in custody had complained of such sickness the onus is on the State Government to show that everything possible was done to save the life of the accused. There is not even an iota of evidence to show that the accused was indeed suffering from such disease and that adequate treatment was given to the accused. The only thing that is stated in the counter-affidavit is that the accused died on 10.8.1991. The statement made in the counter-affidavit to the effect that the accused died of bronchopneumonitis is a finding when the post-mortem examination was carried out by three doctors. There is no report about the complaint of the accused person of such sickness nor is there any record/report about treatment given to the accused while in custody. It is stated by learned Government Advocate that some treatment of course was given as regards the injuries complained of by accused, of course, not of the disease of which he is stated to have died. Learned counsel for the petitioner further submits that one who suffers from bronchopneumonitis cannot die suddenly. It is also further submitted that assuming, apart from the physical injuries as found out as per report of the medical doctors, the accused was suffering from the said disease, it is the duty of the State Government to show to the satisfaction of this court that adequate treatment was provided to the accused.

5. Mr. S. Das, the learned Government Advocate produces Sick Book of Prisoners of Kamalpur Sub-Jail of the relevant period. On 5.8.91 the accused was examined in jail by Dr. K. Debnath. He duly noted in the register all the injuries found on the body of the accused. X-ray was also taken and the injuries were confirmed. Dr. K. Debnath was one of the three doctors who conducted the post-mortem on the dead body of the accused. Even as late as on 5.8.1991 no sickness of bronchopneumonitis was noted in the register. In other words the injuries noted by the doctor on 5.8.91 were of the nature of the complaint made by the accused before the Magistrate when he was produced on 2.8.1991.

6. Under the provisions of the Constitution of India the State is mandated to protect life and liberty of every citizen. Therefore, the fact that accused Krishna Sharma died while in State custody is a very sad story. However, the life of Krishna Sharma is already gone and it is gone for ever. In such a situation the only mode of relief available to the court is to allow compensation in order to give some comfort to the parents and to the other loved ones of the deceased. In a similar case in *Notle Vs. Union of India (UOI) and Others*, an amount of Rs. 2,50,000 (Rupees two lakh fifty thousand) was allowed as compensation. In *Zukhil Sema v. Union of India* 1999 (1) GLR 162, an amount of Rs. 2,00,000 (Rupees two lakh) was allowed.

In the result, on the premises aforesaid this petition is allowed. Respondents are directed to pay a sum of Rs. 2,50,000 (Rupees two lakh fifty thousand) only to the petitioner as compensation within a period of 2 (two) months from the date of receipt of this order.

This writ petition is accordingly disposed of.