

(1998) 06 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule (HC) No. 62 (K) of 1996 with Criminal Original (Contempt)
Petition No. 7 (K) of 1996 and Miscellaneous Case No. 21 (K) of 1996

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APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-06-1998

Acts Referred:

Armed Forces (Special Powers) Act, 1958 — Section 4, 5
Constitution of India, 1950 — Article 21, 22, 226, 32
Contempt of Courts Act, 1971 — Section 12

Citation : (2000) ACJ 786 : (1998) 3 GLT 43

Hon'ble Judges : V.D. Gyani, Acting C.J.; N.C. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.D. Gyani, Actg. C.J. and N.C. Jain, J.—By this petition presented on 26.4.96, the petitioner Node, wife of Bu-0 Angami, complained of illegal and wrongful detention of her husband Bu-0 Angami by the Security Forces (29th Bn. Assam Rifles) and prayed for a writ of Habeas Corpus. The above named detenu, the petitioner's husband, was arrested on 18.4.1996 around 11.30 p.m. and taken away from his house situated in Chhota Basti of Kohima town in a blind folded manner without assigning reason or disclosing his ground of arrest. The house was also searched, but nothing incriminating was found. On 19th morning the matter was reported to the Deputy Commissioner, Kohima as also to the Officer-in-charge, Police Station, Kohima, praying for tracing out the detenu, but till filing of the writ petition he was not traced. He was neither produced before any Magistrate nor was handed over to nearest police station as contemplated u/s 5 of the Armed Forces (Special Powers) Act, 1958. Thereafter the present petition was filed on 26.4.96 and on the same day a learned single Judge of this court while issuing rule made the following direction:

In the interim, therefore, I direct the respondent No. 5 to make over the said Bu-O Angami to the Officer-in-charge of the nearest police station immediately on

receipt of this order.

2. Since the above order dated 26.4.96 was not complied with a contempt petition was moved on 30.4.1996 alleging wilful defiance of the court's order dated 26.4.96 by the respondent Commanding Officer, 29th Bn. Assam Rifles, Col. V.K. Malhotra. A miscellaneous application being Misc. Case No. 21 (K) of 1996 was also filed on 6.5.1996 to bring to light how the detenu was tortured to death. That too in defiance of the court's order dated 26.4.1996.

3. By order dated 28.10.1997 this petition was sent to the main seat at Guwahati for being listed for final hearing on 17.11.1997. The respondents have entered appearance. It may be noted that there are three affidavits-in-opposition filed by the Commandant 29th Bn. A.R. As per the affidavit filed on 23.5.1996 it is an admitted position that Bu-0 Angami was picked up in the small hours of 19.4.1996 on specific information as claimed by the respondent No. 5. The reason for not handing him over to the nearest police station as assigned by and contained in the affidavit dated 23.5.1996 is as follows:

The deponent respectfully begs to state that the subject on questioning had revealed his identity as No. 1006 SS 2/ Lt. Bu-O Angami. During the course of questioning he divulged many facts related to NSCN (K). Bu-0 had led Security Forces to village Chiechema, Nerhema and Tophema. He had taken Security Forces to certain hide-outs of NSCN (K) cadre in Dimapur. Therefore, he could not be handed over to police before completion of operations led by him.

4. The second affidavit filed in the writ petition on 14.5.1996 by the same deponent Col. V.K. Malhotra also admits the fact that Bu-0 Angami was apprehended from his residence around 00.30 hrs. on 19.4.1996 by the Security Forces. The only difference is about the timing. According to the writ petitioner it was around 11.30 p.m. whereas the respondents say that it was around 12.30 in the night. This difference of timing is hardly of any consequence. It is an admitted position that Bu-0 Angami was in the custody of the Security Forces from the moment he was apprehended from his house and till his dead body along with the F.I.R. was handed over to police by the Security Forces. The deponent V.K. Malhotra in his affidavit dated 14.5.1996 has stated that one .38 revolver made in U.S.A. with one empty case and one live round of 9 mm ammunition was recovered from him with two letters as detailed in para 2 of the affidavit dated 14.5.1996. It is reproduced hereunder:

He was apprehended from his residence at about 00.30 hrs. on 19.4.1996 by Security Forces based on specific information. One 38 revolver, made in U.S.A. regd. No. PH 1725 with one empty case of .38 and one live round of 9 mm ammunition was recovered from him. On subsequent search of the house, two letters, one written by Zeloulie, Chairman Angami Region/GPRN and another signed by Bu-0 Angami himself as Colonel, Central Command, Naga Army were also recovered (photocopies attached as Annexures A & B). Bu-0 had been very cooperative and led the Security Forces for operations to other hide-outs of NSCN

(K) cadres. On 23.4.1996 he helped in apprehension of SS Pvt Velhuto and SS Pvt Atou Chaksang of NSCN (K). From 24 to 27.4.1996 Bu-0 led the Security Forces to vill. Chiechema, Tophema and Ner-hema. He even led Security Forces to Dimapur for operations. On 27.4.1996 he led Security Forces to vill. Jotsoma for operations. He had shown many hide-outs of NSCN (K) cadre in and around Kohima as well as Dimapur. All these operations led by Bu-0 delayed his handing over to police earlier. On 28.4.1996 when police had come to take over Bu-0 and two others, viz., SS Pvt Velhuto and SS Pvt Atou Chaksang, Bu-0 was left behind as he had refused to sign documents. Within 20 minutes after departure of police Bu-0 had died. His dead body along with F.I.R. was handed over to police at PS (N) by Security Forces.

5. It is claimed by the deponent that the Superintendent of Police, Kohima was informed of the arrest of the detenu on 19th, but the laconic manner in which this information is claimed to have been given is self-explanatory. The deponent in para 4 of his affidavit states "as per best of knowledge of the deponent". This kind of knowledge has no value in the eye of law. The claim made in para 4 of the affidavit is reproduced below:

(4) ...the deponent respectfully begs to state that any apprehension of undergrounds is always intimated to the SP Kohima either on telephone or during Joint Control Centre (JCC) meeting which is held everyday and attended by SP Kohima. As such SP Kohima and others attending meeting were informed on 19.4.1996. As per best of knowledge of the deponent, no telephone call of SP Kohima was received on 22.4.1996 as he was already very much aware of the fact that Bu-0 had been in custody of Security Forces since 19.4.1996.

6. It is the respondents' case that the detenu cooperated with Security Forces and led the force in the operation in and around Kohima and Dimapur which had resulted in the apprehension of two other extremists Velhuto and Atou Chaksang. Delay in the handing over the detenu in time is sought to be explained by the cooperation extended by the detenu in the operations. It is their pleaded case that- "on 28.4.1996 at about 19.30 hrs. when he was being handed over to police, he refused to sign the seizure memo, due to which on instruction from SP Kohima, Vizeo Angami, ASI, PS (N), declined to take him over, a fact which is known to both SP Kohima as well as ASI, Vizeo Angami who spent about 40 minutes explaining to Bu-0 in his own language about the procedures. On his refusal, he reported the matter to SP Kohima on telephone and then on his instructions left him behind but took away SS Pvt Velhuto and SS Pvt Atou Chaksang with him. Later that evening just 20 minutes after departure of ASI, Bu-0 died. Hence, the order of the Hon'ble High Court could not be complied with". The respondents have highlighted the cooperation extended by the detenu in taking the Security Forces to certain hide-out of NSCN cadres in Dimapur, flouting statutory law and guidelines issued by the Additional Director General, Discipline and Vigilance vide notification dated 25.11.1992. A curious plea has been taken by the respondents saying that these guidelines pertain to the State

of Assam only, as if permitting its violation outside the State of Assam. Denying the allegations of torture the respondents seek support from the post-mortem examination report which accordingly confirms that there was no fracture on the body of the detenu. The injury marks on the wrists were sought to be explained by saying that they were caused by the cord tied to his hands which was considered essential for security reason. The circumstances in which the detenu met with his death are explained in the following manner:

Police spent about 40 minutes with Bu-O explaining him the procedures but when he refused to sign the seizure memo, they left. After departure of ASI, when Bu-O was being taken towards jeep to drop him back to his room, some water sort substance was noticed coming out of his mouth. He was immediately taken to hospital, where medical officer on duty after examining and rendering medical aid, declared him dead at about 20.30 hrs. on 28.4.1996, probable cause of death being cardiac arrest. Immediately, SP Kohima and OC PS (N) were informed on telephone and requested to come over to hospital. At about 21.00 hrs., OC PS (N) came and DC along with SP Kohima arrived around 21.25 hrs. On advice by SP Kohima, the dead body of Bu-O was handed over to police at PS (N) at 01.10 hrs. at night, by Security Forces.

7. What is claimed by the deponent is that Assam Rifles is a law abiding force.

8. The last in the series of counter-affidavit filed by the respondent is dated 7 6.1996 which was filed in the contempt petition. Admittedly, the court's order passed in Civil Rule (HC) No. 62 (K) of 1996 was delivered on 26.4.1996, but the deponent respondent V.K. Malhotra in his affidavit states "it was seen by the respondent only on 27.4.1996". This is the explanation offered for non-compliance of the court's order. The same story of cooperation said to have been extended by the detenu has been repeated in this affidavit as well. As for delay in not complying with the order the deponent has further stated that:

On 23.4.1996, he even helped in apprehension of SS Pvt Velhuto and SS Pvt Atou Chaksang of NSCN (K). On 25.4.1996, Bu-O led Security Forces to Dimapur and area around. On 27.4.1996 he led Security Forces towards village Jotsoma in search of Zeloulie, Chairman Angami Region/CPRN and other accomplices. All these operations led by SS 2/Lt Bu-O Angami delayed his handing over to the police authorities as ordered by the Hon'ble Court. On 28.4.1996 on return from operations, documents in respect of SS 2/Lt. Bu-O Angami for handing over to police station (North) were prepared along with papers in respect of SS Pvt Velhuto and SS Pvt Atou Chaksang. However, in the evening at about 19.30 hours on 28.4.96 when Vizeo Angami, ASI, PS (North) arrived Bu-O Angami refused to sign the seizure memo pertaining to revolver recovered from him. In spite of the fact that ASI himself explained the requirement of signing the papers, in his own language (Angami) SS 2/Lt. Bu-O Angami refused to sign. ASI Vizeo then spoke to SP Kohima on telephone and on his directions declined to take over without signature on seizure memo. ASI PS (North) left at about 20.10 hrs. on 28.4.1996 with two other undergrounds, namely, SS Pvt Velhuto and SS

Pvt Atou Chaksang. After departure of ASI, when Bu-0 Angami was taken to jeep to drop him back to his room, some water sort substance was noticed coming out of his mouth. He was immediately taken to the hospital where medical officer on duty after examining and rendering medical aid declared him dead at about 20.30 hrs. on 28.4.1996, with probable cause of death being cardiac arrest (photocopies of death certificate and case-sheet attached as Annexures C and D). On occurrence of the incident, immediately, SP Kohima and OC PS (North) were informed on telephone. OC PS (North) came at about 21.00 hours followed by DC Kohima and SP Kohima who arrived around 21.25 hrs. On advice of SP Kohima the dead body was handed over to police at PS (North) with F.I.R. at about 01.10 hrs. at night by Security Forces (photocopy of F.I.R. attached as Annexure "E"). It can be seen from the above that at no stage the contention of the Security Forces was of not handing over Bu-0 Angami to police authorities. In fact, immediately on arrival from operations on 28.4.1996, police authorities were requested to take over all the three undergrounds. This also proves beyond doubt that intentions were sincere in nature and there was no foul play in this regard. Also at no stage orders of the Hon"ble Court had been defied. It is reiterated that the dead body of SS 2/ Lt. Bu-0 Angami was handed over at Police Station (North) and not collected by police as stated in the petition.

(6) That with regard to the statements as contained in para 5 of the writ petition, the deponent respectfully begs to state that there was no doubt about the directions of the Hon"ble Court passed vide CR (HC) No. 62 (K) of 1996 signed on 26.4.1996. However, due to various operations led by SS 2/Lt. Bu-0 Angami in Kohima and villages around and outside Kohima to Dimapur and adjoining areas, he could not be handed over to the police before completion of said operations, as per directions of the Hon"ble Court.

9. It is significant to note that in face of what has been stated by the deponent for non-compliance of court's order dated 26.4.1996, the crowning statement that follows is:

This also proves beyond doubt that intentions were sincere in nature and there was no foul play in this regard. Also at no stage orders of the Hon"ble Court had been defied.

10. In the same affidavit the allegation of torture is denied in the following words:

It is also incorrect to say that Bu-0 Angami was tortured to death...

Returned to the Habeas Corpus is the production of the detenu, but what was produced in this case is not the detenu, but the dead body. The undisputed facts emerging from the affidavit sworn by the respondent No. 5 established beyond any doubt that the detenu, Bu-O Angami was picked up on 19.4.1996 by members of the Security Forces from his house and thereafter what was handed over to police was his dead body on 29.4.1996. Mr. Goswami, learned senior counsel appearing for the petitioner assisted by Mr. T. Kozo highlighted and brought it to sharp focus. The writ issued by this court on 26.4.1996 directing

the respondent No. 5 to make over Bu-0 Angami to Officer-in-charge of the nearest police station immediately on receiving the order. Admittedly, this order dated 26.4.1996 was received on 26th itself, but the respondent No. 5 has added that it was seen by him only on 27.4.1996 [see affidavit dated 7.6.1996 filed by the deponent V.K. Malhotra in contempt proceeding]. There is no explanation whatsoever as to why the order was not carried out on 26th itself. It is not so much a matter of contempt as it is a matter of human life being lost which would have been and could have been saved if the court's order was carried out. But that was not to be. It is this aspect of the matter which Mr. Goswami has brought into sharp focus. The value of freedom and equality, the dignity of human individual and the respect of fundamental human rights are set at naught by disobedience of court's order.

11. While handing over the dead body, an F.I.R., Annexure E filed along with the affidavit of deponent V.K. Malhotra was also lodged paras 5 and 6 thereof are extracted below:

(5) The subject had been very cooperative and led SF for operation even till last evening. Today in the afternoon he was to be handed over and as such documents were prepared. Later in the evening OC PS (N) was requested to come over to the unit and take the subject along with other two accomplices as mentioned above. However, the OC PS (N) expressed his inability as he had no vehicle at that time. Therefore, we sent our vehicle to fetch him. All three were then brought to the office. SS 2/ Lt. Bu-0 on arrival asked for water and drank two glasses of water. On arrival of ASI, OC PS (N) SS Pvt Vettiuto and SS Pvt Akhayi alias Atou Chaksang were handed over after necessary documentation at 19.30 hrs. However, in presence of ASI, SS 2/Lt. Bu-0 Angami refused to sign the documents pertaining to seizure memo of revolver recovered from him perhaps knowing the consequences of offence committed. In fact he refused to sign any paper. ASI, OC PS (N) even explained to him in Angami language, but he did not sign. OC PS (N) was then requested to contact SP Kohima to take his advice. After talking to SP Kohima, ASI confirmed that unless he signed the documents he would not be taken over by police and even left thumb impression won't do any good. As such OC PS (N) left SS 2/Lt. Bu-0 behind and went off with other two handed over by S.F. It was about 20.10 hrs. on 28.4.1996 when ASI left.

(6) Thereafter, vehicle was asked for to take SS 2/Lt. Bu-0 back to his room. While taking him towards jeep, some water was noticed coming out of his mouth. He was then taken to unit hospital where medical officer on duty after examining and rendering him medical aid declared him dead at about 20.30 hrs. on 28.4.1996. Immediately, SP Kohima and OC PS (N) were informed on telephone and requested to come over to unit hospital. At about 21.00 hrs. OC PS (N) arrived and DC along with SP Kohima arrived at unit hospital around 21.25 hrs. On the advice of SP Kohima, the body of deceased is hereby handed over along with this report for necessary action.

12. The respondents have made a futile attempt at painting a very common picture as if nothing was done to the detenu Bu-0 Angami and he died a natural death. The plea as sought to be raised by the respondents is totally belied by the post-mortem examination report, Annexure D as placed on record. The findings recorded by the Medical Superintendent narrated a tell-tale story which proved that the detenu was subjected to torture:

Multiple small wounds scattered all over body, numerous, unaccountable, character of the wounds are that they were not deep but amount to inflict the body.

The bruises are all over the body, and more if with ecchymosis with swelling amounting to a blunt weapon used in the beating repeating on the same site specially in the arms elbow and on the legs besides being wound on the body. Ligature marks are most prominently marked on both hands and also above ankle of the joint - say about 3" above both the elbows, i.e., on both the hands. As described in various columns specified, the blunt weapon was mostly used in inflicting the victim, causing tremendous mental and physical torture which is humanly impossible to bear. It is also found that most of the wounds found over the various parts of the body of the victim are in the process of drying up, thus the inflictions caused on the victim were mostly 4 to 5 days old. Rigor mortis was present at the time of post-mortem on all over the body except neck. Neck was too free and on dissection it was found that there was dislocation of cervical vertebrae between 1st and 2nd leading to compression of cervical spinal cord. The rest of the system remain, not suggestive to the cause of death.

The consensus opinion drawn leading to the cause of death was- Dislocation of cervical vertebrae between 1st and 2nd causing compression of the cervical spinal cord leading to the cardio-respiratory failure.

13. The multiple small bruises scattered all over the body with ecchymosis and the categorical opinion that blunt weapon was used in beating and repeatedly beating on the same site on the arms, elbow, the shin, the legs. Multiple ecchymosis was present all over the abdomen itself indicative of the torture. It is significant to note that while rigor mortis was present all over the body, the neck was too free and on dissection it was found that there was dislocation of cervical vertebrae between the 1st and 2nd leading to compression of cervical spinal cord. Viewed in its totality, the post-mortem report Annexure D fully establish the fact that the detenu was subjected to brutal physical torture while in custody.

14. So far as torture and custodial death is concerned we can do no better than refer to one of the most leading recent judgments of the Apex Court, delivered by Hon'ble Justice Dr. Anand in D.K. Basu Vs. State of West Bengal, where it has been observed:

Custodial death is perhaps one of the worst crimes in a civilised society governed by rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the

problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right of life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer indeed has to be an emphatic "No". The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

The importance of affirmed rights of every human being need no emphasis and, therefore, to detect the breaches thereof become a sacred duty of the court as the custodian and protector of the fundamental and basic human rights of citizens. Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demand that the powers of the executive should not only be derived from law, but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the fundamental rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.

(10) "Torture" has not been defined in the Constitution or in other penal laws. "Torture" of a human being is essentially an instrument to impose the will of the "strong" over the "weak" by suffering. The word "torture" today has become synonymous with the darker side of the human civilisation.

"Torture" is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself." -Adriana P. Bartow

(11) No violation of any one of the human rights has been the subject of so many conventions and declarations as "torture"-all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before.

"Custodial torture" is a naked violation of human dignity and degradation which

destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward-flag of humanity must on each occasion fly half-mast.

(12) In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.

15. Fatal injuries resulting from blunt impact force follow a certain pattern. It is a matter of common knowledge that homicidal injuries are usually inflicted with some clubbing weapon. What is significant to be noted is while the respondents in their affidavit-in-opposition have tried to explain the ligature marks in the wrist joint, there is not a whisper about the multiple bruises found all over the body and the fracture of the vertebral column. The death certificate, Annexure C as filed by the respondents reads as follows:

This is to certify that Bu-O Angami, 32 yrs. s/o late Mazadou Angami, r/o Chhota Basti, Kohima (Nagaland), died at unit hospital at 8.30 p.m. on 28.4.96 due to cardio-respiratory failure.

16. The respondents have also filed the examination report dated 28.4.1996 submitted by the duty medical officer, who had examined Bu-O Angami at the unit hospital. This report is also reproduced below:

Name: Mr. Bu-O Angami, Age 32 yrs.

This 32 yrs. old prisoner was brought to unit hospital at 8.15 p.m. on 28.4.1996 C/o loss of consciousness.

On examination: Pulse absent. Heart sounds-absent.

Pupils-dilated and fixed, not reacting to light.

Reflex-absent.

Injury marks: Old injury marks around the lt. & rt. wrist (due to tying of ropes), superficial scratch marks at neck, lower chest, injury marks around the elbows, leg, rt. hand and in the back.

Cardiac massage given for 10 mts., but there is no response.

Pt. is declared dead at 8.30 p.m. The cause of death is cardio-respiratory failure.

17. What has been described as superficial scratch marks in this report were the multiple bruises, arteritis around left elbow, leg, right hand and back, speak volume for themselves. The fact that cardiac massage was given is self-indicative. The cause of death is stated to be cardio-respiratory failure. The question is, what led to this cardio-respiratory failure. The reason is not far to seek. Can one ignore the multiple injuries found on the body? The dislocation of the vertebrae and loose neck, the multiple wounds and bruises found all over the

body as fractured vertebral column was enough to alert any pathologist that the death was due to the application and impact of manual force. The post-mortem examination report also clearly and categorically states that the dislocation of cervical vertebrae between first and second caused compression of the cervical spinal cord leading to the cardio-respiratory failure. It is thus clear that cardio-respiratory failure was the result of compression but if the medical officer of the unit hospital simply does not want to see it, who can help it.

18. The rule of law is of universal validity in its application embraces principles of justice which are considered minimal to the assurance of human rights and the life and dignity of man. Respect for human dignity and fundamental human rights is obligatory. The principle of protection for life and liberty has received recognition in several international declarations and conventions, but what good it is when the gap between principle and practice widens, to such an extent that incidents such as the one at hand become frequent, affirming the principle is one thing and enforcing and implementing the same is something else.

19. Article 6 (1) of the International Bill of Human Rights declares that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. The Universal Declaration of Human Rights in the same vein declares that- "Everyone has right to life, liberty and security of person". The dignity of man is inviolable. "To respect and protect it shall be the duty of all State authority". So runs Article 1 of the Basic Law of the German Federal Republic.

20. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by United Nations General Assembly on 29.11.1985 provides victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and prompt redress as provided for by national legislation for the harm that they have suffered. Look at the post-mortem examination report with what compassion Bu-0 Angami was treated would be clear, fracture of spinal column, the loose neck is self revealing of the respect for his dignity, who can hold his neck erect in face of these findings? Recourse to mechanism of justice was no doubt taken, but to what avail? The writ issued by the court on 26.4.1996 was flouted with impunity. What else could the petitioner do than approaching this court praying for writ of Habeas Corpus which was granted as well. Yet what was returned was not the prisoner but his dead body.

21. All constitutional provisions, declarations, and conventions seem dull and flat when in return to a writ of Habeas Corpus, a dead body is handed over. Life in the 5th and 14th Amendments of U.S. Constitution which correspond to Article 21 of the Constitution of India means not merely the right to the continuance of a person's animal existence but a right to the possession of each of his organs, his arms and legs as explained by the Supreme Court in Kharak Singh Vs. The State of U.P. and Others, In D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others, the Supreme Court declared that though the

Government possesses the constitutional right to initiate laws, it cannot, by taking law into its own hands resort to opponents. The colour of crime varies according to constitutional facts, corporate crime, white collared crimes, police harassment, extremists' crimes, terrorists' crimes and the crimes committed in colour of office.

22. It is a case of established infringement of fundamental right to life. The tall denial made by the respondent in his affidavit-in-opposition that the detenu was not subjected to any torture is too tall to be accepted in face of the finding recorded in the post-mortem examination report.

23. No amount of compensation can substitute for precious human life lost. The Supreme Court taking note of growing custodial deaths and violence has expressed its deep concern about this disturbing factor in D.K. Basu Vs. State of West Bengal,

24. The question is what should be the compensation. We are to go by the materials available on record and some of the decided cases by the Supreme Court.

25. Having examined its earlier judgments as reported in Joginder Kumar Vs. State of U.P. and others, ; Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, ; State of M.P. Vs. Shyamsunder Trivedi and Others, Rudul Sah v. State of Bihar (1983) 1 SCC 141 ; Sebastian M. Hongray Vs. Union of India (UOI) and Others, Bhim Singh v. State of J&K 1986 ACJ 867 (SC); Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, ; and Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, the Supreme Court noted that "indeed no express provision in the Constitution of India for grant of compensation for violations of a fundamental right to life, nonetheless, this court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life" yet found a way out for compensation for unconstitutional deprivation of fundamental right to life and liberty as follows:

The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for

penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its duty to protect the fundamental rights of the citizens.

26. The petitioner claimed a sum of Rs. 10,00,000 as compensation for illegal detention of her husband and torturing him to death. Seeking guidance from the reported case in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, where the Supreme Court awarded a compensation of Rs. 1,50,000 with costs of Rs. 10,000, in Bihar Timung v. Union of India 1993 (2) GLR 347 , and Geeta Sangma Vs. State of Nagaland and Others, this court awarded Rs. 2,00,000 and Rs. 1,50,000 respectively as palliative. There is always certain amount of guesswork involved in quantifying the amount of compensation with cost of (sic). To our mind awarding Rs. 2,50,000 towards compensation with cost of Rs. 15,000 inclusive of counsel's fee would substantially meet the ends of justice. Accordingly Rs. 2,50,000 with cost of Rs. 15,000 is awarded payable by the respondents.

27. The matter does not rest here. Admittedly, the matter was reported to the Deputy Commissioner, Kohima and Officer-in-charge of Kohima Police Station, but no action seems to have been taken by the State authorities, particularly the police. The respondent No. 3 is directed to register a case on the basis of the report lodged and we see no reason as to why it had not been registered so far. It clearly discloses the commission of a cognizable offence and as has been held by the Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, the police has no option, but to register a case and to proceed with the investigation if the F.I.R. discloses commission of cognizable offence which it undoubtedly does in the instant case. The District Magistrate, Kohima is directed to see to it, and the O.C. is directed to proceed with the investigation after registering a case in accordance with law.

28. The only point that still remains to be considered is that of contempt.

29. The petitioner has in clear words averred in paras 2 and 3 of her contempt petition that after obtaining certified copy of the order dated 26.4.96, she personally handed over the same to Mr. K. Meruno, C.G.S.C, the same day at Dimapur and it was delivered to the contemner on the same day, i.e., 26.4.1996 through special messenger, yet instead of handing over the detenu to the police he was tortured to death. It is not as if the contemner was not aware of the order, even if he was, it would afford no justification for the in-human torture meted out to the detenu, but we are presently concerned with contempt, the alleged contemner in his affidavit-in-opposition has admitted the position in the following words:

The deponent respectfully begs to state that the said order of the Hon'ble Court was though, delivered on 26.4.1996, it was seen by the respondent only on 27.4.1996.

30. Bu-0 Angami was picked up from his residence in the midnight intervening

18/19.4.1996. He ought to have been handed over to police or produced before Magistrate, in any case on 19th morning. Instead of doing so, he was detained in custody, for a week, which necessitated filing a petition for Habeas Corpus. The court directed the detenu to be handed over to police or produced before a Magistrate. This direction was made on 26th, served on 26th, yet not complied with. He was already in custody for a week but the contemner has in his affidavit suggested that he became co-operative with the authorities, after being taken into custody as if it was all voluntary. To quote his own words:

Thereafter, Bu-0 became very co-operative and led Security Forces for operations to other hide-outs of NSCN (K) cadre in Kohima, Dimapur and villages Nerhema, Tophema and Chiechema.

31. While explaining the delay in non-production, the deponent has stated:

On 23.4.1996, he even helped in apprehension of SS Pvt Velhuto and SS Pvt Atou Chaksang of NSCN (K). On 25.4.1996, Bu-0 led Security Forces to Dimapur and area around. On 27 .4.1996 he led Security Forces towards village Jotsoma in search of Zeloulie, Chairman Angami Region/GPRN and other accomplices. All these operations led by SS 2/Lt. Bu-0 Angami delayed his handing over to police authorities as ordered by Hon''ble Court. On 28.4.96 on return from operations, documents in respect of SS 2/Lt. Bu-O Angami for handing over to Police Station (North) were prepared along with papers in respect of SS Pvt Velhuto and SS Pvt Atou Chaksang. However, in the evening at about 19.30 hours on 28.4.1996 when Vizeo Angami, ASI PS (North) arrived, Bu-0 Angami refused to sign the seizure memo pertaining to revolver recovered from him. In spite of the fact that ASI himself explained the requirement of signing the papers, in his own language (Angami), SS 2/Lt. Bu-0 Angami refused to sign. ASI Vizeo then spoke to SP Kohima on telephone and on his directions declined to take over without signature on seizure memo. ASI PS (North) left at about 20.10 hours on 28.4.1996 with two other undergrounds, namely, SS Pvt Velhuto and SS Pvt Atou Chaksang. After departure of ASI, when Bu-0 Angami was taken to jeep to drop him back to his room, some water sort substance was noticed coming out of his mouth. He was immediately taken to the hospital where the medical officer on duty after examining and rendering medical aid declared him dead at about 20.30 hours on 28.4.1996 with probable cause of death being Cardiac arrest (photocopies of death certificate and case-sheet attached as Annexures C and D).

Again in para 6 it is stated:

The deponent respectfully begs to state that there was no doubt about the directions of the Hon''ble Court passed vide CR (HC) No. 62 (K) of 1996 signed on 26.4.96. However, due to various operations led by SS 2/Lt. Bu-0 Angami in Kohima and villages around and outside Kohima to Dimapur and adjoining areas, he could not be handed over to the police before completion of said operations, as per directions of the Hon''ble Court. It is also incorrect to say that Bu-0 Angami was tortured to death. Two photographs taken immediately after the

death are produced herewith for perusal of the Hon''ble Court (photos attached as Annexures F and G). It is also stated that dead body was open to all whosoever visited the hospital including party of OC PS (North), DC Kohima and SP Kohima. There was no mala fide intention to hide the facts, at any stage. The fact remains that Bu-0 Angami was in the company of ASI PS (North) for about 40 minutes till the latter left at about 20.10 hours. And within 20 minutes of his departure, Bu-0 Angami died due to cardiac failure as per the examination and report of duty medical officer at the hospital.

32. This is no explanation. On the other hand, it clearly shows that despite the court's order having been served on him on 26th itself, the contemner persisted in his operation in total disregard of the order. It is nothing but wilful disobedience of the order.

33. Mr. Sharma, learned counsel invited our attention to the apology tendered by the contemner. This apology as contained in para 9 of the affidavit is reproduced below:

The deponent respectfully begs to state that the delay in handing over of SS 2/ Lt. Bu-0 Angami under the above circumstances has been considered to be contempt of this Hon''ble Court's order, the contemner tenders his humble apologies and prays that he may be pardoned. The delay has taken place due to unavoidable circumstances wherein Bu-0 Angami himself had been leading the Security Forces for operations against NSCN (K) cadres, a banned organisation.

34. The above apology cannot be accepted, hedged as it is with justifications sought to be advanced by the contemner.

35. An apology is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power; only then is it of any avail in a court of justice. Apology must be voluntary, unconditional and indicative of remorse and contrition. An unconditional or unreserved apology in the case of a minor or technical contempt may be accepted to have the effect of purging the same. But the same could not be legitimately predicated of serious or gross contempt. Whether an apology should be accepted or not as purging the contempt in any particular case must depend on the circumstances of each case and the chief of these factors must inevitably be the nature or character of the contempt made. Where the contempt is of a particularly gross character, any apology offered by the contemner should not be accepted as having urged the same.

36. The Supreme Court even while upholding the constitutional validity of Section 4 (a) to (d) of the Armed Forces (Special Powers) Act, 1958 in Naga Peoples ' Movement of Human Rights v. Union of India 1997 (10) SC 169, has categorically held that the power conferred u/s 4(c) read with Section 5 of the Armed Forces (Special Powers) Act, 1958 has to be exercised in consonance with the overriding requirement of clauses (1) and (2) of Article 22 of the Constitution which means

that the person who is arrested by an officer specified in Section 4 has to be made over to the Officer-in-charge of the nearest police station together with a report of the circumstances occasioning the arrest with the least possible delay so that the person arrested can be produced before nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person can be detained in custody beyond the said period without the authority of a Magistrate.

37. Apart from the mandate of law and the judgment of the Supreme Court, there was a specific writ issued against the contemner which he has flouted with impunity. He is found to be guilty of contempt u/s 12 of the Contempt of Court Act, 1971.

38. In one of its very recent judgments as reported in *Government of Andhra Pradesh v. G. Lakshman Reddy* 1997 (4) SC 340, a question was posed as to what punishment should be imposed on the contemner? It was a case where the execution of a decree for demolition of a compound wall constructed on police line was obstructed by police officers, who took the law into their hands, a false plea of commotion and disturbance was taken so as to justify the use of force, the plea was found to be false. The Apex Court was urged to accept the apology or imposition of fine. Only rejecting the plea, the Supreme Court observed that it would be an insult to the injury and considering the circumstances of the case, the contemnors were punished to undergo simple imprisonment for two months and a fine of Rs. 2,000 or in default of payment of fine to suffer 15 days simple imprisonment. The fine was made payable personally from their pockets and the Superintendent of Police, Nizamabad was directed to deduct the same from their salaries and credit to the court account.

39. In contrast, see the present case. Unlike demolition of wall, it is a case where life has been destroyed solely because of the disobedience of the writ issued by the court, a precious human life is lost. Following *G. Lakshman Reddy* 1997 (4) SC 340, the contemner can be sentenced to imprisonment but in view of the direction made as regards the investigation of the case, we are purposefully avoiding imposition of sentence of imprisonment at this stage. The contemner is sentenced to pay fine of Rs. 10,000, or in default of payment of fine to undergo 15 days simple imprisonment. This amount of fine of Rs. 10,000 is payable personally by the contemner and shall be deductible from his salary, to be credited to the court account. Ordered accordingly. The petition stands disposed as indicated above.