

(2000) 02 DEL CK 0016

In the Delhi High Court

Case No : Criminal Writ Petition No. 221 of 1999 and Criminal Misc. No. 8534 of 1999

Phoolwati @ Phullo

APPELLANT

Vs

National Capital Territory of Delhi

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 176

Citation : (2000) 2 AD 537 : (2000) CriLJ 1613 : (2000) 84 DLT 177 : (2000) 53 DRJ 165 : (2000) 2 RCR(Criminal) 433

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. K.C. Mittal, Crl., Inspector Ved Prakash, SHO, Samaypur Badli, Delhi. and SI Ramesh NaranMr. Arjun Bhandari Adv, for the Appellant; Mr. S.S. Mishra, for the Respondent

Judgement

Anil Dev Singh, J.—Rule D.B.

2. This is a writ petition whereby the petitioner Phoolwati @ Phullo claims compensation on account of custodial death of her husband Jaswant Singh. It is the case of the petitioner that on December 2, 1992 at about 10.00 A.M. seven police personnel of Police Station Samaypur Badli and three persons, namely, Udai Singh, Jai Prakash and Kishan, came to the residence of Balbir Singh, resident of village Siraspur. Balbir Singh was identified by Jai Prakash. The police personnel enquired from Balbir Singh about the whereabouts of his cousin Om Prakash, Jagdish and others. As Balbir Singh failed to furnish the whereabouts of his cousins he was asked to accompany them to the police station. By this time deceased Jaswant Singh, who was the elder brother of Balbir Singh intervened, whereupon one of the police personnel stated they should be beaten to death. Sub Inspector Ramesh Narang, who was part of the police party, fired in the air as a result whereof Jaswant Singh tried to flee but was overpowered and was administered beating with lathis by the police personnel and the private persons,

who were accompanying them. By this time women folk related to the petitioner reached the spot and asked the reason for the action of the police. The Sub Inspector is stated to have got angry and started dragging and abusing them. The women flock were caught by their hair and beaten by the police personnel. Devinder Singh, a nephew of Balbir Singh, came on the spot but he was also administered beating by them. Several other relatives of the deceased were also stated to have been dragged and beaten by the police personnel. At about 11.15 A.M. Jaswant Singh along with his other relatives were taken to Police Station Samaipur Badli by the police personnel. In the police station, Jaswant Singh was again beaten up. Around 1.00 P.M. Jaswant Singh along with his other relatives were taken to Hindu Rao Hospital by the police for medical examination. Jaswant Singh was admitted in Hindu Rao Hospital in custody due to serious injuries sustained by him. The rest of the relatives of Jaswant Singh were brought back to the police station at about 8.00 P.M. On December 3, 1992, at about 6.15 P.M. Jaswant Singh died in police custody in the Hindu Rao Hospital. As per the post mortem report, Jaswant Singh died due to haemorrhagic shock consequent upon multiple injuries mainly because of fracture of the femur. Information about the death of Jaswant Singh was received by the Sub Divisional Magistrate on December 4, 1992 at about 2.00 P.M. and an inquest u/s 176 of the Code of Criminal Procedure was held by him in order to locate the cause of death of Jaswant Singh. The Sub Divisional Magistrate noted that even though the doctors had declared Jaswant Singh fit to make a statement, his statement was not recorded. The Sub Divisional Magistrate after a detailed enquiry came to the following conclusion :-

1. Jaswant Singh was taken into custody by the police on December 2, 1992 at about 10.30 A.M. and he remained in custody till his death in the Hindu Rao Hospital on December 3, 1992 at 6.15 P.M.

2. Jaswant Singh died due to multiple injuries as a consequence of the beating administered by the police.

3. The Sub Divisional Magistrate while fixing the responsibility of the incident observed as follows:-

"1. Ramesh Narang SI : For beating and thereby inflicting injuries especially fracture of femur, which resulted in the death of Jaswant Singh.

2. Udai Singh and his sons Jai Prakash and Kishan for co-operating with the police party (headed by Ramesh Narang SI) in catching hold of Jaswant Singh and also beating him up. Their role in beating is minor one in my opinion.

3. Nand Kishore SI (PS Samaipur Badli) : He did not record the statements of Jaswant Singh. This would have thrown the light on the incident in general and cause of injuries and death of Jaswant Singh in particular. Secondly, he did not inform the area SDM in time.

4. The then SHO (Samaipur Badli): For lack of proper supervision and control as

Jaswant Singh was beaten up in police station, statement of Jaswant Singh was not caused to be recorded in spite of fact that he was allegedly beaten up by police as clearly mentioned in MLC dt. 2.12.92 of Jaswant Singh, he should have prevailed upon Inquiry Officer to inform the area SDM immediately about the death of Jaswant Singh. He would have deployed ladies constables to accompany ladies of Jaswant Singh family particularly with the IInd police party which was called after assessment of situation. SHO can also not be absolved of responsibility with regard to interpolation in the DD entries discussed above.

4. It needs to be noticed that an order in Writ Petition No. 555/94 was passed on January 17, 1995 directing the Central Bureau of Investigation to take up investigation of the instant case which was registered by the police vide FIR No. 560/94 dated December 16, 1994. The C.B.I., after investigation of the matter, filed charge sheet against seven police personnel and three private parties.

5. The petitioner is stated to be an uneducated lady who has four children. Jaswant Singh at the time of his death was stated to have been running a grocery shop. The claim of compensation by the petitioner is based on violation of Article 21 of the Constitution of India by the agents of the State.

6. We have heard learned counsel for the parties. It is not denied in the reply affidavit filed on behalf of respondent No. 2 that Jaswant Singh was arrested by the police on December 3, 1992. Again the allegation of the petitioner that Jaswant Singh died in police custody on December 4, 1992 has not been denied in the reply affidavit. Inquest proceedings conducted by the S.D.M. u/s 176 Cr.P.C. have also not been denied by respondent No. 2. In fact the facts stated in the petition have not been traversed at all. It is significant to note that respondent No. 2 has not claimed that Jaswant Singh died in custody due to natural causes. No effort has been made by respondent No. 2 to explain the injuries which were found on the person of Jaswant Singh in custody. From the perusal of the report of the S.D.M. it cannot be denied that the Jaswant Singh died in police custody as a result of beating given by the police personnel.

7. It is well settled that compensation for custodial death of a person can be claimed by his relatives by invoking Article 226 of the Constitution. The remedy is available in public law grounded on strict liability for contravention of Article 21 of the Constitution, which comprises right to life. In Smt. Kamla Devi and another Vs. Government of National Capital Territory of Delhi and others, Criminal Writ Petition No. 1015/98, decided on October 11, 1999, a Division Bench of this Court in a custodial death case held as follows:-

"Similarly, this principle of award of compensation will apply with greater force when the life of a person is extinguished in violation of Article 21 of the Constitution. In such a case the person having already died the only relief which can be given is by directing payment of monetary compensation to his family for violation of his fundamental right to life. If such a direction is not given in a writ for enforcement of Article 21 of the Constitution, the right to life and liberty will

be denuded of its significant content. The right to receive compensation by the parents, wife and children of a victim, whose life is snuffed out in custody due to unlawful act of a functionary of the State must be held to emanate from Article 21 of the Constitution. The High Court in writ jurisdiction can pass an order for payment of money to the relatives of the deceased as a natural consequence flowing from illegal deprivation of the fundamental right to life and liberty of a person. In *Shyama Devi and Others Vs. National Capital Territory of Delhi and Others*, , *Nasiruddin Vs. State and others*, Criminal Writ Petition No. 585/96, decided on December 16, 1997, and *Smt. Geeta and another Vs. Lt. Governor and others*, CWP No. 3188/97 decided on September 18, 1998, similar view was taken by this Court."

8. At another place in the same judgment it was held that use of third degree methods by police for extracting information from a suspect for working out a crime amounts to negation of Article 21 of the Constitution. It was further held as follows:-

"Article 21 bans the taking away of the life and liberty of an individual except in accordance with law. It is obligatory on the State and its functionaries to respect and protect life and liberty of an individual. The protectors cannot be allowed to become predators. Police is meant to enforce the law and not violate the same in the garb of bringing the culprits to book. It cannot be allowed to adopt extra legal methods in aid of investigation. Assault on body of a suspect by the functionaries of the State amounts to mounting an attack on the constitutionally guaranteed right to life. A comparison between a criminal and a policeman committing brutality will end where the latter violates the law of the land and tramples upon the human rights of a citizen. While no one can deny that interrogation is a necessary mechanism for solving a crime, the use of force against a suspect cannot be permitted as a part of the interrogation. Sections 330 and 331 of the Indian Penal Code provide punishment for subjecting a person to torture for extracting information. These provisions are clear indicators of the fact that brutality in extracting confession or any information which may lead to the detection of an offence cannot be tolerated. The futility of using third degree methods is evident from the fact that over the years there has been a steep rise in the criminal activities. It must be understood that where an innocent person is tortured by the law enforcing agencies, he loses faith in the administration of justice. A citizen acquires disdain for law. It is a myth to suppose that crime can be solved if the police subjects the suspects to force. Interrogation on scientific lines can be more effective than subjecting a person to torture. By using third degree methods the police gets the information or statement from the person who suffers its brutality according to its liking. By adopting such methods an investigator cannot arrive at the truth of the matter.

Article 21 is the back bone of the constitutional system of this country. Any violation of Article 21 by a functionary of the State must be viewed seriously otherwise Article 21 of the Constitution will be rendered nugatory and the people

will cease to have confidence in the system. The only effective remedy against infringement of the fundamental right to life and liberty of a victim by the functionary of the State is to hold the State vicariously liable and to direct the State to pay compensation.

It must be noted that when a suspect is subjected to third degree methods in a police station there would be no witnesses to the incident. This being the position there would be hardly any justification for delaying the grant of compensatory or ex gratia payment in a writ petition to the near relatives of a victim on the ground of the pendency of a criminal trial against the police personnel or the pendency of a civil suit against them and the State for seeking compensation. When a person dies in police custody and the dead body bears tell tale marks of violence or the circumstances are such that indicate foul play, the court acting under Article 226 of the Constitution will be justified in granting monetary relief to the relatives of the victim, who cannot be made to wait for months and years till culmination of criminal and civil proceedings. At least their immediate material needs must be taken care of expeditiously after the bread winner of the family dies due to custodial violence. In such a situation the affected family is entitled to invoke the extra ordinary writ jurisdiction for a quicker and efficacious relief."

9. In a path breaking judgment of the Supreme Court in Rudul Sah Vs. State of Bihar and another, AIR 1985 S.C. 1086, it was observed as follows:-

"9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, Civil and Criminal. A money claim has Therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full-dressed trial. He filed a Habeas Corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this Habeas Corpus petition itself.

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages

for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favor of the petitioner will be doing mere lipservice to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulot its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

10. It is not necessary to burden the judgment with authorities as it is well settled that violation of Article 21 by the functionaries of the State gives rise to the obligation of the State to pay compensation to the family of the victim of such violation as the State is vicariously liable for their acts.

11. In this view of the matter, the writ petition succeeds. The rule is made absolute. The Government of National Capital Territory of Delhi is directed to make payment of rupees three lakhs to the petitioner as compensation within four weeks from the date of receipt of this order.

12. It is further clarified that the compensation awarded by us in public law jurisdiction shall be without prejudice to any other action which may be lawfully available to the petitioner.