

(2014) 08 TP CK 0017
In the Tripura High Court
Case No : W.P. (C) 241 of 2004

Puspa Reang VsThe State of Tripura

Date of Decision : 19-08-2014

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 148, 149, 364

Citation : (2015) ACJ 1234 : AIR 2014 Tripura 49

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : P.K. Biswas, Sr. Advocate, Advocate for the Appellant; H.K. Bhowmik, Advocate and S. Chakraborty, Addl. G.A, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—By means of this writ petition, the petitioner urges for compensation for custodial death of her husband namely, Nirendra Reang @ Niram Reang. There is no dispute that Nirendra Reang was arrested in connection with Shantirbazar P.S. case No. 53/2000 which was registered under Sections 148/149/364 of the I.P.C. and Section 27 of the Arms Act. After producing Nirendra Reang in the court of the Sub-Divisional Judicial Magistrate, Belonia, South Tripura on 11.09.2000 he was remanded to the police custody with a direction to produce him on 23.09.2000. On 20.09.2000, he was initially taken to Tripura Sundari hospital at Udaipur on complaint of breathing difficulty, abdominal pain, vomiting and blood in urine. But the said hospital had immediately referred Nirendra Reang to G.B.P. hospital at Agartala but his life could not be saved as he expired on 21.09.2000.

2. According to the petitioner, after arrest of Nirendra Reang on 10.09.2000 he was brutally tortured in the lockup of Shantirbazar Police Station. When he was produced in the court of the SDJM, Belonia, South Tripura, Nirendra Reang, the victim hereinafter in short, did not make any statement in respect of the torture in the police custody as he was apprehensive of further torture as the police had prayed for the police remand. But in the forwarding report it had been stated

that the petitioner's husband sustained injuries due to scuffling at the time of arrest. Even during the police remand the victim was subjected to torture by the police. The victim succumbed to those injuries.

3. On 23.09.2000 the petitioner filed an application, Annexure-5 to the writ petition, in the court of the SDJM, Belonia, South Tripura where she has stated "after arrest as per prayer of I.O. Nirendra Reang remanded in police custody for a period of 13 days. During police remand he was died due to physical torture by police and then he was gone custodial death. (sic)" She had also prayed for a copy of the postmortem examination report. The postmortem examination report has been placed with the writ petition as Annexure-4. In the postmortem report, presence of hematoma/contrition head 1"X1"/skin surface, ante mortem in nature, and bleeding per nose-ears and mouth has been recorded, but no injuries were detected on other parts of the body. After the procedure, the cause of death has been determined by the Department of Forensic Medicine & Toxicology, IGM hospital, Agartala as under:

"Head injury. Death was due to shock and hemorrhage."

4. The respondents by filing their counter affidavit have squarely denied the allegations of the custodial torture and according to them the injuries those were present on the person of the victim were received when the victim had engaged himself in scuffling at the time of his arrest. They asserted that the victim repeatedly "fell on the ground which making tremendous forceful attempt to escape and we jumped on him repeatedly to hold custody, but he desperately dragged us to the downward to his house. (sic)" On the face of such conflicting versions, by the order dated 20.12.2004 the District & Sessions Judge, South Tripura, Udaipur was asked to cause an enquiry for ascertaining the circumstances and causes leading to death of the victim. In terms of the said direction, a report has been submitted by the District & Sessions Judge, South Tripura, Udaipur on 12.07.2007. In para-16 of the said report, it has been observed as under:

16. There is no evidence in record that Nirendra Reang was assaulted in the Police custody. Nirendra Reang also did not report to the Medical Officer that he was assaulted while he was in the Police custody. He has stated to the Medical Staffs at T.S.D. Hospital at the time of his admission that he was assaulted about 10 days back. So, it appears that the matter of bleeding through nose etc. was due to the head injury sustained at the time of scuffling of his arrest. So, I find that Police did not voluntarily assault Nirendra Reang either at the time of arrest or in the Police custody. He sustained injuries by falling on the hard substance while trying to flee away to avoid arrest.

5. The District & Sessions Judge, South Tripura, Udaipur has accepted the police version and observed as follows:

Under the above discussed facts and circumstances and evidence so far adduced by both the parties I find and hold that Nirendra Reang sustained injury at the

time of his arrest when he tried to flee away and got himself dashed against the root of a big tree and there was internal hemorrhage and he died after about 10 days from the date of arrest. Adequate medical aid was provided but he died in the Police custody. There was no fault or liability on the part of any Police personnel of Sri Ratan Majumder, C.I. of Police.

6. We have heard Mr. P.K. Biswas, learned senior counsel, who has brought to our notice that the petitioner has raised serious objection against the said report contending that the materials placed before the District & Sessions Judge, South Tripura, Udaipur were not properly appreciated.

7. Mr. S. Chakraborty, learned Addl. G.A. has placed before us the treatment records of the victim. Contrary to what has been observed in Para-16 of the said report we find in the bed head ticket a note of the attending Medical Officer dated 20.09.2000, which records as under:

"H/O alleges assault kicking by shoes all over body especially abdomen and back and chest."

8. That apart, we find that the enquiry has been conducted superficially by the District & Sessions Judge, South Tripura, Udaipur. There had been no endeavour to analyze the conduct of the police after the victim received the injuries. According to the respondents, those were received from scuffling when the victim attempted robustly to flee away. But the medical examination reports were not placed on record by the police during the said enquiry and when the victim was produced before the court of the SDJM. It was incumbent on the police in terms of the direction of the Supreme Court in D.K. Basu Vs. State of West Bengal, to prepare the inspection memo etc. The Supreme Court's practice directions in this regard are unequivocal:

** "The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee."

** "The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well."

Neither do we find any such inspection memo nor any medical records. The treatment records as produced by Mr. Chakraborty, learned Addl. G.A. do not contain that the victim was attended by the Doctor on every 48 hours during his detention in the custody. Further we are shocked to discover in the postmortem examination report that the Department of Forensic Medicine and Toxicology has not ascertained the age of the injuries found on the person of the victim at the

time of the said postmortem examination. Even though we find a column for additional remarks but no remark has found place thereunder. But from the nature of the ante mortem injuries we can say without any uncertainty that the injuries were fresh and the victim was severely assaulted. From mere absence of marks of violence, it cannot be held that there was no violence. The victim at that critical condition of his life, confided to the Doctor, who had attended him in the GBP hospital that he was assaulted. He had also stated how he was assaulted. We do not have any amount of doubt in our mind that husband of the petitioner died of custodial torture. We do not find any credibility in the version as advanced by the police.

9. This Court in *Anima Deb Sukla Baidya Vs. State of Tripura* [W.P. (C) No. 151 of 2013 decided on 30.06.2014] held as under:

"We must bear in mind that every death in custody is not a result of a custodial when death or torture. When death takes place during custody the Court should examine the records very carefully and should not accept the statement of the police officers at their face value. At the same time, one must remember that all police officials are not monsters or criminals. If after carefully examining the case no torture is established then it would not be proper to grant the compensation under public law."

But in this case what has surfaced on exploring the records is that the police officers behaved like monsters and tortured the victim in their custody. The victim died succumbing to the injuries that he received in the custodial brutality. It is not a case where the violation of Article 21 is doubtful or not established. We have come across adequate medical evidence about the injury resulting from custodial torture and also the dying declaration made to the medical officer by the victim. The medical evidence if carefully scrutinized would immutably stand to show the real causes of death of the victim. We are not oblivious of the caution that has been sounded by the Supreme Court in *Sube Singh Vs. State of Haryana and Others*,

"while jealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable the police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that the every arrest and detention does not lead to custodial torture."

10. It is a clear case of unconstitutional deprivation of fundamental right to life and liberty. Thus this Court is competent to invoke the jurisdiction in the public law for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of its citizen. No law has authorized the police to perpetrate the custodial torture. The law's abhorrence is no more funneled in the international covenant. On umpteen occasions, the Supreme Court has held that

the purpose of public law is not only to civilize the public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserves their rights. Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others,

11. Having held so and having regard to the petitioner's financial status, we quantify the compensation at Rs. 4,00,000/- (Rupees four lakhs) without prejudice to any other action like civil suit for damages which is lawfully available to the petitioner or to the heirs of the victim with respect to the same matter for the tortious act committed by the functionaries of the State. The respondents No. 1, 2 & 3 shall pay the petitioner the said compensation within a period of 3(three) months from today, else the said amount shall carry interest @12% p.a. till the payment is made.

12. In the result, the writ petition stands allowed. No order as to costs.