
(2010) 07 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (Cril) No. 05 of 2007

Sagolshem Ongbilatani Devi APPELLANT
Vs
Union of India (UOI) and Others RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Penal Code, 1860 (IPC) — Section 121, 121A, 307, 34

Citation : (2011) 3 GLR 578 : (2010) 4 GLT 625

Hon'ble Judges : T. Nandakumar Singh, J;K. Meruno, J

Bench : Division Bench

Advocate : M. Rakesh, for the Appellant; Th. Ibohal Singh and N. Ibotombi Singh, for the Respondent

Judgement

T. Nandakumar Singh, J.—The Petitioner is the wife of late Shri Sagolshem Vikram Singh, who was killed by the personnel of 34 Assam Rifles on 03.10.2006. The relief sought for in the present writ petition is for monetary compensation as exemplary damages in a proceeding under Article 226 for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution of India, as it is a remedy available in public law.

2. Heard Mr. M. Rakesh, learned Counsel appearing for the Petitioner, Mr. N. Ibotombi, learned CGSC appearing for Respondent Nos. 1 to 4 as well as Mr. Th. Ibohal, learned senior G.A. appearing for Respondent Nos. 5, 6 and 7.

3. Background Fact:

The Petitioner is the wife of late Sagolshem Vikram Singh, who was an extremely hardworking individual and had very sound health. The Petitioner got married with late Sagolshem Vikram Singh, in the month of September, 2006 and her husband, late Sagolshem Vikram Singh had been staying at the parental house of the Petitioner, which is just adjacent to the bank of Thoubal River at Nongbrang Village, Imphal East. Late Shri Sagolshem Vikram Singh had been

doing stone quarry works at Thoubal River to eke out a living.

4. On 03.10.2006 in the early morning at about 4 a.m. a team of 34 Assam Rifles personnel stationed at Yairipok, in full combat dress came to the village of the Petitioner and surrounded the entire village and none was allowed to go out from their respective houses; and then personnel of the 34 A.R. came to the house of the Petitioner while all the members of her family were fast asleep. Firstly personnel of the 34 Assam Rifles broke down the main door of the Petitioner's house in violent manner without giving any warning to the family members and intruded inside the house of the Petitioner. The personnel of the 34 A.R. further intruded inside the room of the Petitioner's father and the adjacent rooms where the mother, younger sister namely, Sagolshem Lata Devi and brother namely Sagolshem Nanao Singh were sleeping.

5. The Petitioner and her husband were awoken by the kicking sound at the door of their room and commotion created by the intruders; Petitioner then got up and on opening the door, the personnel of the 34 A.R. had rushed into the room of the Petitioner. One of the personnel was covering his face with a black cloth. And one of the A.R. personnel pulled up the Petitioner's husband from the bed holding his hand and a powerful torchlight was also flashed over the face of Sagolshem Vikram Singh. The A.R. personnel also asked her husband as to why his left eye is closed and then, the Petitioner's husband replied that he had lost his left eye vision due to cataract some years back; one A.R. personnel forcibly opened the eyelids of his left eye, thereafter, her husband was being tried to take away from the room.

6. The Petitioner and her husband had requested the A.R. personnel not to take away late Shri Sagolshem Vikram Singh from the house stating that he is innocent. However, the Petitioner was told that nothing will happen to her husband and he will be released just after making some queries. Thereafter the Petitioner's husband Sagolshem Vikram Singh was forcibly taken away towards the gate of the house by pushing and pulling by the 34 A.R. personnel. At the time of his arrest no arrest memo was issued.

7. The Petitioner's husband was taken to the southern side along the Imphal-Nongpok-Keithelmanbi Road and then took him inside the gate of one Konthoujam Chandrakala Devi's house which is adjacent with the Petitioner's house. At that time, Petitioner's husband, Sagolshem Vikram Singh was wearing only a loin cloth. The Petitioner and some members of her family were looking to the direction where Sagolshem Vikram Singh was staying with 34 A.R. personnel inside the gate of the next neighbouring house, i.e. Konthoujam Chandrakala Devi's house. One of the 34 A.R. personnel asked the Petitioner to bring a shirt for her husband and then the Petitioner gave a shirt to the 34 A.R. personnel who asked her to do so.

8. After a few minutes later, Petitioner's husband was again taken towards north along the same road about 50 mtrs. away from the house of the Petitioner. The

Petitioner and her mother start to follow them but the 34 A.R. personnel threatened them not to do so as to avoid dire consequences. As forced by the personnel, Petitioner and her mother turned back to their gate and stood looking towards the personnel who proceeded along with the Petitioner's husband. At that time, some personnel of the 34 A.R. were still standing near the gate of the Petitioner's house along Imphal-Nongpok Keithelmanbi Road. Soon after, the Petitioner's husband had been taken away by personnel of 34 A.R., Petitioner heard gun firing sound from the area where her husband and 34 A.R. personnel were standing. After a short interruption some gun firing sounds were also heard from the eastern direction across the Thoubal River; and the bank of the Thoubal River is just adjacent to the Petitioner's house. At that time, Petitioner and her family members were not allowed to go out of the gate of their house by the personnel of 34 A.R. personnel who were standing near the gate.

9. After about 1/2 an hour of that incident a Police team of Yatripok Police Station came to the place of incident. Thereafter, the personnel of 34 A.R. left the place. Only then the Petitioner and her family members proceeded to the said place. The Petitioner found the dead body of her husband Shri Sagolshem Vikram Singh lying at the river bank of Thoubal River from where the gun firing sound came. The Petitioner was informed by one of the Police personnel who came to the spot that the 34 A.R. had lodged a report stating that her husband was killed in an encounter and a pistol was also recovered from his possession. On the report lodged by the 34 A.R. a case being FIR No. 99(10)06 YPK PS. u/s 121/121A, 307/34 IPC, 15/20 U.A. (P)A Act and 25 (1-C)A Act had been registered and inquest was done over the dead body of the Petitioner's husband by one Sub Inspector of Police, Md. Anamuddin of Yairipok Police Station, wherein it is stated that dead body was found lying at the spot, Nongbrang Awang Leikai. His head was found facing towards western side, both legs facing towards eastern side, face upward and both hands and legs are straight.

10. On 04.10.2006 at about 02.30 p.m. post mortem examination was conducted over the dead body of Sagolshem Vikram Singh at the Mortuary of Regional Institute of Medical Sciences, Imphal. The relevant portion of the Post Mortem report reads as follows:

Wearing apparels

White and blue chequered khudei, blood stained, white, black and orange mixed colour half sleeved shirt with holes corresponding to external inquiry (1), blood stained, multicoloured underwear; 3 rounds of Urik (sacred necklace) around the neck.

Post mortem changes and other appearances of body.

Dried blood stain on trunk and limb, greenish discolouration on lower part of abdomen, abdomen distended; skin peeling off at different places, marbling present.

External injuries:

- 1) Entrance wound of firearm injury on right side of chest, 0.8 cm x 0.6 cm in the first intercostals space and 7 cm from mid line with red abraded colour base superolaterally. Exit wound on left side of back 2.5 cm x 2 cm at the level of 11th thoracic vertebra 10 cm from mid line with red irregular margin. The track involved skin, muscle, ribs, lung and vertebrae.
- 2) Entrance wound of firearm injury on right side of chest, 0.9 cm x 0.7 cm in the 3rd intercostals space, 3 cm from midline with red abraded collar base superolaterally. Exit wound on left flank, 4 cm x 3 cm, at the level of 2nd lumbar vertebra 15 cm from midline with red irregular margin. The track involved skin, muscle, lung, heart, diaphragm, liver, intestine and mesenteries.
- 3) Entrance wound of firearm injury on back, 0.6 cm x 0.5 cm, at the level of 7th thoracic vertebra 1 cm left to midline with red abraded collar base superomedially. Exit wound on back, 7 cm X 3 cm at the level of 9th thoracic vertebra and 5 cm left to midline with red irregular margin. The tract involves skin and muscle only.
- 4) Entrance wound on posterior aspect of left arm, 1.5 cm x 0.8 cm and 15 below tip of shoulder with red abraded collar superiorly. Exit wound on left elbow in the posterior aspect, 8 cm x 5 cm with red irregular margin; the tract involves skin, muscle and bone.
- 5) Entrance wound of firearm injury on medial malleolus of right foot, 0.4 cm x 0.5 cm, with red abraded collar. A piece of metal was found lodged in between the tendons and bone. It is recovered and handed over to the I.O.
- 6) Lacerated wound on anteriolateral aspect of left elbow, 5 cm x 3 cm with red irregular margin.

11. The Respondent Nos. 1 to 4, who are the contesting Respondents had filed joint affidavit in opposition sworn by one Lt. Col. Pravin Vikram, Officiating Commandant, 34 A.R., wherein it is stated that on 02.10.2006 based on a special information received from own source regarding movement of cadres of prescribed militant group, PLA (People Liberation Army) under Sergeant Major Khumngcha, in village Nongbrang, three columns, one each from Yairipok, Chandrakhong Company Operating Base and Battalion Headquarters of 34 A.R., Thoubal respectively were launched at 1900 hrs. on 2nd October, 2006 to carry out Cordon and search operations in general area Nongbrang.

While the said troops of 34 A.R., were approaching village Nangbrang to establish cordon, they were fired upon from the northern side of the village. The troops of 34 A.R. immediately returned fire and observed that two militants were firing and running towards the Tlioubal River. Thereupon, the personnel of 34 A.R. quickly pursued the militants who were trying to evade cordon. Militants kept firing at Assam Rifles troops and rushed towards the river. During the ensuing fire fight, two militants jumped into the river. One militant was later retrieved

from the river, vidio was critically injured, but within a very short time succumbed to his injuries. Dead body of Anr. militant was subsequently found by the villagers approx 350 meters downstream with bullet injuries on head and torso. The Petitioner's husband was one of the militant killed in that incident. Respondent Nos. 1 to 4 in their affidavit in opposition had categorically denied the allegation and assertions of the writ Petitioner in the writ petition.

12. As there was disputed question of fact, this Court passed an order dated 19.07.2007 directing the District and Sessions Judge, Manipur West to hold an inquiry about the fact leading to the death of late Sagolshem Vikram Singh. Both the parties appeared before the learned District and Sessions Judge, Manipur West. The Petitioner in support of her case had adduced 6 P Ws namely, (1) P.W. 1, Smt. Sagolshem (O) Latani Devi - Petitioner herself, (2) P.W. 2, Konthoujam Ongbi Mubi Devi (mother of the Petitioner), (3) P.W. 3, Thangjam Ongbi Tangbi Devi, neighbour and shopkeeper whose shop is situated by the roadside along Yairipok-Nongbrang Road, not far away from the house of the Petitioner, (4) P.W. 4, Smt. Nameirakpam Ibempishak Devi, is running a hotel at the gate of her house near the house of the Petitioner, (5) P.W. 5, Md. Anamuddin, S.I., Yairipok P.S. and (6) P.W. 6, Dr. H. Nabachandra Singh, Professor and Head of Department in the Forensic Medicine Department, RIMS Imphal. The Respondents had also adduced 4 R.Ws. namely, R.W. 1, Major S.S. Nagiyan, R.W. 2, Hav. Dewan, R.W. 3, Rifleman Satabir and RW4, Rifleman Raju Ram.

The learned District and Sessions Judge, Manipur West, after completing inquiry, submitted a report dated 31.03.2009 that the deceased Sagolshem Vikram Singh was killed by the persoimel of 34 AR after he was arrested from the house of his wife i.e. Petitioner in the early morning of 03.10.2006. After receving the Inquiry Reeport dated 31.03.2009 copies of the inquiry report were furnished to both the parties.

13. Mr. N. Ibotombi, learned CGSC appearing for Respondent Nos. 1 to 4 was permitted to file objection to the said inquiry report submitted by the learned District and Sessions Judge, Manipur West.

The Respondents submitted objections in the form of affidavit sworn by Col. Sanjoy Ghosh, Commandant 15 Assam Rifles, which reads as follows:

1. That, I deny all the allegations/statements made in the Enquiry Report except those which have been specifically admitted hereinabove and answered to.

2. That, with reference to para No. 1 of the report, I beg to state that the Petitioner's husband was never picked up nor taken and thereafter killed by the troops of 34 Assam Rifles from the Petitioner's house on 3.102006 as alleged in the report. No individual was picked up on the intervening night of 2/3 October, 2006 by the personnel of 34 Assam Rifles from village Nangbrang.

3. That, with reference to para No. 2 of the report, it is submitted that the Petitioner has herself confessed that her husband was our active member of PLA

(People Liberation Army) and was arrested during the year 2004 and booked under NSA (National Security Act 1980) for which he was lodged in jail.

4. That, with reference to para Nos. 3 and 4 of the report, I have no comment to offer.

5. That, with reference to para No. 5 of the report, I beg to state that no individual was picked up on 3.10.2006 by the troops of 34 Assam Rifles and individual was killed in an encounter between the troops of 34 Assam Rifles and terrorists at the early morning of 3.10.2006.

6. That, with reference to para Nos. 6 and 7 of the report, I have no comment to offer.

7. That, with reference to para No. 8 of the report, it is submitted that the contention is false and baseless. Individual was killed in encounter as already stated in the foregoing para No. 5 of this affidavit.

8. That, with reference to para Nos. 9, 10 and 11 of the report, I have no comment to offer except those that the Petitioner's husband was an active member of the banned militant organisation, People Liberation Army (PLA) and carried a fire arm 9 mm pistol which he used against the column of 34 Assam Rifles along with his comrade on the intervening night of 2/3 October, 2006.

In view of the facts and circumstances stated above the Hon"ble Court may graciously be pleased to dismiss the Writ Petition as the ends of justice may call for.

14. On bare perusal of the objection/affidavit in opposition filed by Respondent Nos. 1 to 4, it is clear that save and except denial of the facts mentioned in the said report of the District and Sessions Judge, Manipur West, dated 31.03.2009, no rational and cogent reasons for not accepting the said report of the learned District and Sessions Judge, Manipur West, dated 31.03.2009 are pleaded.

15. The Petitioner as P.W. 1 before the learned District and Sessions Judge, Manipur West testified that about 1 year back on 11 th day of Mera month (Manipuri Calendar month) in the early morning while she was lying down on the bed she heard sound of kicking door of her house. After about 2/3 minutes somebody knocked at her door to open. Thereafter she opened her door. Just after opening her door she saw her mother, Tamubi Devi standing in front of the door and 4(four) army personnel wearing combat dresses holding fire arms entered into her room. One army personnel ordered her to open the almirah kept facing west near the bed on the eastern side of the room. While she was going to open her said wooden almirah one of the army persormel calling her husband (Nupa, Nupa Hougatlo) asked him to get up from the bed and ordered to stand in front of the bed. At the relevant time her husband, Vikram Singh was wearing a Chadar (Khudei). It is further stated that one of the army personnel was standing near the door while two of them were near the bed and Anr. one was near the almirah. The army personnel standing near the door enquired her

husband why he was closing his left eye. To which her husband replied that he could not open his left eye because of his suffering from Cataract and at that time the army personnel lighted the torch towards her husband's eye. The other army personnel who pulled up her husband from the bed tried to open the left eye of her husband. The two army personnel standing near the bed attempted to drag her husband and while doing so she asked the army personnel to ask any question to her husband inside their room. The two army personnel told her that they would interrogate her husband for some minutes. Thereby the two personnel took away her husband by dragging his hands from inside their room towards the gate. After that many other army personnel joined the party. She and her mother chased after them up to their gate. The army personnel had taken away her husband, Vikram Singh on foot towards south and they asked them to return back to their home. When she and her mother reached at their courtyard, she saw her husband Vikram Singh sitting leaning towards the kitchen wall of her aunt's house situated on the southern side of their house, intervened by a vacant area of land. Then she and her mother went towards the house of her said aunt through the said vacant area. At that time her youngest brother, Nanao Singh aged about 10 years came towards them crying and one army personnel came near them and asked her to bring one shirt for Vikram Singh. Her mother asked her younger brother to bring a shirt for Vikram Singh. Accordingly, her younger brother brought a shirt from her house and handed over the same to her. Then she handed over the shirt to the army personnel who put the shirt to Vikram Singh. Then they have taken her husband by dragging towards the north. The army personnel asked them to return back home, when she and her mother tried to go after them. So they returned back towards their home through the vacant area of Ingkhol. When they reached their gate one of the army personnel ordered them to return back by pointing the gun towards them. So out of fear they returned back towards their home. When they reached their gate she saw the army personnel dragging her husband Vikram Singh by his hand towards the bank of the river. Just near the gate while they were going towards their home, she heard gun-shot firing just near the bank of the river. She further heard several gun-shots towards other sides of the bank of the river. She fell unconscious and she came to know about the death of her husband, Vikram Singh at about 7 a.m. While she was lying on her bed inside her room, two police personnel looked inside her room from the window situated in the front portion of her room near her bed and she came out from her room up to the verandah of her house. One of the police personnel informed her that the dead body of her husband, Vikram Singh is lying on the bank of the river near their house as shot dead by him. Just after hearing the news she ran towards their gate and saw the police personnel taking up the dead body of her husband inside the vehicle. Then she fell unconscious. In her cross-examination she testifies that at the western side of their house there lies the paddy field and at the northern side of their house lies a house and the said house is a bit far away from her house. She further says that Yairipok-Nongbrang Road runs at the eastern side of her Ingkhol and thereafter on the east there lies the Thoubal

River. She says that she will not be able to say who was the first army personnel who entered into her room and she also would not be able to say the numbers of army personnel even approximately who entered into her homestead. It is also said that the persormel who entered into her room except the one who spoke Manipuri are non-Manipuris. She does not know which battalion or Unit the said army personnel belongs. She admits that the place where her husband died is not visible from her house and that the said place is about 500/600 ft. away from her house. She denies that it was dawn by the time of hearing the sound of gun firing by her. She also says that there was no sort of damage on the door of her house and that the civil police arrived at the place of occurrence at about 7 a.m. She further denies the defence suggestion that her husband Vikram Singh was never arrested by the army personnel from their house and that army personnel never entered into her house or Ingkhol on 2nd and 3rd October, 2006. She also denies that there was an encounter between the army personnel and her husband in which her husband died at 3.30 a.m. on 3.10.2006 and that she has filed the case in order to malign the image of the army personnel.

16. P.W. 2, Konthoujam Mubi Devi, mother of the Petitioner testifies that her daughter Latani's husband late S. Vikram Singh had been living for about one year at her house with her daughter. On 3rd October, 2006 when her husband called her to get up, she woke up and found some 4/5 army persormel standing near her bed. She woke up her two children who were sleeping with her. Thereafter the army personnel left her room without any question to her. She followed them towards the northern room wherein her second son, younger brother of the Petitioner was sleeping. When they pulled up her son by holding his hand, she introduced him as her son and thereafter they left him and went out from his room. She also came out of her room and stood at the main-door of her house which consists of 3 rooms in the middle, two rooms at the verandah and one kitchen room on the backside. Then there is one maindoor for thoroughfare except the room which has been occupied by her daughter and her husband. There is a separate door for the room of her daughter on the northern side of her room. She further states that the army personnel knocked at the door of her daughter's room asking to open the door. After opening the door by her daughter, some army personnel entered into the room of her daughter; she could not see except hearing some noise what the army personnel were doing inside her daughter's room. At the relevant time she had seen 5/6 army personnel standing at her courtyard. Then she heard crying sound of her daughter requesting the army personnel to ask any question inside her room. Within a few seconds the army personnel came out along with her daughter's husband, Vikram Singh. Thereafter he was taken towards their gate and they chased after them. When they reached their gate he was found taken towards south along the Yairipok-Nongbrang Road. They returned back home as the army personnel threatened them to go back. But when they reached their courtyard, they saw Vikiam Singh leaning on the kitchen wall of her brother's house just nearby the main road surrounded by a number of army personnel. So they walked towards

the house of her brother to see the act of army personnel. But they were stopped by some personnel at about 20 ft away from the place where Vikram was being questioned. Her daughter requested one of the army personnel standing nearby kneeling down to release her husband. Another army personnel asked them to bring a shirt for Vikram. As instructed, her youngest son, Nanao Singh had taken a shirt from her house and given to her daughter who handed over the same to one of the army personnel who put the shirt to Vikram. Thereafter Vikram was taken away towards north along the main road. They also rushed towards their gate and when they reached at their gate she saw Vikram being dragged by army personnel. When they tried to approach towards the place where Vikram was dragged down, two personnel stopped them by pointing their guns to them. When they were about to turn back, instantaneously she heard firing sound from the place where her son-in-law was taken by the army personnel. After a short while she also heard gun shots from the other side of the Thoubal River along the hillock thereafter as her daughter fainted, she escorted her up to her room. She took a knife and tried to see her son-in-law by cutting down herbs and grass plants at the eastern side of her neighbour, but she could not see her son-in-law. Thereafter she tried to go to latrine which is just nearby the place from where Vikram was taken by the army personnel, by holding a pot. But the army personnel did not allow her to go there. Then she went passing 4/5 courtyards towards the south and met 3 or 4 women gathering at the market shed along the roadside of Yairipok-Nongbrang Road. She along with 3 or 4 women come back towards her house along the main road. She found a number of army personnel standing at the road side along the main road. When they were about to reach her gate one of the army personnel standing at the gate of her house shouted towards them and started firing in the sky. Due to fear the said 3 or 4 women turned back towards the market shed and she came back to her house by passing the courtyard of her neighbours. Thereafter the Civil Police came there on two vehicles. Some of them were coming towards her while she was sitting at her verandah while Ors. were standing at the gate. She narrated the story to the police personnel as asked by them. Thereafter her daughter also came out from her room. After a short conversation she went towards her gate and saw the dead body of her son-in-law on the police vehicle. She further states that the cremation ceremony was held on 4.10.2006 at the residence of Vikram Singh at Keirao Pitra Awang Leikai. In her cross-portion she says that she will not be able to say even approximately the number of army personnel who were at the courtyard and that there was no damages on any door of their house. She has no idea whether any report was lodged by her or their family member in respect of the arrest of her son-in-law by army personnel from their house on that day. She also cannot say to which Battalion or Unit the said army personnel belongs. Sumati, Tangbi and Rashesori were the women she met at the market-shed, but could not remember the other woman. She denies other negative suggestions of her statement in chief of the defence counsel.

17. Statement of P.W. 1, Petitioner is fully corroborated by the statement of P.Ws. 2, 3 and 4.

18. R.Ws. adduced their statements in support of the case of Respondent Nos. 1 to 4 that Petitioner's husband was killed in encounter. The learned District and Sessions Judge, Manipur West, after examining testimonies of the witnesses i.e. P.Ws., R.Ws. and hearing both the parties made a finding that the testimonies of the P.Ws. are more convincing and reliable than those of the R.Ws. No incriminating articles or documents are produced to prove the plea of the Respondents that the deceased Sagolshem Vikram Singh is a member of any Outlaw Organisation. It is not likely that the Petitioner, Latani Devi who is aged only 20 years at the time of recording her statement on 29.8.2007 and adorns the dress of a woman whose husband died at such young age will depose false statement before this Court about the death of her husband Sagolshem Vikram Singh whom the Respondents have failed to prove to be member of an outlaw organisation except oral allegations against him.

Learned District and Sessions Judge, Manipur West held that the deceased Sagolshem Vikram Singh was killed by the personnel of 34th Assam Rifles after he was arrested from the house of his wife, the Petitioner in the early morning of the 3rd October 2006. It is further held that the deceased, Sagolshem Vikram Singh was not killed in an encounter between the personnel of 34th Assam Rifles and the U.Gs. in the early morning of 3.10.2006. It is also held that the facts and circumstances leading to the death of the said deceased, Sagolshem Vikram Singh are that he was arrested from the house of his wife, the Petitioner at Nongbram village by the personnel of 34th Assam Rifles without any charge and killed near the Bank of Thoubal River.

19. We are not sitting as an appellate authority of the said report of the learned District and Sessions Judge, Manipur West dated 31.03.2009. No doubt, we have to interfere with the finding of the learned District and Sessions Judge, Manipur West in her report dated 31.03.2009 only when the finding was based on no evidence and finding is perverse. For that limited purpose we have given our anxious considerations of the testimonies of the witnesses, documents produced by the parties and report of the learned District and Sessions Judge, Manipur West, dated 31.03.2009, and are of the view that the finding of the learned District and Sessions Judge, Manipur West, in the report dated 31.03.2009 are based on evidence, and accordingly, we endorse the finding of the learned District and Sessions Judge, Manipur West in her report dated 31.03.2009.

20. The Apex Court *Rudul Sah Vs. State of Bihar and Another*, had considered the important question as to whether the Apex Court in exercise of its jurisdiction under Article 32 can pass an order for payment of money as compensation for deprivation of fundamental rights; and answered the question, thus, while allowing award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to

which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. The ratio laid down in Rudul Sah's case (supra) was also followed in Bhim Singh v. State of J and K (1985) 4 SCC 611.

21. The Apex Court in Nilabati Behera v. State of Orissa (1993) 2 SCC 7465 held that "the public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by (the Supreme Court) or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. 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 which aims to protect their interests and preserve their rights. Therefore, when the Court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort.

22. It is now well settled that award of compensation is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, of the Constitution of India. This Court also considered some of the important cases wherein the Apex Court exercising its jurisdiction awarded compensation, i.e. D.K. Basu v. State of W.B. (1991) 1 SCC 416, Sube Singh v. State of Haryana and Ors. (2006) 3 SCC 118.

23. Now the question is what would be the quantum of compensation to be awarded for the death of Sagolshem Vikram Singh. From the evidence on record, it is clear that Sagolshem Vikram Singh is a young man aged about 22 years at the time of his death.

24. The Apex Court in a catena of cases held that even in the absence of evidence to show the earning of the deceased, the Court has to apply some hypothesis, some guesses as well as human consideration in determining the quantum of compensation. Regarding this point, we may refer to the decisions of the Apex Court "Ashwani Kumar Mishra v. P. Muniam Babu Ors. (1994) 4 SCC 22 and R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, We also

take into consideration of the normal life span of a citizen of India, more particularly, the life span of the residents of Manipur, while calculating the amount of compensation to be awarded by this Court and for that purpose we are of the considered view that the normal life span of the residents of the State of Manipur is about 70 years. It is also admitted case of both the parties that the minimum wages for the unskilled workers is Rs. 81/- per day for the State of Manipur. We also take into consideration of the earlier judgments of this Court for awarding compensation in the cases of similar nature with the present case.

25. Keeping in view of the above discussion and also the age of late Sagolshem Vikram Singh, we consider it appropriate that the amount of compensation would be Rs. 4,00,000/- for the death of Sagolshem Vikram Singh. Accordingly, Respondent Nos. 1 to 4 are directed to pay compensation of Rs. 4,00,000/- (Rupees four lakhs) for the death of Sagolshem Vikram Singh to the present Petitioner, i.e. the wife of the deceased, within a period of four months from the date of receipt of certified copy of this judgment and order.

26. However, it is made clear that this amount of compensation is in addition to other remedies available to the Petitioner and also the other remedies in the criminal proceeding against the 34 Assam Rifles personnel. Further, Respondent Nos. 1 to 4 are to pay a sum of Rs. 5,000/- (Rupees five thousand) as fee for the learned Counsel for the Petitioner in the present writ petition within four months.

With the above observations and directions, this writ petition is disposed of