
(2006) 06 GAU CK 0024
In the Gauhati High Court
Case No : Writ Petition (C) No. 3003 of 2003

Saira Begum Barbhuiya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Criminal Procedure Code, 1973 (CrPC) — Section 130, 130(1), 131

Citation : (2006) 3 GLT 42

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : A. Rashid, for the Appellant; K.C. Mahanta, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. A. Rashid, learned Counsel for the Petitioner. Also heard Mr. K.C. Mahanta, learned State counsel appearing for the State Respondents.

2. By means of this writ petition presented under Article 226 of the Constitution of India, the Petitioner has sought for a direction by way of a writ of or in the nature of Mandamus to the State-Respondents to pay compensation due to the killing of her husband namely Romij Uddin Barbhuiya in police firing at Silchar due to the fact that one student namely Abdul Hasim Mazumdar @ Liblu Mazumdar of Soidpur Part-1 died because of accident caused by a 407 Bus for which the students of the locality launched a picketing on 12.9.2000 near the shop of Rahim demanding for construction of a speed break. Subsequently the police personnels headed by one Sri Pabitra Barman O/C, Silchar Police Station with armed CRPF came on the spot and restored to lathi charge. Eventually firing was ordered due to which the Petitioner's husband received bullet injury and was sent for treatment at Silchar Medical College and thereafter at Guwahati Medical College & Hospital. Ultimately he succumbed to his injury.

3. This Court by order dated 21.11.2003, after, hearing the learned Counsel for the parties and also taking into account the seriousness of the matter, directed the learned District & Sessions Judge, Cachar at Silchar to hold an enquiry and to submit report thereof.

4. In compliance of that order, the learned District Judge, Silchar took the matter for enquiry, appreciated the materials evidence so produced before him both oral as well as documentary and after completion of the enquiry submitted his report dated 6.7.2004.

5. It would be necessary and expedient to refer to the enquiry report dated 6.7.2004 submitted by the learned District Judge and the same may be reproduced as under:

JUDICIAL INQUIRY CASE No. 20 F 2003

(Judicial Inquiry in connection with death of one Romij Uddin Borbhuiya)

REPORT

In connection with W.P. (C) No. 3003/03, the Hon"ble Gauhati High Court vide order dtd. 21.11.03 asked the District & Sessions Judge, Cachar, Silchar, to make judicial inquiry in connection with killing of one Romij Uddin Borbhuiya in police custody on 12.9.2000, with a direction to cause an inquiry into the incident of alleged death of the above mentioned deceased by giving reasonable and adequate opportunity of hearing to all the interested parties.

In connection with this inquiry 16 (sixteen) persons could be sorted out as interested in the matter. They are Musstt. Saira Begum Borbhuiya, W/o Late Romij Uddin Borbhuiya, Majib Uddin Borbhuiya, Mojahid Islam, Assam Uddin Laskar, Bau Uddin, Rofique Uddin Laskar, Samsur Uddin Laskar, Ain Uddin Laskar, Ajijur Rahman (Reserve Officer, Silchar Police Station), Dipan Paul (S.I. of Police attached to Rongpur P.P.), Khitindra Kr. Deb (S.I. of Police, Silchar Police Station), Pabitra Barman (P.I., Silchar IMDT), Gyanendra Ch. Paul (Retd. City Inspector), Abdul Hai Choudhury (S.I. of Police at Katigorah), Samsul Alom Borbhuiya (Retd. Police Inspector), Partha Sarathi Das (S.B., South Zone, Silchar). All these persons have been examined as witnesses.

On examination of these witnesses it appears to me that the death of Romij Uddin Borbhuiya revolves around the death of a student one Abdul Hasim Mazumdar on 11.9.2000 due to road traffic accident that took place in front of Rohim's shop situated at N.H. 54 at Soidpur.

For the death of this student there was road blockade on 12.9.2000 called by the students. As per programme the students blocked the road on 12.9.2000. Romij Uddin Borbhuiya, who was a driver by profession, was proceeding to Silchar by that road on 12.9.2000. At that time, suddenly, there was a gun fire from police to which he sustained injury and he was removed to Silchar P.S. and thereafter to Silchar Medical College Hospital. As his condition became critical, he was

shifted to Gauhati Medical College Hospital, where he breathed his last.

P.W. 16 - Partha Sarathi Das was In-charge of Rangirkhari Police Outpost on 12.9.2000. On 12.9.2000 at about 10.50 a.m. Nimar Ali Laskar, Sub-Inspector of Police of Sonai Police Station, came to Rangirkhari Police Outpost and informed Partha Sarathi Das that students of Sonabarighat Higher Secondary School blocked the N.H. 54 at Soidpur Part-1 near Rohim's shop. Sri Partha Sarathi Das informed the Officer-in-Charge of Silchar Police Station immediately over telephone. He also informed the matter to City Inspector Sri Gyanendra Paul over telephone. At about 11.10 a.m. he again rang up City Inspector Sri Gyanendra Paul to know the reason of delay of police movement. In reply the City Inspector Gyanendra Paul informed that the Officer-in-Charge of Silchar Police Station and himself with force are about to move at about 11.30 a.m. Sri Samsul Alom Mazumdar, C.I. (East), Silchar, appeared at Rangirkhari O.P. Sri Samsul Alom Mazumdar informed Partha Sarathi Das that while he was proceeding to Dholai Police Station in a private Maruti van along with two accused persons wanted in a murder case of Dholai P.S. and the I.B. Hailakandi and as soon as they reached Rohim's shop he found the road blockade by students and public. Seeing the gathering Samsul Alom Mazumdar got down from the vehicle and tried to talk to the leaders of the agitators but they assaulted him with fists and blows and pelted stones at him. A constable No. 244-Samsul Huda Laskar of Sonai Police Station was also assaulted by the students. At 11.35 Sri Gyanendra Paul, City Inspector, Silchar, arrived at Rangirkhari O.P. and asked Partha Sarathi Das to accompany him to go to the place of blockade. Sri Gyanendra Paul also informed Partha Sarathi Das that the Officer-in-Charge along with CRPF and gas party had already proceeded to the place of occurrence in a separate vehicle. Accordingly Partha Sarathi Das along with S.I. A.H. Choudhury accompanied City Inspector Gyanendra Paul and reached the place of occurrence. On arrival at Soidpur near Rohim's shop they found a gathering of students and public and also found blockade in the National Highway. On their arrival the students as well as public demanded presence of Deputy Commissioner and Superintendent of Police. The Officer-in-Charge of Silchar Police Station Sri Pabitra Barman informed the agitators that both the Deputy Commissioner and the Superintendent of Police were out of station and requested them to withdraw the blockade. Suddenly, the agitators attacked the Officer-in-Charge and the CRPF by pelting stones. In spite of repeated endeavours of the Officer-in-Charge, Sri Gyanendra Paul (Circle Inspector) and Sri Partha Sarathi Das, the agitators continued pelting of stones. The Officer-in-Charge then loudly declared the mob as unlawful and ordered them to disperse immediately, but this loud declaration turned futile. The Officer-in-Charge Sri Pabitra Barman then ordered the CRPF to take resort to mild lathi-charge and accordingly the CRPF party resorted to lathi-charge and chased the mob.

At this the mob became more violent and cordoned the police personnel and pelting of stones continued. As a result of pelting of stones the Officer-in-Charge Sri Pabitra Barman, Circle Inspector Sri Gyanendra Paul, Sri Partha Sarathi Das

and S.I. A. H. Choudhury and CRPF personnel sustained injuries. At that time the CRPF personnel opened fire to save the life of police and as a result, seven agitators who were in fore-front of the mob sustained injuries.

P.W. 15 - Sri Samsul Alom Mazumdar was proceeding to Dholai P.S. along with two accused persons being accompanied by Abdus Sattar, IBI, Hailakandi. On his way he found blockade at Soidpur near Rohim's shop. He got down from his vehicle and tried to pacify the agitators which turned futile. He informed Rangirkhari T.O.P.

P.W. 14 - Abdul Hai Choudhury was attached to Rangirkhari T.O.P. on 12.9.2000. He was deputed to the spot on law and order duty. He along with armed forces arrived at the spot just after the incident to maintain law and order and to keep peace in the area. At the time of firing he was not present at the place of occurrence.

The Circle Inspector Gyanendra Paul (P.W. 13) was City Inspector of Silchar on 12.9.2000. On that day he received telephonic information from In-charge Rangirkhari T.O.P. He conveyed the message to Officer-in-Charge, Silchar Police Station and at the request of the Officer-in-Charge of Silchar Police Station he went to the spot.

P.W. 12 - Sri Pabitra Barman, the then Officer-in-Charge of Silchar Police Station, was the main person who was involved with the occurrence. On being informed he went to the spot being accompanied by CRPF personnel and other police officers. There was pelting of stones and CRPF personnel opened fire. He stated that the students and the public who blocked the road turned violent and started pelting of stones upon them. He tried to pacify the situation but the students and the public became more violent and continued to throw stones at them. Thereafter, the students and the public attempted to assault CRPF. Finding no alternative and for self-defence CRPF accompanying him opened seven rounds of fire. As a result of which eight persons sustained injuries due to fire and lathi-charge and were removed to hospital.

The evidence adduced by P.W. 9 Ajijur Rahman (the then attached officer of Silchar P.S.), Sri Dipan Paul (S.I. of Police, Rongpur P. P. under Silchar P.S.), Kshitish Kr. Deb (S.I. of Police, Silchar Police Station) reveals that a case No. 1190/2000 U/S 325/326/302/34 I.P.C. was registered against the Officer-in-Charge, Silchar Police Station and four others CRPF personnel, but the said case is still pending or investigation.

From the evidence of P.W. 1-Musstt. Saira Begum, P.W. 2-Majib Uddin Mazumdar, P.W. 3 Mojahid Islam, P.W. 4-Asam Juddin, P.W. 5-Bau Uddin, P.W. 6-Rofique Uddin Laskar, P.W. 7 Samsur Uddin Laskar and P.W. 8-Ain Uddin Laskar, it appears that on 11.9.2000 a student of Sonabarighat died while he tried to board on a bus at a place near Rohim's shop and on 12.9.2000 the students demanded for setting up of a speed-breaker and blocked the road and thereafter, the untoward incident happened and as a result, one Romij Uddin Borbhuiya

sustained bullet injuries and subsequently died.

The evidence on record reveals that the Officer-in-Charge of Silchar Police Station in order to take appropriate action did not consult his authority and even did not inform any Executive Magistrate before proceeding to the place of occurrence along with the CRPF personnel. It further appears that the Officer-in-Charge along with his party went very near to the agitators, although arm forces were with him. It further appears that the then Officer-in-Charge of Silchar P.S. Pabitra Barman did not maintain a safe distance to obviate the risk of sudden use of fire arm by armed forces. Section 130 of the Code of Criminal Procedure pertains to use of armed forces to disperse assembly. Section 130(1) of the Code of Criminal Procedure reads as follows:

If any such assembly cannot be otherwise dispersed and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces.

Section 131 of the Code of Criminal Procedure relates to power of certain armed force officers to disperse assembly. Section 131 of the Code of Criminal Procedure read as follows:

When the public security is manifestly endangered by any assembly, no Executive Magistrate can be communicated with, any commissioned or gazetted officer of the armed forces may disperse such assembly with the armed forces under his command and may arrest and confine any person forming part of it, in order to disperse such assembly or that they may be punished according to law, but if, while he is acting under this section, it becomes practicable for him to communicate with an Executive Magistrate, he shall do so and shall thence forward to obey the instructions of the Magistrate, as to whether he shall or shall not continue with such action.

In the inquiry at hand Sri Pabitra Barman, the then Officer-in-Charge of Silchar Police Station, on being informed about the blockade rushed to the place of occurrence being accompanied by CRPF personnel and other police officers. The assembly found for demanding a speed-breaker, demanded presence of the Deputy Commissioner and the Superintendent of Police. The Officer-in-Charge Sri Pabitra Barman, however, gave a reply that the Deputy Commissioner and the Superintendent of Police are not available at that time. Definitely there were Additional District Magistrates and the Additional Superintendent of Police and the Officer-in-Charge Sri Pabitra Barman could have obtained their views and suggestions before taking law in his own hand.

To sum up, I find that the death of Romij Uddin Borbhuiya was due to firing by CRPF personnel as per direction of Sri Pabitra Barman, the then Officer-in-Charge of Silchar Police Station and the direction was given by Sri Pabitra Barman without consulting his superior officers as well as the senior most officer of the district administration.

Sd/- 6.7.04 Enquiry Officer & District & Sessions Judge. Cachar, Silchar.

6. After carefully going through the enquiry report submitted by the District Judge above mentioned, taking into account the facts situation in the case as noticed herein above and also having regard to the materials available on record, it transpires that the evidence of all the witnesses is found to be consistent, credible and corroborative and this Court is of the view that there is no illegality, infirmity and/or irregularity found in the findings of the said enquiry and the same is accordingly accepted and approved.

7. Having considered the enquiry report and also having been guided by the settled legal position propounded by the series of judicial authorities See Tekarongsen and Others Vs. Union of India (UOI) and Others, and Smti. Phulo Bala Das v. Union of India and Ors. in Civil Rule No. 3131/98 disposed of on 16.2.06 this Court has no hesitation to record that the State Respondents especially Sri Pabitra Barman, the then Officer-in-Charge of Silchar Police Station is found responsible for resorting to police firing without any reasonable or acceptable explanation resulting in the killing of Late Romij Uddin Borbhuiya, the husband of the Petitioner.

8. Since this case is squarely covered by the catena of decisions of the Supreme Court as well as this Court relating to the violation of Article 21 of the Constitution, this Court is of the view that the Petitioner is entitled to get the monetary compensation due to the death of her husband and accordingly an amount of compensation is quantified as Rs. 2,00,000/- (Two lacs) to be paid to the Petitioner.

9. It is made clear that the entire compensation as quantified above, shall be deposited with the Registrar General of the Gauhati High Court at the Principal Seat through the Bank Draft within a period of three months from the date of receipt of this order and after being deposited the said amount, the Registry shall pay the amount to the Petitioner, on her proper identification by the learned Counsel appearing on her behalf and in case of her death, the amount shall be released to the legal heirs.

10. The State Respondents shall be at liberty to reimburse the compensation amount so ordered from any officer found responsible for such action as indicated above.

11. In the result, this writ petition stands allowed. However, there is no order as to cost.