

(2008) 09 JH CK 0118
In the Jharkhand High Court

Sankari Masomat and Another

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2009) CriLJ 1445

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Laxman Rana, the husband of the petitioner No. 2, was undergoing sentence as a life convict in the District Jail, Hazaribagh. Another convict Jai Nandan Rajwar who was also undergoing life imprisonment, was lodged in the same jail and in the same ward.

In the morning of 20-6-2004, Laxmana Rana suffered unnatural death while under jail custody, due to assault made by Jai Nandan Rajwar.

F.I.R. regarding the murder of the deceased convict Laxman Rana was lodged by the Head Warden of the jail.

2. The deceased left behind his widow namely the petitioner No. 2 and the widow mother (Petitioner No. 1) and four minor children.

3. The petitioner No. 2 had claimed compensation from the respondent State for the premature death of her husband which had occurred on account of alleged negligence on the part of the jail authorities to provide safety and protection to the life and person of the deceased inside the jail.

4. The contention of the petitioners is that though the deceased was convicted for the offence u/s 302 of the Indian Penal Code but an appeal was preferred against the conviction before the High Court which is still pending and while other co-convicts have been granted bail, the deceased was awaiting for his release on bail and there was every chance of his succeeding in the criminal

appeal against the judgment of his conviction.

The further contention of the petitioners is that information regarding the death of the deceased was conveyed to the petitioners by the Superintendent of Jail (Respondent No. 7) stating that some unknown persons had killed the deceased and calling upon the petitioner No. 2 to take the dead body of the deceased for cremation. According to the petitioners, no definite information regarding the cause of death and the circumstances in which the deceased had suffered death was promptly communicated. It was only on being informed that an F.I.R. was lodged, that the petitioners could obtain the necessary information. It is further contended that even otherwise, it was the statutory duty of the respondent jail authorities to provide adequate protection to the life and person of the jail inmates and in this the respondent jail authorities had obviously committed gross negligence as a result of which the deceased had suffered premature unnatural death at the hands of the co-inmate of the jail. It is further contended that the respondent State has therefore, a statutory duty to pay compensation for the death caused to the deceased and the petitioner and her children and the mother of the deceased, who were entirely dependent on the earnings of the deceased, are entitled to claim such compensation.

5. Counter affidavit has been filed on behalf of the respondent No. 7 denying the liability of the respondents to pay any compensation on the ground that there was no negligence on the part of the jail authorities and that the death was a result of accident. From the counter affidavit, it is admitted that the deceased Laxman Rana had suffered homicidal death while inside jail custody. The circumstances under which he was killed is explained in the counter affidavit of the respondent in the following terms:

...That Laxman Rana was under full safety and there was adequate protection, but accidentally he was killed....

The respondents have sought to deny their responsibility in the following terms:

...that there was no any iota of negligence on the part of the jail authority, as because there was the jail guard namely Head Warder Paras Nath Munda had been attended on careful duty in the said ward premises of Double Storied Building. It was the rainy day as such to take the chance of loneliness life sentence convict prisoner Laxman Rana was killed by one life sentence convict prisoner namely Jay Nandan Rajwar, under the Central Jail, Hazaribagh there has been approximately 4000 prisoners including the under-trial and convict prisoner. Therefore it is not be possible to depute the jail guard specifically for each prisoner one by one, and also as the convict prisoners are staying for the long period of time, as such it was also not possible to keep the convict prisoners under Lock and Key, so that in the day time the prisoner used to move freely inside the jail premises. Similarly, Laxman Rana was also under free movement and was outside of double storied building premises, inside the jail under the supervision and careful duty of Head Warder Jail Guard Paras Nath Munda, as

such there was adequate protection and no any negligence was on the part of the jail custody.

...it is humbly stated that there was no any iota of negligence on the part of the jail authority and Laxman Rana died under the fear of suspicion and hot talkative stage between Jay Nandan Rajwar as per the statement of the then duty Warder Paras Nath Munda.

6. The F.I.R. lodged on the basis of Fardbayan of the Jail Warden, a copy of which has been annexed to the writ petition as Annexure-2, confirms that the deceased was assaulted by the assailant Jai Nandan Rajwar with a spade. The murder weapon was still in the hands" of the assailant at the time when the jail warden arrived at the scene of occurrence: No explanation has been offered by the respondent jail authorities as to how and under what circumstances, was the spade -made available to the assailant. It is apparent that instruments such as spade were kept inside the jail premises and within such easy access of the inmates of the jail. Had the respondent jail authorities been vigilant to ensure that no tools or implements or instruments, which could be used as weapons of assault or violence, should be kept within easy access of the jail inmates, this incident could have been avoided. It cannot be disputed, therefore, that the respondent jail authorities were negligent and they did not maintain adequate safety and protection to the life and person of the inmates of the jail who were in their custody.

7. The facts and circumstances confirm that the murder of the deceased husband of the petitioner No. 2 was committed on account of such gross negligence on the part of respondent jail authorities permitting the inmates of the jail to have access to instruments and implements which could be used as weapon of assault. The jail authorities cannot disown their responsibility for the homicidal death of the deceased. The State Government cannot, therefore, disown its liability to pay compensation for the premature death of the deceased.

Fundamental rights of citizens cannot be curtailed merely because they are imprisoned in jails. Their right to safety and protection has to be ensured and it is the responsibility of the State to ensure such protection and such responsibility is emphasized on account of the fact that the prisoners are in the custody of the State authorities.

8. The petitioners have claimed a sum of Rupees Four Lacs by way of compensation on the ground that the deceased was aged 30 years and used to work as a farmer and also as a daily wage labourer and amongst his dependents are as many as six members including the petitioners (mother and wife of the deceased) and four minor children.

In the counter affidavit, except denying the liability to pay compensation, no specific averment appears in respect of the petitioners" claim of a sum of Rupees Four Lacs as compensation and the statement of petitioner No. 2 that the deceased was aged 30 years at the time of his death and used to work as farmer

and also as a daily wage labourer.

9. In the light of the facts and circumstances of the case, the petitioners' claim for compensation cannot be denied. Regard being had to the age and earnings of the deceased and the circumstances of the case, in my opinion, compensation of Rupees Two Lacs Fifty Thousand, is deemed just and proper.

10. In the circumstances, this Court directs the respondent State to deposit a sum of Rupees Two Lacs Fifty Thousand with the Registrar General of this Court within eight weeks from the date of receipt of a copy of this order.

Out of the total amount, a sum of Rupees One Lac will be paid to the petitioner No. 2 by depositing the same in an account opened with any nationalised bank in her name. The remaining amount of Rupees One Lac Fifty Thousand will be deposited in the name of the four minor children for a period of one year in any nationalized bank and such period shall be renewed from year to year till all the children reach the age of 18 years. The amount accumulated in the fixed deposit account till then, shall be divided in equal shares amongst the four children and paid to them accordingly.

This writ application is disposed of accordingly.

Let a copy of this order be given to the counsel for the State.