

(1994) 01 SC CK 0072

In the Supreme Court Of India

Case No : Writ Petition (Criminal) No. 209 of 1993

Secretary, Hailakandi Bar Association

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Constitution of India, 1950 — Article 21, 32

Citation : AIR 1996 SC 1925 : (1996) 1 ALD(Cri) 866 : (1994) CriLJ 2197 : (1995) 6 SCALE 618 : (1995) 3 SCC 736 Supp

Hon'ble Judges : N. Venkatachala, J;A. M. Ahmadii, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The Secretary, Hailakandi Bar Association, forwarded a copy of the resolution passed by the Association at an emergent meeting held on 16-3-1993 condemning the brutal assault on Nurul Haque and the physical torture meted out while he was in police lock-up. Nurul Haque died on account of such brutalities committed on him by the police. The brief facts set out by the Bar Association may be stated as under.

2. The police apprehended Nurul Haque on the evening of 9-3-1993 around 6.00 p.m., effected a formal arrest on 10-3-1993, and produced him before the court on 11-3-1993. At that time he was in good health. He was, however, remanded to police custody for 72 hours for interrogation. During the said period he brutally assaulted and tortured by the police. As a result of the cruel treatment meted out to him while in police custody his condition deteriorated. On the expiry of the period of remand on 12-3-1993, since he was in very bad shape and almost sinking, the police officers without producing him in court secured an order remanding him to judicial custody. However, the jail authorities referred him to the Hailakandi Civil Hospital for treatment when they realised that his condition was serious. He died in the hospital on 13-3-1993 at about 5.00 a.m.

3. Further, the Bar Association alleges that to hush up the matter the police

personnel got the post-mortem done without informing the family members of the deceased about his demise and tried to bury the body but their attempts were foiled by the vociferous protests from the members of the public. The wife of the deceased filed a complaint on 14-3-1993 against certain police personnel alleging that her husband was murdered by them. She requested the Chief Judicial Magistrate, Hailakandi, to take immediate custody of the dead body of Nurul Haque and get a proper post-mortem examination done. The learned Magistrate conceded this demand. The police, however, secured orders from the Deputy Commissioner for the disposal of the dead body by burial but their efforts were rendered unsuccessful by the members of the public. The Bar Association in the backdrop of these facts demanded a judicial inquiry.

4. This communication received from the Bar Association was ordered to be treated as a writ petition under Article 32 of the Constitution and was so numbered. Thereupon, this Court by its order dated 20-8- 1993 directed the Director General of Police, State of Assam, to inquire into the matter and forward a detailed report in regard to the events leading to the death of Nurul Haque. Pursuant to the said order the Registrar General of this Court caused a letter to be written to the Director General of Police, Assam, to forward his report. Thereupon, the Inspector General of Police, forwarded his report under letter No. C-150/91/107, dated 13-9-1993 along with enclosures in the regional language. The letter discloses that he got the matter inquired into through the Superintendent of Police, Hailakandi, who prepared a report which was forwarded to this Court along with the afore numbered forwarding letter. This report contained copies of documents, viz., (i) medical certificate dated 10-3-1993, and (ii) particulars of medical examination of Nurul Haque on 11-3- 1993.

5. The report of the Superintendent of Police sets out the facts thus : On 27-10-1992 at about 6.30 p.m. a gang of dacoits entered the house of Moinul Haque of Village Boalipar, Police Station Hailakandi and gold ornaments, etc., worth about Rs. 15, 000 and a gun. On a complaint being lodged by Moinul Haque investigation started in the course whereof six names including that of the deceased Nurul Haque surfaced. Out of them four confessed to the police that they were members of the gang of Nurul Haque and had committed this and other dacoities under his leadership. When Sub-Inspector A. H. Choudhary went to Boalipar to apprehend Nurul Haque the latter ran away but he was overtaken by the members of the public who beat him with fists and blows before handing him over to the police. The police staff rescued him, put him under arrest on 10-3-1993, produced him on 11-3-1993 and took him on remand after intimating the fact of assault by fist blows. As ordered by the Chief Judicial Magistrate he was sent to the Civil Hospital for treatment. He could not be radiologically examined as the X-ray machine was out of order. After interrogation he was produced before the Chief Judicial Magistrate on 12-3-1993 whereupon he was taken in judicial custody. On the next day on his complaining of chest pain he was taken to the Civil Hospital, Hailakandi where he died on the next day i.e. 13-3-1993. The wife and other relations of the deceased were duly informed in

writing and the post-mortem examination was conducted by a conducted by a qualified medical officer of the Civil Hospital, Hailakandi. Since the wife and other relatives of the deceased were not satisfied with the findings of the medical officer who conducted the post-mortem examination, on the orders of the Chief Judicial Magistrate, Hailakandi, the dead body was sent to the S. M. Civil Hospital, Silchar, where the Standing Medical Board carried out the post-mortem examination and submitted its report.

6. According to the report while the report of the post-mortem examination conducted at the Civil Hospital, Hailakandi, revealed that death was due to myocardial infection leading to heart failure and 'did not' indicate any external injury over the dead body, the report of the medical team at Silchar stated that it was not possible to express any opinion in respect of the cause of death as the dead body was highly decomposed. The viscera was, however, sent sent to the Forensic Science Laboratory for chemical examination but the report was not received till 1-9-1993.

7. Lastly, it is mentioned in the report that the wife of the deceased had, as stated earlier, moved the Chief Judicial Magistrate, Hailakandi, being C. R. Case No. 275 of 1993 against Sub-Inspector A. H. Choudhary, Sub-Inspector Rajendra Ray and Head Constable Dalim Uddin, all of Hailakandi Police Station whereas O. C. Hailakandi Police Station has registered a case No. 120 of 1993 u/s 302 IPC against some unknown members of the public who had beaten up the deceased. It is further pointed out that pursuant to the orders of the District Magistrate, Hailakandi, S. D. O. (Civil), Hailakandi had conducted a magisterial inquiry and submitted a report to the Government of Assam. That report is not placed before us.

8. The report of the Superintendent ends with the findings.

"Nurul Haque neither died in police lock-up nor in police custody. He died while in judicial custody as UTP (under trial prisoner). He was not tortured during the period of police custody."

9. From the above, it emerges that according to the police version in the report, the deceased was beaten up by the members of the public and then handed over to the police. It was only thereafter that the police took him in custody and effected his formal arrest. The reason for the public wrath against Nurul Haque is stated to be that he was a notorious dacoit and a rapist. The case of the police is that after his arrest he was sent to the Civil Hospital for treatment and three external injuries, viz. (i) abrasion on cheek 1 cm. x 1 cm. (ii) abrasion on left leg 2 cm. x 2 cm. with tenderness in right leg over upper third of tibia and (iii) abrasion both forehands, size 2 cm. x 1 cm. each. These injuries are found noted in the copy of the medical certificate dated 8-9-1993 appended to the report. On 11-3-1993 when he was produced before the court, the Investigation Officer stated that the accused was beaten up by the members of the public and has sustained injuries, but no mention was made regarding his examination by a

medical officer and the nature of injuries sustained by him. Even the learned Magistrate's order dated 11-3-1993 does not show that the accused had received medical treatment before his production before him and that is why he directed the Investigating Officer to arrange to provide for medical treatment. The doctor's prescription of 11-3-1993 does not show that the accused had received medical treatment before his production before him and that is why he directed the Investigating Officer to arrange to provide for medical treatment. The doctor's prescription of 11-3-1993 shows that besides prescribing certain medicines he had advised X-ray of the right leg, upper third of tibia. The medical certificate dated 8-9-1993 in respect of the examination dated 11-3-1993 reveals that the following external injuries were noticed.

"(1) one lacerated wound present over the left thumb of size 2.5 cm. x 1.5 cm. x skin deep.

(2) one abrasion present over the left forearm at middle third of size 1 cm. x 2 cm.

(3) one abrasion present over the left arm of size 2.5 cm. x 2 cm.

(4) one abrasion present over the left leg over the tibia of size 3 cm. x 2 cm.

(5) one lacerated wound present over the right leg at upper third over the tibia of size 1.5 cm. x 1.5 cm. x bone deep and severe tenderness."

10. The accused Nurul Haque was produced in court on the next day i.e. 12-3-1993 after the remand period of 72 hours and was ordered to be kept in judicial custody till 25-3-1993. The record of 12-3-1993 shows the production of the accused before the court which prima facie negatives the allegation that since he was in bad shape he was actually not produced. Unless the note in the order sheet of 12-3- 1993 is a routine note, it would be difficult to accept this allegation.

11. The accused died on 13-3-1993. The copy of the post-mortem report dated 14-3-1993 shows five external injuries. The injuries were ante-mortem. Unfortunately, the post-mortem report does not disclose the corresponding internal injuries except a crack fracture in the middle of the right tibia. In the column pertaining to the heart there is a mention of 'an infracted area 2 cm. in diameter in the anterior part of the inter-ventricular septum'. In the opinion of the doctor death was due to myocardial infection with heart failure.

12. The second post-mortem examination was undertaken on 16-3-1993. The particulars in regard to the findings recorded in the case diary would show that the body was highly decomposed which is perhaps natural having regard to the fact that it was the middle of March and three full days and passed. However, fracture was noticed on the right tibia while the other bones were healthy. No opinion was expressed in the absence of the chemical analyser's opinion on the viscera sent for examination.

13. It is clear from the above that the deceased had certain external injuries one of which had resulted in the fracture of the right tibia bone. The letter dated 9-9-1993 (page 36 of paper-book) shows that the victim had 'multiple injury' on 12-3-1993 and was immediately referred to the Civil Hospital, Hailakandi, for necessary treatment. While the report of the Superintendent contains the medical case papers of the 10th and 11th, the case papers on the 12th are surprisingly not included. It is difficult to say if that is by design or oversight. Be that as it may, the medical examination report of 12-3-1993 would be a very important piece of evidence since the victim had died next day i.e. 13-3-1993. Since the dead body had reached the morgue by 5.00 p.m., it would be reasonable to infer that he must have died a few hours before that. In the circumstances, the condition of the deceased on 12-3-1993 would shed a lot of light. The report on the viscera would be equally vital. The statement in the report of the Superintendent of Police that 'The P.M. Report did not indicate any external injury over the dead body' was factually incorrect and, if we may say so, misleading. We had called upon the officer to explain the same and he states in his affidavit that the word 'not' had inadvertently appeared for which he apologised. We are afraid his explanation, if accepted as correct, would leave the sentence grammatically incorrect. We have some hesitation in accepting the same but we think it would suffice if we may say that the officer should be more careful in future. Even his superiors would have noticed this obvious error if they had taken sufficient care to cross-check the same with the medical papers of the deceased before forwarding the same of this Court. We think it is necessary to remind high-ranking officers to show extra care while forwarding their comments to this Court and not to mechanically forward the information collected through subordinates. When the Court calls for the report of the Director General of Police, the Court places confidence in the objectivity of a person holding such high office and when such an officer mechanically forwards the report of his subordinate with a forwarding letter he betrays a casual approach shaking the Court's confidence in him and dilutes the probative value of the report.

14. There is one thing more which needs to be noticed. Even the police have registered an offence u/s 302, IPC, albeit against unknown members of the public. The story that the members of the public beat him raises doubts because in that case the wrath of the public would not have been towards the police and the Bar Association would not have taken up the cause. The medical examination report of 12-3-1993 is not forthcoming nor is the laboratory report on the viscera available. The fact that the deceased was beaten up is not in doubt. He had fractured a bone. In the circumstances even if it is believed that he died of cardiac failure there can be no doubt that those who caused the injuries had committed grievous hurt. The possibility of the police having caused injuries cannot be ruled out altogether. Since the local police at the highest level have taken a stand that the assault on the deceased was by members of the public and not the police after the apprehension of the deceased it is futile to expect an independent and wholly objective investigation by the State police. Even

otherwise, the people will have little confidence in the investigation no matter how honest and objective the investigation be. In the circumstances, we deem it most appropriate that the investigation of the crime in regard to the murder of the deceased under C. R. Case No. 275 of 1993 and/or FIR No. 120 of 1993 should be undertaken by the Central Bureau of Investigation (CBI). In doing so, the CBI will bear in mind the allegation of the wife and other relations of the deceased that the he died on account of the beating given to him after his apprehension on 9-3-1993, without being influenced by the fact that in the FIR No. 120 of 1993, it is alleged that the assault was by the members of the public.

15. The Registrar General will writ a letter to the Director of CBI to take immediate steps to take over the investigation of the crime from the local police and try to complete the same at an early date and bring the real culprits to book. This petition will stand so disposed of.