
(2014) 11 MEG CK 0002
In the Meghalaya High Court
Case No : W.P. (Crl) No. 8 of 2013

Shrina Begum

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2014) 11 MEG CK 0002

Hon'ble Judges : Sudip Ranjan Sen, J

Bench : Single Bench

Judgement

Sudip Ranjan Sen, J.—The petitioner's case in brief is that:

"The instant writ petition under Article 226 of the Constitution of India is preferred by the petitioner who is the wife of the victim who was arrested in connection with Phulbari P.S. Case No. 51(9) of 2013.

The petitioner's husband who is a forest guard under the Garo Hills Autonomous District Council was falsely implicated in the aforesaid case and was arrested by the Phulbari Police where he was subjected to gruesome physical torture and thereafter he was admitted in the Phulbari Community Health Centre and kept handcuffed in the Hospital bed, despite advise by the doctors for providing a better treatment in a hospital properly equipped as the injuries caused is grievous and the said Community Health Centre lacks proper facilities the victim is yet to be given better treatment.

The treatment meted out to the victim is a flagrant violation of Human Right and also in violation of the fundamental right under Article 21 of the Constitution of India, further it is also a violation of the law laid down by the Hon'ble Apex Court in D.K. Basu Vs. State of West Bengal, . And hence the petitioner prays for appropriate relief".

2. On the basis of the petition filed by the petitioner, this court passed an order dated 19.05.2014 in W.P. (CRL) No. 8 of 2013 directing the learned District and

Sessions Judge, Tura to conduct an enquiry to find out the truth.

3. In compliance with the order dated 19.05.2014 passed by this court, the learned District and Sessions Judge, Tura furnish his report dated 05.09.2014.

4. Mr. R. Kar, learned counsel appearing for and on behalf of the petitioner argued that, when the accused Atfur Rahaman Azad was arrested, he had no physical injury, but in police custody he has been tortured physically and mentally and as a result, he sustained physical injury and was admitted in hospital for quite sometime.

The learned counsel also further argued that for such gruesome act of the police, adequate compensation may be awarded in favour of the petitioner.

5. On the other hand, Mr. N.D. Chullai, learned Sr. GA appearing for and on behalf of the State submitted that, there was no torture. The accused was suffering from old ailment so; the question for compensation does not arise.

6. I have perused the enquiry report dated 05.09.2014 submitted by the learned District and Sessions Judge, Tura wherein, it appears that he has examined as many as 25(twenty five) witnesses. Specifically, on perusal of the evidence of the doctor, who first examine the accused Atfur Rahaman Azad on 14.09.2013 on being produced by the police, it appears that after examination of the accused, he did not find any external injury on any part of the body of the accused. Thereafter, the accused was sent back along with the police personnel and the medical report. From his deposition, it is also clear that no injury was detected on the body of the accused on 15.09.2013. So, he was released and sent back to the police along with the medical report. Further, he stated that when the accused was produced on 16.09.2013 at around 7:55 PM by the police personnel and examine medically, he noticed that there is bruise and swelling on both side of the buttock 10 x 8 cm and no other injury detected. From the deposition of the doctor, it also appears that the accused disclose that he sustained injury due to police torture.

On 06.10.2013 the accused was examined by the medical board. It was detected that there was ulcer on left buttock with loss of skin with sign of infection. It is also further revealed from the enquiry report that healing of infection was delayed due to shortage of medicines in the hospital. Thereafter, he was shifted to Tura Civil Hospital for a better treatment as per the direction of this court. It is also apparent from the enquiry report that all the police personnel who were on duty denied any tortured upon the accused. So, on analysis of this enquiry report, one question is clear when the accused was produced first on 14.09.2013 and thereafter, on 15.09.2013 before the medical officer, there was no external injury found on his body and at that period of time he was in police custody. But, when he was examined on 16.09.2013 the Doctor Shri Nehru R. Marak detected bruise and swelling on both side of the buttock 10 x 8 cm and he was also suffering from hypertension @ 160/100 m.m.hg. However, the police explanation is that he sustained injury on the buttock while trying to escape from custody at

the time of arrest.

7. After analyzing of the entire report, I am of the considered view that when the police arrested the accused on 14.09.2013 and thereafter, when he was produced to a doctor for medical examination on 14.09.2013 and 15.09.2013 no injury was detected. Therefore, I am unable to agree with the version of the police that he sustained injury on his buttock due to falling down while trying to escape from custody at the time of arrest. It is also a fact that on 14.09.2013 and 15.09.2013 medical examination did not find any external injury sign on the body of the accused. It is only on 16.09.2013 when he was produced for medical examination the doctor detected bruise mark as well as swelling 10 x 8 cm and his blood pressure was high. It is also an undisputed fact that on 14.09.2013 and 15.09.2013 the accused was in police custody. So, when on 14.09.2013 and 15.09.2013 medical report says that there is no external injury, but on 16.09.2013 medical report found that there is external injury then, in that case, all probable logic points finger that the injury sustained on the buttock of the accused is due to torture in the police custody as the accused was in custody from 14.09.2013 to 16.09.2013. The enquiry report also reveals that healing of ulcer delayed due to shortage of medicines available. It also reveals that the injury sustained by the accused during police custody is simple in nature.

8. Therefore, after taking into consideration of the enquiry report and the submissions advanced by the learned counsel appearing for the parties, I am of the considered view that the accused was tortured in police custody prior to producing him before the doctor on 16.09.2013.

9. Now, in such a case, the only remedy available to grant compensation as prayed for by Mr. R. Kar, learned counsel appearing for the petitioner since the injury is simple in nature, in my view Rs. 15,000/- (Rupees fifteen thousand) only will suffice the purpose. Accordingly, the respondents State Govt. is directed to pay Rs. 15,000/- as compensation to the petitioner/accused for such torture within 2(two) months from the date of receipt of a certified copy of the judgment and order.

10. Before I part with this case record, I direct the Director General of Police, State of Meghalaya to instruct all the police stations to follow the guidelines given by Hon"ble the Apex Court in D.K. Basu Vs. State of West Bengal, .

11. With this observation and direction, the instant writ petition is allowed and stands disposed of.