
(2001) 02 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No. 13814 of 1998

Smt. Chandania	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 197, 45
Penal Code, 1860 (IPC) — Section 193, 201, 218, 304, 323

Citation : (2001) 1 AWC 839 : (2001) CriLJ 2090 : (2001) 3 RCR(Criminal) 122

Hon'ble Judges : D.R. Chaudhary, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Siddhartha Srivastava, for the Appellant; K.S. Kushwaha, S.C., for the Respondent

Judgement

Binod Kumar Roy and D. R. Chaudhary, JJ.—The petitioner has come up with a prayer to command the respondents to pay a sum of Rs. 5 lakhs as compensation on account of her husband's custodial death.

2. A portrayal of relevant facts are in a narrow compass. On 12th April, 1994, Duli Chandra, aged about 42 years and the sole earning member of his family, and a Scheduled Caste having his wife-the petitioner and four sons Kamlesh, Lal Babu, Shyam Babu and Gyan Chandra. went to police station Giwan, Banda. to lodge an information against his co-villager Budhwa in regard to some land dispute which had taken on that very day. Far from registering the first information, he was severely beaten by Ram Vraksh Singh Yadav. the station house officer of police station Girwan and Subcdar Pal, the head constable respectively as a result of which he became unconscious and was thrown out of the police station. When his condition deteriorated, he was taken to the hospital at Barokhar. The petitioner's eldest son Kamlesh Kumar after coming to know aforementioned facts lodged a first information report on 13th April, 1994 (copy appended as Annexure-1). On 14th April. 1994, Duli Chandra succumbed to his injuries. On 15th April. 1994 post-mortem was carried out and a report

(Annexure-4) was prepared from a bare perusal of which it would be abundantly clear that he had died due to injuries on his head resulted due to beating by the police. An investigation was conducted by the C.B.I. in relation to the first information report dated 13th April, 1994. Thereafter, notification dated 14th June, 1996 (as contained in Annexure-2) was made granting sanction by the Governor of Uttar Pradesh u/s 197 read with Section 45 of the Code of Criminal Procedure to prosecute and arrest them. On 25th March, 1997, charge-sheet was submitted. Till date the S.H.O. concerned is absconding and could not be arrested by the police as a result of which the trial, which has started, is still pending. The petitioner tried from pillar to post to get some economic assistance/compensation but of no avail. Further two representations were also made by her eldest son, as contained in Annexures-5 and 6, but no orders have been passed. A representation made by the eldest son on 18th January, 1997 (as contained in Annexure-7) to the Chief Minister was also of no avail. Keeping in view the size of the family and the high time of the period, at least a sum of Rs. 5 lakhs be given to the family.

3. A counter-affidavit has been filed on behalf of respondent No. 2. the Senior Superintendent of Police, Banda. This counter-affidavit has been sworn by the Circle Officer, Naraini, Banda. It has been asserted therein as follows : At 12.30 p.m. of 12th March, 1994, Budhwa had got registered in P.S. Girwan N.C.R. No. 32 of 1994 under Sections 323/504, I.P.C. against Duli Chandra and Smt. Chandanta (petitioner herein) and that at 12.45 p.m. on that very day, the deceased Duli Chandra had also got registered N.C.R. No. 33 of 1994 (copy appended as Annexure-1) under Sections 323/504, I.P.C. against Budhwa and his sons Tejva and Lakshmi : So far as torture of Duli Chandra by the then S.H.O. is concerned, Crime Case No. 116 of 1994 under Sections 304/218/193/201, I.P.C. was registered and investigation by the C.B.C.I.D. offences under Sections 304/218/193/201, I.P.C. and Section 3(1) S.C.S.T. Act has been found to have been established (proved) after establishment of the crime, charge-sheet was forwarded, which is still pending : the S.H.O. concerned was also suspended and whose arrest is being vigorously perused ; it is a fact that Duli Chandra had died on account of head injury, but not in police custody and the question as to why and how the injury was sustained is sub-judice in Court ; pursuant to the Government order on 18th April, 1994, Cheque No. 117363 of Rs. 10,000 was handed over by the District Magistrate to the petitioner by way of compensation ; two of the sons, namely. Kamlesh and Lal Babu are adult, who are competent to maintain themselves by doing labour, the compensation has been demanded by inflating it which is illegal, improper, unpracticable and unjustified and that the petitioner is not entitled to the reliefs prayed for under Article 226 of the Constitution of India ; her writ petition, being baseless, is liable to be dismissed.

4. A rejoinder dated 15.2.2000 sworn by Kamlesh Kumar showing his age about 23 years has been filed asserting, inter alia, that cause of death of Duli Chandra is custodial violence as due to his severe beating by the S.H.O. and the head constable at the police station, he had died whose fundamental right was

infringed to an extreme limit and thereby the petitioner is entitled to get compensation, keeping in view the continuous devaluation of the rupee and rising prices day-to-day, she is entitled to the compensation as prayed for, who was not paid any amount the accused are still roaming out freely and the State has not taken any action to punish them ; or to pay compensation to the petitioner.

5. Srt Siddhartha Srivastava, learned counsel for the petitioner, with reference to the decision of the Supreme Court in Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, , contended that in the peculiar facts and circumstances, it is a fit case in which the desired compensation be directed to be paid to her.

6. Sri K. S. Kushwaha, learned standing counsel, with reference to two decisions of the Supreme Court (i) Amitadyuti Kumar v. State of West Bengal 2000 (2) AWC 1585 and (ii) Ajab Singh and Another Vs. State of Uttar Pradesh and Others, contended that a reasonable amount of compensation may be awarded keeping in mind that vide the representation as contained in Annexure-7, a sum of Rs. 2 lakhs only was sought for as compensation by the petitioner's eldest son.

7. From the post-mortem report. Duli Chandra had died "due to coma as a result of head injury". The injuries on head are apparently on account of custodial violence in the police station. From the materials on the record, this much is clear to us that Duli Chandra's fundamental right to have liberty of life was breached by the S.H.O. and the head constable of the police station concerned.

8. The other question for our consideration thus is as to what amount should be awarded by way of compensation to the petitioner and the family of the deceased Duli Chandra?

9. The decision of the Supreme Court in Smt. Nilabati Behera, (supra) relied upon by Sri Srivastava, was further considered by the Supreme Court in D. K. Basu is better known as D.K. Basu Vs. State of West Bengal, , and it was held as follows :

"..... The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence [irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the

peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is. thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case. be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

10. There is no denial of the fact that at the time of his death, Duli Chandra was the sole bread earner of his family. His family was dependent on earnings from about four bighas of land. The strength of the family, at the time of his death, was five including the petitioner. The occurrence is of 12th April, 1994. the unfortunate death took place on 14th April. 1994 and this writ petition was filed on 17th April, 1998. At the time of his death, Duli Chandra was aged about 42 years. According to averments made in paragraph 12. the four sons of the petitioner were aged 22 years, 18 years. 16 years and 8 years, that is to say. only Kamlesh appears to be major being 18 years at the time of death. Having taken into account the entire facts and circumstances, we determine compensation amount as Rs. 1.50.000 (rupees one lakh fifty thousand) only apart from Rs. 10.000 already granted to the petitioner and direct respondent No. 1 to pay the same within three months from today with liberties as observed in D. K. Basu (supra).

11. We express our anguish for an apparent failure on the part of the State and its police authorities in not apprehending the then S.H.O. Ram Vraksh Singh Yadav and the head constable Subedar Pal. Even though not prayed for by the petitioner, we. in the interest of justice, command respondent No. 1 to take all possible steps to arrest them and for their production before the Court concerned through the Director General of Police of this State and to inquire whether they are being paid salary, etc. and take an appropriate disciplinary action against those persons who were responsible for payment of the salary, etc. to the aforementioned two persons, if they were paid.

12. This writ petition is disposed of accordingly.

13. The office is directed to hand over a copy of this order within one week to Sri K. S. Kushwaha, learned standing counsel, for its intimation to and follow up action by respondent No. 1.