
(1996) 06 GAU CK 0017
In the Gauhati High Court
Case No : Civil Rule No. 2937 of 1995

Smt. Kamini Bala Talukdar	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 12-06-1996

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 21, 226, 32
Penal Code, 1860 (IPC) — Section 307
Unlawful Activities (Prevention) Act, 1967 — Section 10, 11

Citation : (1997) CriLJ 874

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S.K. Medhi, for the Appellant; B.P. Todi, Government Advocate, for the Respondent

Judgement

J.N. Sarma, J.—The allegation in this case is that one Sudhir Talukdar aged about 27 years who was the second son of Sri Madhab Chandra Talukdar was killed by the police in front of this house on 3-6-95. Sudhir passed the HSLC examination in the year 1984, but could not prosecute his studies due to adverse pecuniary condition of his father.

2. The admitted position in this case is that Sudhir is a hardcore ULFA, but the question is that whether the killing of Sudhir was a diabolic murder or that was in pursuance of an attempt to apprehend him. The allegation is that on the morning of 3-6-95 at about 11.30 a.m. when Sudhir along with 3 other persons were playing carrom by the side of public road in front of his house, at that time 8 persons in civil dress came to the spot on 4 motor cycles and on being pointed out by one of them Sudhir was caught by another and one of the eight persons brought out a revolver and fired on Sudhir. Sudhir being injured ran towards the "bari" behind his residential house. Then all the eight persons chased Sudhir with their motor cycles, went inside the "bari" through the small track and fired point blank on him by using carbine. Sudhir died on the spot instantaneously.

Thereafter some of the eight persons disclosed their identity as police personnel and one of them was a surrendered ULFA.

3. Thereafter this Civil Rule was filed with a claim for compensation on account of the killing of the son of the petitioner. The District Judge at Barpeta was asked to conduct an enquiry and accordingly the learned District Judge examined the following witnesses:

1. Kamini Bala Talukdar, the mother of the deceased.
2. Himangshu Talukdar, a close door neighbour of the deceased and who saw the occurrence.
3. Himangshu Talukdar the person who was playing carrom with Sudhir.
4. Pramod Talukdar, the younger brother of the deceased who was at that time cutting tree on the back side of his house.
5. Dr. Golap Hussain, the doctor who conducted the post-mortem examination. The doctor found the following injuries-

(i) One perforated wound over right side of the chest in between 2nd and 3rd ribs of size 2 cm x 2 cm up to the cavity. The edge of the injury was inverted and charred.

(ii) One perforated wound over left side of the ; chest between the 3rd and 4th ribs of size 2cm x 2cm. up to the cavity. The edge was inverted and charred.

(iii) One perforated wound just below the umbilicus of size 2cm x 2cm in diameter. Loops of the intestine had come out.

(iv) One perforated wound over the right buttock of size 2 cm x 2cm upto the cavity. The edge was inverted.

(v) One lacerated wound of size 6 cm x 2cm. over right thigh.

The doctor further opined that the deceased died because of bullet injury inasmuch as the bullet must have hit the deceased straight.

6. Khurshed Ali, S.I., i/c of Bhabanipur O.P. He depoised inter alia as follows:

During investigation, I found that the deceased Sudhir Talukdar was the Organising Secretary of ULFA of Barpeta District. On the relevant day police got a confidential information that some ULFA members had gathered at village Bar Tapa and conducted a search. Police personnels found that 6/7 boys were running helter-skelter and on their arrival near the house of the deceased there was a firing on the police party. For self defence police party also opened fire. In the cross fire Sudhir Talukdar sustained bullet injury and later died.

DSP Jit Mai Doley led the police party during the search. DSP Doley himself seized one revolver alongwith 4(four) live cartridge from one Dipu Sutradhar who was accompanying the de -ceased at the P.O. police also recovered 2(two) i

empty cartridge from the P.O. For the same occurrence DSP J.M. Deloy also lodged FIR against Dipu Sutradhar, Sudhir Talukdar and others which was registered as Barpeta P.S. Case No. 342/95 u/s 307. I.P.C. r/w Section 25 of the Arms Act r/w Section 10/11 of the Unlawful Activities Prevention Act. This case has also been assigned to me for investigation. I have not submitted the final report in both the cases. There were about 15/20 criminal cases pending against the deceased Sudhir Talukdar.

7. Dr. Chittaranjan Das, conducted the post mortem examination on the deadbody of the deceased. He opined as follows:

Injury No. (iv) was in the nature of out-let of bullet injury. No other out-let was noticed on the deadbody. During post mortem no bullet was found inside the body. Sometime the bullet comes out from the same hole after striking back-bone.

I can not say the diameter and size of the bullet as well as the nature of fire-arm.

Since the skin of 2(two) wounds were found charred/latooing it can be said that the deceased might have received bullet injury from a close distance within a range of 3 ft. to 5 ft.

8. Jitmal Doley, the D.S.P. deposed as follows:

In our party only 2(two) persons had carried automatic weapon and other officers had weapons like pistol/revolver having short range. U.B.C. Nazrul Islam was carrying a carbine and A.B.C. Daneswar Das had carried a stengun. Since Nazrul was the first person to face the extremist he had fired about 25 (twenty-five) rounds in reply to the fire by the extremists in whose fire the deceased Sudhir Talukdar had sustained injuries. From our side no one sustained bullet injury.

9. Surajit Choudhury, S.I. who accompanied DSP Jitmal Doley and other police personnels to village Tapa on that date deposed as follows:

Constable Nazrul Islam fired 25 rounds from his carbine. After sometime when fire stopped we proceeded further and found one injured in the jungle which was at a distance of about 50 metres from the house premises. Initially I heard 3 (three) gun-shots from the extremists but I cannot say if there was more fire from their side later.

10. U.B.C/68 Nazrul Islam who deposed as follows:

The fire ended within 2/3 minutes. I fired 25 rounds from my automatic weapon. There was no fire by the extremist after reply by me. After the stoppage of fire we proceeded further and found one person in injured condition in the jungle. I had taken position with S.I. Surajit Choudhury under the bush and the distance where the injured was lying only at a distance of about 30/35 yards. I had fired upon gun shots blindly and I had not noticea the injured before that. Other 2(two) police personnels had fired only 2(two) blank fire in the air. No other

outsider accompanied our team and all of us were police personnels.

4. On consideration of all the evidence, the learned District & Sessions Judge at Barpeta found as follows:

1. that the deceased was an active member of ULFA, a banned organisation. The deceased was absconding from village and on many occasions police personnels came in search of him also indicates that the deceased was involved in the activities of banned organisation.

2. From the evidence and the attending circumstances, I am of the opinion that the police personnels had visited village Tapa on the date of occurrence and in their firing Sudhir was killed.

3. Having considered the evidence of both the sides, it appears to me that petitioner's version is partly believable to the extent that Sudhir was first chased and only thereafter he was hit by bullet injury in the jungle. Similarly the defence version that Sudhir Talukdar sustained bullet injury in the cross-firing is also believable in as much as one of his colleagues, Dipu Sutradhar was found carrying a revolver and 2(two) bullets were short in it's chamber. In other words, it can not be totally ruled out that the police personnel had to retaliate in defence only after firing by the extremist.

4. The deceased sustained bullet injury from a close distance and the bullet must have hit him from a distance of 3/5 ft.

5. In other words, the reply firing was disproportionate which shows that no bona fide attempt was made by the police officers to apprehend the deceased alive.

5. An affidavit-in-opposition has been filed wherein it is denied that Sudhir was killed in a cold blooded manner and it is stated that he was killed while an attempt was made to apprehend him and he tried to flee away.

6. On the basis of materials on record and on the basis of the evidence I agree with the findings of the learned District Judge that there was no bona fide attempt to apprehend Sudhir but he was killed by the police personnels in a cold blooded manner. That being the position the next question which will arise is that what should be the compensation because it is found that respondents were negligent in the performance of their duties inasmuch as even if the deceased is a culprit he cannot be eliminated by the police personnel as was done in this case. The deceased has all the rights to live as enshrined under Article 21 of the Constitution of India which provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to live with human dignity enshrined under Article 21 must be given due protection, otherwise the very fabric of the democratic society shall crumble. Having found that the death of Sudhir was caused by the police in a negligent manner, now let us determine what should be the adequate amount of compensation.

7. Heard Mr. S. Medhi, learned counsel for the petitioner and BP Todi, learned Govt. Advocate appearing for respondents.

8. Mr. Medhi places reliance on the following decisions-

1 Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, . That was a case of custodial death. In Para 22 the Supreme Court has pointed out as follows:

The above discussion indicates the principle on which the Court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

2 Inder Singh Vs. State of Punjab and Others, that was a case on human rights violation and police atrocities. There 7 persons were abducted by the police ranging in age from 85 to 14 years and it was further found that the State police acted in leisurely and in irresponsible manner and the Supreme Court directed the CBI to make an enquiry to decide the question of payment of compensation by the respondents to the next of kins of the seven persons.

3. 1995 Su (2) SCC 572 People's Union for Civil Liberties v. Union of India. That was a case where there was the allegation of cold blooded killing of 2 persons by staging fake encounter by police. The District and Sessions Judge was directed to record evidence of relevant witnesses and submit a report to Supreme Court within six months in order to decide the question of compensation.

4. Harbans Kaur (Smt) Vs. Union of India (UOI) and Others, That was a case where one person was called to the Police Station through the constable and thereafter his whereabouts was not known. A Habeas Corpus petition was filed and the claim for compensation was made and the Supreme Court directed an enquiry to find out whether the petitioner was mercilessly beaten in police custody which, ultimately, led to his death.

5. 1995 Su (4) SCC 450 (Death of Sawinder Singh Grover, RE) That was a case of custodial death and there also the Additional District Judge submitted a report and the Supreme Court in the interim directed a sum of Rs. 2 lakhs to be paid to the widow of the deceased by the Union of India with further liberty to file appropriate case by the widow.

6. 1994 Su (3) SCC 100 (Pratul Kumar Sinha v. State of Bihar. That was a case of police atrocities where three young persons died because of police atrocities and the direction was made for ex-gratia payment of Rs. 25,000/- to family of deceased, withhar further direction to the State Govt. to recover this amount from the tort-feasors.

9. On the background of this law, now let us decide the question of compensation. The person who died was aged about 27 years and passed H.S.L.C. examination, but at the same time he was a hardcore criminal and a large number of cases were pending against him. It is also a fact that the police personnels went to the spot to apprehended him and when the police personnels went to the spot to apprehend him he fled away and thereafter he was chased. But at the same time, it has been found that the deceased was fired from a close range of 3/5 feet as found by the [earned District Judge, there was ample opportunity to apprehended him alive, but that was not done by the police authority rather the police authority wanted to eliminate him. This approach cannot be encouraged otherwise the very fabric of the rule of law shall stand shattered. Taking an over all view of the matter, I award compensation of Rs. 1,00,000.00 (One lakh) to the petitioner's, the poor mother who has lost her son. The amount shall be paid by the authority within a period of 3(three) months from the date of receipt of this order. The authority if it think fit, may realise the amount from the police personnels responsible for the killing of the deceased.

10. This disposes of this writ application.