

(2006) 01 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 1986 of 2001

Smt. Ningthemcha Ongbi Shakhenbi Devi	APPELLANT
Vs	
State of Manipur and Others	RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Arms Act, 1959 — Section 25(1A), 25(1B)
Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 176, 438, 439, 46
Evidence Act, 1872 — Section 26, 27
Penal Code, 1860 (IPC) — Section 121, 121A, 302, 307, 34

Citation : (2006) CriLJ 1895 : (2006) 2 GLT 627

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : Ngongo, for the Appellant; Th. Ibohal Singh, G.A., A. Nilmani Singh and A. Bimol Singh, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—The Supreme Court and the High Courts being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also obligation to grant relief in exercise of their jurisdictions under Articles 32 and 226 of the Constitution of India to the victims or heirs of the victims whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the state to repair the damage done by its officers to the fundamental rights of the citizens, notwithstanding the right of the citizens to the remedy by way of civil suit or criminal proceedings. Basing on these principles of law, petitioner filed the present writ petition praying for monetary compensation for unjustified killing of her son, late R.K. Laksana @ Vito Singh by the personnel of the Manipur Police Commando Unit under the private respondent No. 6 (i.e. Shri Pebam John Singh, S. I.) while he (R. K. Laksana @ Vito Singh) was in their custody. In the present writ petition, over and above the relief for monetary compensation of Rs.

15,00,000/-, the petitioner prays for:

1. Directing the respondent No. 1, i.e. the State of Manipur represented by the Chief Secretary, Govt. of Manipur to hand over the investigation of the FIR, i.e. FIR No. 7(2)/99 Lamsang P.S., u/s 121, 121-A, 307, 302/34, IPC and 25(1-A) Arms Act, and the complaint dated 21-2-99 made by the petitioner to the O.C. Singjamei P.S. for killing of her son, late R. K. Laksana by the personnel of the Manipur Police Commando Unit, i.e. O. C. Inspector Lokhon Singh, S. I. Pebam John Singh, Annexure-A/8 to the present writ petition, to the Central Bureau of Investigation (CBI);

2. Directing the respondents to produce the report of the enquiry conducted by the District Magistrate, Imphal West u/s 176 of Cr.P.C.; and

3. directing the respondents to make payment of Rs. 1,00,000/- (Rupees one lakh) as ex gratia for the death of her son.

2. The Apex Court in Sebastian M. Hongray Vs. Union of India (UOI) and Others, discussed about the nature of consideration of facts in a writ proceeding and held that "In a writ petition under Article 32 rarely, if ever, pleadings are meticulously extracted and reproduced in the judgment. It however became a compelling necessity in this case for the obvious reason that certain inferences were drawn and submitted for the consideration of this Court by both sides after referring to facts admitted and/or not controverted. We would, therefore be justified in deducing the indisputable fact situation that emerges from the rival affidavits and then proceed to draw necessary permissible inferences that flow from them". Even in the writ proceeding, it has been held that it would be justified in deducing the indisputable fact situation that emerges from the rival affidavits and then proceed to draw necessary permissible inferences that flow from them. Keeping in view of the ratio laid down by the Apex Court in Sebastian M. Hongray v. Union of India (supra), this Court is meticulously examining the facts admitted and/or not controverted by the parties vis-a-vis in the present case for drawing necessary permissible inferences that flow from them. Justice Krishnan Iyer (As he was then) was made an observation in Niranjan Singh and Another Vs. Prabhakar Rajaram Kharote and Others, . "An encounter ensued, both sides sustained injuries and the deceased succumbed to a firearm shot even as some of the police party sustained revolver wounds but survived. May be, the defence case, if reasonably true, may absolve them of the crime, although the story of encounters during arrest and unwitting injuries resulting in casualties, sometimes become a mask to hide easy liquidation of human life by heartless policemen when some one allergic to authority resists their vices. The police have the advantage that they prepare the preliminary record which may "kill" the case against them. This disquieting syndrome of policemen committing crimes of killing and making up perfect paperwork cases of innocent discharge of duty should not be ruled out when Courts examine rival versions." The petitioner is the mother of late R.K. Laksana @ Vito Singh, Late R.K. Laksana @ Vito Singh, it is said, after passing HSLC Examination stopped his study and started supporting

his father in maintaining the family maintenance by doing small time business. In the course of his business, it is said that late R. K. Laksana @ Vito Singh used to visit the State of Tripura, other places like Guwahati and Moreh and his business was supplying of porks to the pork vendors of Imphal City specially in Kakhulong and Majorkhul after collecting pigs from different parts of Manipur, and in the course of his business he got about Rs. 5000-6000/- per month. His income, it is said, was utilized for the maintenance of the family and also in incurring expenditure in the educational fees for his younger brothers and sisters.

3. On 15-2-1999 about 7 A.M. when late R.K. Laksana Singh returned to his house after supplying porks to different pork vendors of Imphal City, present petitioner asked him (late R.K. Laksana) to go to the house of one Shri Sukham Yaima Singh of Chigamakha Oinam Leirak, Imphal who is said to be a close friend of her family to enquire about his illness. As instructed by r's mother (Present petitioner), late R.K. Laksana @ Vito Singh went to the house of Shri Sukham Yaima Singh of Chingamakha Oinam Leiram, Imphal. After reaching the house of Shri Sukham Yaima Singh, late R.K. Laksana Singh was requested by the family members of Sukham Yaima Singh to purchase some medicines from the nearby medico shops and accordingly he (late R.K. Laksana) went and purchased some medicines. It is said that when late R.K. Laksana came back to the house of Shri Sukham Yaima Singh after purchasing the medicines, present petitioner was also present at the house of Shri Sukham Yaima Singh. After giving the said medicines to Shri Sukham Yaima Singh, late R. K. Laksana Singh entered into the drawing room of Sukham Yaima Singh for watching a Manipuri Film "Merathagi Sanarei". It is said that after some time, a neighbour of Shri Sukham Yaima Singh namely, Shri Sukham Indrakumar Singh came and joined in watching the said Manipuri Film. At about 9.30 A.M. of the same day, i.e. 15-2-1999, some police personnel of Manipur Police, it is said, were chasing some insurgents who were rushing inside the courtyard and dwelling house of Shri Sukham Yaima Singh by shouting to stop them. The police personnel, it is said, had arrested 2/3 youths from the house of Shri Sukham Yaima Singh and tortured them before putting them to their police vehicles.

4-5. It is said that all the persons present in the house of Shri Sukham Yaima Singh were called out to the courtyard by the police personnel by shouting and abusing them. Late R.K. Laksana and Shri Sukham Indrakumar were also called out to the courtyard. As directed by the police personnel, late R.K. Laksana and Shri Sukham Indrakumar gave their names and addresses to the police personnel. As soon as late R.K. Laksana gave his name, S.I. Pebarn John Singh (respondent No. 6) started beating him in the courtyard against the protest of the family members of Shri Sukham Yaima Singh and others. After beating him, he was taken inside the police vehicle after blind folding him and tied his hands on the back side. After arresting the late R.K. Laksana and taken him in the custody of the police personnel, i.e. S.I. Pebarn John Singh and respondents 7, 8, 9 and 10, made him sit in their police vehicle after his hands were tied on the back side and the police vehicle was proceeded towards Manipur College through

Oinam Leiram, Imphal.

6, It is said that after arresting late R.K. Laksana from the house of Shri Sukham Yaima Singh, he was tortured and taken to Mayang Langjing which is about 12 Kms. from Imphal and in a lonely place where peoples hardly visited, he was shot down by the police personnel, i.e. S.I. Pebam John Singh (respondent No. 6) and respondents 7, 8, 9 & 10 by stating a fake encounter. After that the respondent No. 6, S. I. Pebam John Singh lodged a complaint in the Lamsang Police Station which was treated as O.E. of FIR No. 7(2)/99 Lamsang Police Station u/Ss. 121, 121-A, 307, 302/34, IPC and 25(1-A) Arms Act. The complaint lodged by S. I. Pebam John Singh dated 15-2-1999 reads as follows:

To The Officer in charge Lamshang Police Station Sub:-- Report.

Sir,

Acting on a tip off about holding of a secret meeting in the house of a bail out PLA member namely Km. Sukham Purnimabati Devi @ Tondon aged about 23 years D/o, S. Yaima Singh of Chingamakha Oinam Leirak by some members of band organization called People Liberation Army (PLA in short) including bailed jumped members for carrying out pre-Judicial activities in and around the areas I along with Inspector Shri Lokhon Singh O/C Police Commandos Imphal West District rushed to the above noted area today, i.e. 15-2-1999 at about 10.30 a.m. and cordoned the whole areas up to Chingamakha Kshetri Leikai, I took my duty post to the western side of the Engkhol premises of Miss Purnimabati Devi to intercept any escape at the time of conducting search. At about 11.20 a.m. I saw one youth in the aged group of 30 years moving on foot slowly in a very suspicious manner along with village land adjoining the house of Purnimabati Devi in the western side he was immediately stopped and on verification he identified himself as R.K. Victo Singh about 30 years S/o R.K. Manisana Singh of Haobam Marak Ngangom Leikai and claimed himself an active member of PLA. He was immediately put and arrest. On further questioning he disclosed that 4 (four) members equipped with sophisticated weapons like AK-47 & 56 were camping at Loitang Khunou. As there is very possibility of the said armed PLA activists being shifted at any time, it was considered advisable for me to take follow up action immediately. Accordingly I immediately left Chingamakha Oinam Leirak with the arrested person after informing Inspector Lokhon over the W/T Set and proceeded towards Loitang Khunou, about 150 yards away from the northern end of the Mayang Langjing towards Phumlou I saw 4 (four) youths holding sophisticated weapons proceeding from the eastern side towards the west. At about 11.55 a.m. when we arrived near Mayang Langjing stream all of a sudden some unknown miscreants fired towards the side of our party we all jumped down from the vehicle leaving behind the arrested person in the vehicle and took position on the eastern side behind the KEWA Plants grown over there. There ensued an encounter for about 5/6 minutes. The miscreants managed their good escape towards west, when I checked about the presence of the arrested person and also any casualty in my party. I did not find the arrested

accused person inside our vehicle. On checking the arrested person namely R.K. Victo Singh was found fall with bullet injury on the western road side about 50 ft. away to the south west of our vehicle within minutes he succumbed to his injuries. The death body of arrested Shri R.K. Victo Singh is being got removed to the RIMS morgue.

It is therefore requested that you may kindly take up necessary legal action against those culprits who fired upon our party.

Yours faithfully, Sd/- Dated (S.I.P. John Singh) the 15th Feb. 1999 Police Commando, Imphal West District

7. It is said that the petitioner came to know the arrest of her son, R.K. Laksana @ Vito Singh when she reached her home after visiting the house of Shri Sukham Yaima as she was informed by one Lata Devi and Ibecha Devi of Chinga Makha. Immediately after knowing the arrest of her son, petitioner along with some local people went to the Imphal Police Station where they met one Inspector Ibopishak Singh at his quarter. Inspector Ibopishak Singh made a call through telephone and then informed them that late R.K. Laksana had been taken to other places and would bring back soon. After giving such assurance, Inspector Ibopishak Singh asked the petitioner and others returned to their respective homes. On the way to their homes, the petitioner met her husband and one Shri Kulachandra, a neighbour near Keisamthong and informed that her son had already been killed by the police and the dead body was lying at the morgue at Regional Institutes of Medical Sciences (for short "RIMS"). On getting this news the petitioner went to the Morgue at RIMS and found the dead body of her son, i.e. R.K. Laksana. There were hue and cry from the localities and other peoples of Manipur regarding the killing of late R. K. Laksana Singh by the police commando unit, i.e. respondents 6, 7, 8, 9 and 10, It is also said that Joint Action Committee was formed for taking up necessary actions for seeking justice and also for necessary punishment of the respondent Nos. 6 7, 8, 9 and 10 for killing late R. K. Laksana while he was in their custody. On 16-2-1999 at about 8 P.M. in the office of the then Hon'ble Chief Minister of Manipur, a memorandum of understanding was signed between the Government of Manipur and the said Joint Action Committee that a Magisterial Inquiry would be conducted by one Shri H. Irnocha Singh, District Magistrate, Imphal West, a copy of the said memorandum of understanding dated 16-2-1999 is available at Annexure-A/2 to the present writ petition. On 16-2-1999 post mortem examination on the dead body of late R.K. Laksana Singh was conducted by one Dr. Th. Bijoy Singh, Demonstrator, Forensic Medicine Department of RIMS and he opined that the death was due to haemorrhage and shock resulting from multiple fire arm injuries on the body of late R. K. Laksana Singh, and injury No. 3 alone was sufficient to cause death in ordinary course of nature and the death was homicidal in nature. A copy of the said postmortem report was furnished to the petitioner and is available at Annexure-3 to the writ petition.

8. As part of compliance of the said memorandum of understanding dated

16-2-1999, the Special Secretary (Home), Govt. of Manipur issued a notification being No. 7/1(1)/99-H Imphal the 19th February, 1999 and it reads as follows:

GOVERNMENT OF MANIPUR HOME DEPARTMENT NOTIFICATION Imphal, the 19th Feb., 1999

No. 7/1 (D/99-H: Whereas, a Memorandum of understanding was signed between the Govt. of Manipur and Joint Action Committee of Haobam Marak on the alleged killing of Shri R.K. Laksana Alias Bito Singh s/o R. K. Manisana Singh of Haobam Marak Ngangom Leikai, Imphal West District, Manipur by some Manipur Police personnel on 15-2-1999 at about 11.50 Hrs. at Mayang Langjing Awang Leikai, P.S. Lamsang, Imphal West District, Manipur to conduct a Magisterial Enquiry;

Now, therefore, the Governor of Manipur is pleased to appoint Shri H. Imocha Singh, LAS, District Magistrate, Imphal West District, Manipur as Inquiry Authority to conduct the Magisterial enquiry into the death of Shri R.K. Laksana Alias Bito Singh u/s 176 Cr. P.C. and submit his inquiry report within 15 days from the date of issuance of the Notification along with police report and other relevant evidence/documents to the Government.

The terms of reference shall be as follows:

- (1) To find out the actual causes/circumstances leading to the death of Shri R.K. Laksana alias Bito Singh.
- (2) To find out whether Shri R.K. Laksana Alias Bito Singh was killed by the Manipur Police Personnel by resorting to indiscriminate firing which could be averted or restrained.
- (3) To fix responsibility on the killing/ death of Shri R. K. Laksana Alias Bito Singh.

Sd/- (P. Bharat Singh) Special Secretary (Home), Govt. of Manipur

In pursuance of the said notification dated 19-2-1999, the District Magistrate, Imphal West issued a public notice, which was published in the daily newspapers, calling upon any interested party to come to the office of the District Magistrate, Imphal West and give their affidavits in respect of the said inquiry. The petitioner submitted at least 70 witnesses to give evidence and inquiry was completed on 26-6-2000 and its report was submitted to the Special Secretary (Home), Govt. of Manipur under letter No. DM (IW)/1/192/Con/97 dated 21-8-2000. But the District Magistrate, Imphal West and the Special Secretary (Home), Govt. of Manipur refused to furnish the copy of the said report in spite of repeated requests to the petitioner. The last request to the Special Secretary (Home), Govt. of Manipur for Allowing to receive a copy of the said inquiry was made on 1-3-2001 by filing an application and the Special Secretary (Home), Govt. of Manipur received the said application on the same day. But till today, the petitioner is denied the copy of the report. It is also stated that the report of the

said Magisterial Inquiry u/s 176 of the Cr. P.C. cannot be a confidential document and the petitioner being the aggrieved party has the right to know the contents of the said report and as such, such denial of furnishing a copy of the said report is quite arbitrary, illegal and whimsical and unfair. The application of the petitioner dated 1-3-2001 reads as follows:

To The Secretary (Home), Government of Manipur

Sub:-- Request for allowing to receipt of copy of the enquiry report of District Magistrate, Imphal West submitted on 21st August, 2000 regarding the death of R. K. Laksana of Haobam Marak Ngagom Leikai, Imphal.

Sir,

I the undersigned as the mother of Shri R. K. Laksana who was dead on 15-2-1999 under the custody of State Police Commando Forces, have the honour to request you the following few lines for your kind consideration and necessary action. That, an enquiry was conducted u/s 176 of Cr. P.C. regarding the death of my son Shri R. K. Laksana Singh by the District Magistrate, Imphal West and its report was submitted to your esteem office on 21st August, 2000 under letter No, DM(IW) I/192/Con/97.

I am hereby requesting you to furnish a copy of the said report.

Yours faithfully, Sd/- Dated/Impal (Smt. R. K. (O) Shakhenbi Devi) The 1st March, (Mother of R.K. Laksana Singh Haobam Marak Ngagom Leikai, Imphal

The torture and killing of late R. K. Laksana after arresting him and taking to their custody by the police personnel, i.e. respondents 6, 7, 8, 9 and 10 in a fake encounter is not warranted by any law of the country and the respondents are jointly and severally liable for the illegal action of the respondents 6, 7, 8, 9 and 10.

9. Petitioner, basing on the settled principle of law laid down by the Apex Court, further stated that she is entitled to adequate compensation for causing death to her son, R.K. Laksana by the respondents 6, 8, 9, and 10 after taking him into their custody and also the payment of ex gratia as per the order of the Government of Manipur, i.e. order No. 1(1)/26/97-H (Pt. 2) dated 6th August, 1998 fixing the amount of ex gratia payable to civilian in the event of death due to unjustified police and security force action to Rs. 1,00,000/-.

10. On 21-2-1999 petitioner filed an application to the O.C. Singjamei Police Station for registering a case against the O.C. Inspector Lokhon Singh of Manipur Police Commando Unit and respondents 6, 7, 8, 9 and 10 for killing her son late R.K. Laksana which was registered as FIR No. 36(2)/99 Singjamei P.S. u/s 307, IPC, Section 25(1-B) Arms Act. The English rendering of the application dated 21-2-1999 reads as follows:

To The O.C. Singjamei (Police Station)

Sub:-- Request for registering a case, joint to the following persons.

Sir,

On 15-2-1999 my son R.K. Lakshana Alias Vecto resident of Haubam Marak Ngangom Leikai was killed by a team of Manipur Police Commando under the leadership of Lokhon including P. Jolm at Mayant Langjing after arresting him from the house of his uncle Sukharn Yaima Singh resident of Singjamei Oinam Leirak at about 10 a.m. of the same day.

It is requested to take up a case against the Manipur Police Commando who killed my son.

Complainant Sd/- R. K. Ongbi Sakhenbi Devi RTI Haobam Marak Ngangom Leikai Translated by Ch. Ngongo Singh Advocate. FIR No. 36(2) 44 Singjamei P.S. u/s 307, IPC, 25 (1-B)

Received a similar copy

Sd/- 21-2-1999 at 3.20 p.m.

It is also said that the investigation of the said complaint dated 21-2-1999, i.e. FIR No. 36(2)/99 Singjamei P.S. has been delayed due to the manipulation by the present respondents and also that the investigation is not likely to be held properly by the police personnel of the Manipur State and as such the investigation is required to be conducted by an independent investigating agency, i.e. CBI.

11. Late R.K. Laksana alias Vito Singh was aged about 27 years at the time of killing by the respondents 6, 7, 8, 9 and 10 on 15-2-1999 and he was at the prime of his life. Late R. K. Laksana, it is said, would have earned in his whole lifetime at least Rs. 15,00,000/- by running his business of supplying of porks to the different pork vendors of the Imphal City after collecting pigs from different parts of the State of Manipur and others. But the untimely killing of late R. K. Laksana has deprived of the petitioner and members of her family a sum of Rs. 15,00,000/-. The petitioner, it is said that her husband filed an application to the Manipur Human Rights Commission for killing of late R.K. Laksana by the respondents 6, 7, 8, 9 and 10 and it has been registered as a complaint case No. 5 of 1999, but it is still pending. Having no alternative, this writ petition.

12. Respondents 6, 7, 8, 9 and 10 filed a joint affidavit-in-opposition sworn by the respondent No. 6, Shri Pebam John Singh, S.I. In their affidavit-in-opposition they had admitted that late R.K. Laksana alias Vito was apprehended by them in the course of a surprise raid at Chingamakha Oinam Leikai, Imphal on 15-2-1999 and further stated that after arresting him (R.K. Laksana alias Vito and also stated that), on questioning him he disclosed that he was a member of the unlawful organisation called PLA and some of his associates 4 (four) in number were hiding or camping at a location in Loitang Khunou village and he agreed to lead the party, i.e. respondents 6 to 10 to the said location or hiding place. It is

also stated that on the way before reaching Loitang Khunou village, just after crossing inhabited areas of Mayang Langjing village, respondents 6 to 10 were fired upon by some 3/4 unknown persons believed to be the militants. After stopping their vehicle, respondents 6 to 10 jumped down and returned the fire from their side. The exchange of fire continued for some minutes and thereafter the militants escaped from their ground/position although they pursued them for some distance and when they had returned to their vehicle they (i.e. respondents 6, 7, 8, 9 and 10) discovered R.K. Laksana alias Vito Singh lying dead with gun-shot wounds on his body at some distance away from the place where their vehicle was parked. But surprisingly in their affidavit-in-opposition, they did not deny the serious fact/allegation mentioned in para 7 of the writ petition that "After then he (R.K. Laksana) was taken on the backside of the police vehicle after blind folding him and tied his hands on the back side. Then the police vehicle along with him and some other vehicles proceeded towards the Manipur College through Oinam Leirak." As stated by the respondents 6, 7, 8, 9 and 10 in their affidavit-in-opposition, late R.K. Laksana who was with them was killed in the broad day light. But nothing is mentioned in their affidavit, where was the exact location of the incident, the respective positions of the respondents 6, 7, 8, 9 and 10 at the time of the incident and how R.K. Laksana jumped down in spite of his hands were tied on the backside, who was driving the vehicle, and why actions were not taken for protecting late R.K. Laksana, who was admittedly under their, (i.e. respondents 6, 7, 8, 9 and 10) control and protection and how they pursued the militants equal in number with the police party and armed with sophisticated weapons in the broad day light and how they had escaped and any witness in the said incident? In the absence of detailed facts, the mere cryptic affidavit stating that R.K. Laksana was killed in the said incident in the broad day light in an encounter with the extremists is hard to believe. But respondents 6, 7, 8, 9 and 10 also stated in their affidavit-in-opposition that one fired projectile of AK ammunition was recovered and seized by the Investigating Officer (for short "I.O.") from the dead body of late R.K. Laksana Alias Vito. All those articles recovered and seized by the I.O. were sent to the Manipur Police Forensic Laboratory for examination and report for their findings and opinion. The report of the ballistic experts shows all those fired/empty cartridge cases and projectiles were fired by none of the fire arms held and used by the respondents 6, 7, 8, 9 and 10. Again, it is admitted an fact that the police personnel of the Commando Unit are armed with a good number of AK Rifles. In the absence of materials and particulars in their joint affidavit-in-opposition that such and such AK Rifles having particular bud numbers, etc. had been allotted to the respondents 6, 7, 8, 9 and 10 on the day of the incident, it would not be possible to infer that the fired projectiles of AK ammunition recovered from the dead body of late R.K. Laksana was not fired from none of the fire arms held and used by the respondents 6, 7, 8, 9 and 10, and also that possibility of manipulation in allotting AK Rifles from a good number of AK Rifles in the custody of the police personnel of the commando unit to the respondents 6, 7, 8, 9 and 10 on the day of the incident, i.e. on 15-2-1999 cannot be ruled out.

13. From the report dated 15-2-1999 made by the respondent No. 6 which has been quoted in entirety it is clear that late R.K. Laksana was arrested by the respondents 6, 7, 8, 9 and 10 and was taken to their custody. Meaning of "custody" had been discussed by the Andhra Pradesh High Court (D/B) after considering the case of R.K. Nabachandra Singh Vs. Manipur Administration, in Iqbal Kaur Kwatra Vs. The Director General of Police, Rajasthan State, Jaipur and Others, and held that "It is well settled that "police custody" does not necessarily mean custody after formal arrest. It also includes "some form of police surveillance and restriction on the movements of the person concerned by the police". The word "custody" does not necessarily meant detention or confinement. A person is in custody as soon as he comes into the hands of a police officer." Division Bench of the Orissa High Court in Paramhansa Jadab and Another Vs. The State, had discussed the meaning of "police custody" in the light of Sections 26 and 27 of Evidence Act and was of the view that:

13. It is now well settled that "police custody" for the purpose of Section 26 of the Evidence Act does not commence only when the accused is formally arrested but would commence from the moment when his movements are restricted and he is kept in some sort of direct or indirect police surveillance. In Lay Maung v. Emperor AIR 1924 Rang 173 : 1924 Cri LJ 381 the learned Judge pointed out the danger of construing the expression "police custody" in Section 26 of the Evidence Act in a more narrow technical sense as commencing from the time when the accused is formally arrested. The learned Judge observed that if such a view be taken it will be very easy for the police to evade that section and that the correct interpretation would be that

As soon as an accused or suspected person comes into the hands of a police officer he is, in the absence of any clear and unmistakable evidence to the contrary, no longer at liberty and is therefore in "custody" within the meaning of Sections 26 and 27 of Evidence Act." In Haroon v. Emperor AIR 1932 Sind 1490 : 1933 Cri LJ 129 and Pharho Shahli v. Emperor AIR 1932 Sind 201 : 1933 Cri LJ 147 it was pointed out that even indirect control over the movements of suspects by the police would amount to "police custody" within the meaning of that section. In Gurdial Singh v. Emperor AIR 1932 Lah 609 : 1932 Cri LJ 756 and in In Re: Mannem Edukondalu, also the same principles were emphasised and it was observed that there may be police custody without formal arrest. In this connection some of the observations of the Supreme Court in State of U.P. Vs. Deoman Upadhyaya, , para 12 may also be noticed: The majority of Judges observed:

Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody : submission to the custody by word of mouth or action by a person is sufficient. A person directly giving a police officer by word of mouth information which may be used as evidence against him may be deemed to have submitted himself to the custody of the police officer within the meaning of Section 27 of the Indian Evidence Act.

The Full Bench of the Madras High Court in Ramanuja Mudali Vs. M. Gangan, held that the terms "custody" and "arrest" are not synonymous terms. It is true that in every arrest there is a custody, but not vice versa. A custody may amount to an arrest in certain cases but not in all cases.

14. u/s 439 of the Cr. P.C. a person accused of an offence and in custody can move for bail before the High Court or Sessions Judge. The Apex Court considered the meaning of the terms "in custody" employed in Section 439 of the Cr. P.C. in Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, and held:

7. When is a person in custody, within the meaning of Section 439, Cr. P.C.? When he is in duress either because he is held by the Investigating Officer or other police or allied authority or is under the control of the Court having been remanded by Judicial order, or having offered himself to the Court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the Court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocal quibblings and hide-and-seek niceties sometimes heard in Court that the police have taken a man into formal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubiologies are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody, in the context of Section 439 (we are not, be it noted, dealing with anticipatory bail u/s 438) is physical control or at least physical presence of the accused in Court coupled with submission to the jurisdiction and orders of the Court.

15. Keeping in view of the meaning of custody, according to different High Courts and Apex Court in the above cases, this Court is of the considered view that late R.K. Laksana was very much in the custody of the respondents 6, 7, 8, 9 and 10 at the time of killing him as he was under their control and also he was physically in their hold at the time of the incidence on 15-2-1999.

16. The Apex Court had considered the requirements of protection of right to life and liberty of the citizen against the lawlessness of the State in Sant Bir Vs. State of Bihar, and Mrs. Veena Sethi Vs. State of Bihar and Others, Ultimately it had been settled that the most precious of the precious fundamental rights of the citizen is right to life guaranteed by Article 21 of the Constitution of India. It is the bounden duty of the State under the Constitution to protect the life and personal liberty of a citizen and it shall not be deprived of except according to procedure established by law. The State is liable for the constitutional tort and

the constitutional tort denotes the case in which compensation or exemplary damages, were awarded by the Court when a constitutional right was violated. Such constitutional remedy was made to partake the character of civil actions. The award of compensation was made only in addition to the normal civil remedies. In the case of *Devaki Nandan Prasad Vs. State of Bihar and Others*, the Apex Court laid down the concept of constitutional tort and compensatory jurisdiction and awarded Rs. 25,000/- (Rupees twenty-five thousand) as exemplary costs for harassing the petitioner. The concept of awarding exemplary costs had been considered in *Rudul Sah Vs. State of Bihar and Another*, In the case, the petitioner filed the Habeas Corpus before the Court for his immediate relief and prayed for rehabilitation costs, Medical charges and compensation for illegal detention. After he is released in 1982, the question before the Court was whether in exercise of jurisdiction under Article 32, the Court can pass an order for payment of money, if such order is in the nature of compensation consequential upon the deprivation of fundamental right and decided in the affirmative. Therefore, the State must repair the damage done by its officers to the petitioner's right. It may have recourse against those officers. The two important points decided in *Rudul Shah* (supra) are that (1) violation of constitutional right gives rise a right to a civil liability enforceable in Civil Court and (2) it formulates basis for a theory of liability under which a violation of right to the personal liberty can give rise to civil liability with the extreme concern to protect and preserve the fundamental rights of a citizen. The Apex Court awarded compensation to the under-trial for violations of his fundamental right and also for the failure of the State to discharge its constitutional obligations to the citizen.

17. The Apex Court in the case of *D.K. Basu Vs. State of West Bengal*, held that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and property, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law proceedings. Award of compensation for established infringement of indefeasible right guaranteed under Article 21 of the Constitution of India is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interest shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Court under the public law Jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

18. The right of citizens to life and personal liberty are guaranteed under Article 21 of the Constitution. It is bounden duty of the State under the Constitution to protect life and personal liberty of the citizen. The State is liable to the constitutional tort and constitutional tort did not come in which the compensation

for exemplary damages were not awarded by the Court when the constitutional right was violated. In such circumstances, order was made to partake the character of civil actions. The matter regarding the tortious liability of the State had been arisen and discussed in juristic circle beginning from the case of Devaki Nandan Prasad Vs. State of Bihar and Others, the Apex Court laid down the concept of constitutional tort and compensatory jurisdiction. In that case awarded Rs. 25.000/- as exemplary cost for harassing the petitioner. The Apex Court again, in the case of Sebastian M. Hongray Vs. Union of India (UOI), awarded exemplary cost of Rs. 1 lakh to the wife of the missing persons. The Apex Court awarded compensation under the writ jurisdiction for the constitutional torts against the citizens. This concept of awarding compensation under the writ Jurisdiction for violation of fundamental right had been followed in a number of cases. The constitutional Bench in M.C. Mehta and another Vs. Union of India and others, held that Article 32 Is not only injunctive in ambit but also peremptory in scope. It is not powerless to assist a person while his fundamental right has been violated, it includes the power to award compensation.

19. In Rameshbhai Lallubhai Luni Vs. Devraj Bhalabhai and Others, this Court held that the respondents are liable to pay compensation for their failure to do their duty to protect the petitioner's husband had been taken away by the security forces and shot dead. It may be worth mention that the Apex Court in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, held;

Thus to sum up, it is now well accepted position in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. 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 appropriating 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 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 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.

20. This Court in a number of cases had entertained the claims in public law for compensation for unconstitutional deprivation of fundamental rights to life and awarded compensation for established infringement of indefeasible rights guaranteed under Article 21 of the Constitution of India and also that it is a remedy available in public law since the purpose of public law is not only to civilize the public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Some of the cases are:

- (1) Shri Ranjan Gogoi v. Union of India 1995 (2) GLT 384;
- (2) Smt. Kangujam Ongbi Thoibi Devi Vs. State of Manipur and Others,
- (3) Terarongsen v. Union of India 2003 (1) GLT 218;
- (4) Tarulata Devi v. State of Assam 2001 (2) GLT 419; and
- (5) Kaisiliangmai (Th) v. Union of India 2005 (1) GLT 185 : and other cases.

21. On the contrary, the learned senior counsel appearing for the respondents 6, 7, 8, 9 and 10 had heavily relied on the decision of this Court in M. Chongacha Tangkhul Vs. State of Manipur and Others, It is equally well settled that a judgment should be understood in the light of the fact of that case and no more should be read into it than what it actually says. The earlier judgment of the coordinating Bench is binding to another Bench in a multi-Judge Court in respect of what it actually decides and not what logically followed from it. (Ref: Principle of Sub silentio:

- (1) M/s. A-One Granites Vs. State of U.P. and Others,
- (2) Arnit Das Vs. State of Bihar,
- (3) Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213

The fact in M. Chongacha Tangkhul Vs. State of Manipur and Others, is that the petitioner claimed ex gratia/compensation for the death of his son who was shot when he was sought to be apprehended as he tried to flee. In that case, the son of the petitioner was never in the custody of the security personnel, and also the claim was for payment of ex gratia under the order of the Govt. of Manipur dated 3-7-1989. this Court in that case taking into consideration of the fact of that case had held that the petitioner was not entitled to get ex gratia for the death of his son who is admittedly a member of the banned organisation, i.e. National Socialists Council of Nagaland within the purview of the order of the Govt. of Manipur dated 3-7-1989. In the instant case, this Court is not considering regarding the prayer of the petitioner for payment of ex gratia under the said order of the Government of Manipur dated 3-7-1989 and order of the Government of Manipur dated 6-8-1998. The point now being discussed in the

instant case was never considered by this Court in *M. Chongacha Tangkhul* (supra).

22. From the view of what has been discussed above, I am of the considered view that late R.K. Laksana Alias Vito Singh was in the custody of respondents 6, 7, 8, 9 and 10 at the time of the incidence on 15-2-1999 and they (respondents 6, 7, 8, 9 and 10) are liable for loss of the life of R.K. Laksana Alias Vito Singh who was very much in their protection and custody, and at their own risks they (respondents 6, 7, 8, 9 and 10) had taken R.K. Laksana Alias Vito Singh to Loitang Khunou instead of keeping him in the police lock-up and thereby resulting to the loss of the life of Shri R.K. Laksana Alias Vito Singh at Loitang Khunou on 15-2-1999. Accordingly, I am also of the view that the respondents should be directed to pay compensation to the petitioner and the respondents are jointly or severally liable for the said illegal actions of respondents 6, 7, 8, 9 and 10. For fixing the quantum of compensation, age and capability of earning by late R.K. Laksana Alias Vito Singh have been meticulously considered and fixed a sum of Rs. 3,00,000/- as amount of compensation. Accordingly the respondents are directed to pay the compensation of Rs. 3,00,000/- to the petitioner within a period of 3 (three) months from the date of receipt of this judgment and order. To my mind, the award of compensation of Rs. 3,00,000/- in exercise of public jurisdiction shall substantially meet the ends of justice in the peculiar facts and circumstances of the case. This writ petition is allowed by granting reliefs to the extent mentioned above only. No order as to costs.