
(2009) 09 GAU CK 0050
In the Gauhati High Court
Case No : Writ Petition (C) No. 482 of 2009

Smt. Thokchom Ongbi Memi Devi

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Arms Act, 1959 — Section 27(3)
Criminal Procedure Code, 1973 (CrPC) — Section 154
Penal Code, 1860 (IPC) — Section 302, 307, 326, 34, 505
Unlawful Activities (Prevention) Act, 1967 — Section 17, 20, 25(1B)

Citation : (2009) 1 GLD 117 Supp : (2009) 5 GLT 380

Hon'ble Judges : Ashok Potsangbam, J

Bench : Single Bench

Judgement

Ashok Potsangbam, J.—Heard Mr. Kh. Mani Singh, learned Counsel appearing for the petitioner and Mr. Th. Ibohal Singh, learned Sr. Govt. Advocate appearing on behalf of Respondent Nos. 1, 3 and 4. Also heard Mr. N. Kumarjit Singh, learned Counsel appearing for respondent No. 2

2. The matter relates to an incident which took place on 23.7.2009 in the midst of B.T. Road, Khwairamband Bazar, the biggest and busiest market in Manipur, where the daughter-in-law of the petitioner, Smt. Rabina Devi died due to bullet injury, instantaneously, and one Ch. Sanjit Meitei was said to have been killed on the same day and in the same area in an alleged encounter with the Police commandos attached to the City Police Station, Imphal West District. It is also alleged that some other persons were also injured in the incident.

3. The writ petition has focussed on two issues, the first relates to non-registration of an FIR on an Ejahar dated 24.7.2009 lodged by the husband of the deceased, Smt. Rabina Devi, to the Officer-in-charge, City Police, Imphal West District, Manipur and the another pertains to investigation of the case by an impartial investigating agency like CBI etc. As agreed upon by the learned Counsel appearing for the parties, only the first issue is taken up for

consideration of the Court at this stage.

4. There is no dispute that Smt. Rabina Devi, the mother of a minor child of 2-1/2 years old, who was pregnant for 7 months, died on 23.3.2009 at about 10.30 a.m. as a result of bullet injury. It is on record that a bullet entered into the forehead of the deceased and exited through the back head and death occurred instantaneously. It is also stated that the little child (son) who accompanied his mother at the place of occurrence, was found screaming after the bullet hit his mother and he was picked up by another woman to a safer place. It is further stated that the incident occurred at Khwairamband Bazar while the deceased Rabina Devi was on her way for medical checkup in connection with her pregnancy. After the incident, the husband of the petitioner lodged an Ejahar on 24.7.2009 to the Officer-in-Charge, City police Station, Imphal, who has the Jurisdiction over the place of occurrence. The English translation of the Ejahar dated 24.7.2009 is reproduced hereinbelow:

To

The Officer-in-charge,

The City Police Station, Imphal,

Sub : Report.

Sir,

My wife Mrs. Thokchom Ongbi Rabita Devi was hit by bullet and consequently she died at public place of B.T. Road, Khwairamband Market on Thursday, 23rd July, 2009 at 10.30 a.m. yesterday.

In this regard you are requested to investigate the case and punish the culprit according to established law as soon as possible.

Dated Friday, the 24th July, 2009.

Yours faithfully Sd/- Th. Chinglensana Singh (24 yrs) S/o. Th. Damu Singh
Lamdeng Khunnou Lamsang 24.7.2009.

5. The precise grievance of the petitioner, who is the mother of the informant and the mother-in-law of the deceased Smt. Rabina Devi, is that no FIR has been registered so far on the basis of the Ejahar lodged by her son on 24.7.2009 in connection with the death of Mrs. Rabina Devi. Shri Th. Ibohal Singh, learned Sr. Govt. Advocate, submits that in connection with the Incident, the City Police has registered FIR case No. 75(7)/2009 under Sections 302, 326, 307 and 505, IPC, 17/20 UA(P) A Act and 25(1-B) A Act on the basis of an Ejahar dated 23.7.2009 lodged by one Head Constable, Th. Herojit Singh. The content of the Ejahar is reproduced below:

To,

The Officer-in-charge

City Police station

Imphal, West District Manipur.

Sub : Report.

Sir,

I am to report that today i.e. 23.7.2009 at about 10.30 AM while our police party was conducting frisking and checking near Shamu Makhong below the Fly over one unknown youth coming on foot from the Western side was stopped for frisking. Suddenly, the youth whipped out a small arm and fired towards the police party and fled towards the East on B.T. Road due to his firing one woman was hit on her head and succumbed at the spot. Our party also dove to side for cover and chased the armed youth. Again the youth fired towards us and the public indiscriminately. Having no alternative our police party fires some rounds in the air and chased the youth further.

After running for 300 mtrs., the armed youth ran inside Maimu Pharmacy near Gambhir Singh shopping arcade. The police party surrounded the whole campus and entered Maimu Pharmacy tactically under the command of inspt. H. Devandra Singh of CDO Inspt (W). I along with Rfn No. 1299344 Ng. Toyaima went inside and knocked the door. The door flung open and the armed person open fired towards our party. Immediately our party retaliated and in the retaliatory firing the unknown armed youth was shot dead. One 9mm Pistol was found clutched in his hand.

It is therefore requested to take necessary action against the culprit as per law.

Dated/Imphal 23rd July, 2009

Yours faithfully Sd/- HC Th. Herojit Singh CDO/Imphal (W) District.

6. It is to be noted that in the format prescribed u/s 154 of Cr PC the name of the accused is shown as unknown and the description of the offence is also shown as murder, attempt to murder, assault by members of unlawful organization by using firearm.

7. According to official version, the unknown youth who is alleged to have fired from his small arm causing the instantaneous death of Mrs. Rabina Devi, has subsequently been identified as one Ch. Sanjit Meitei of Khurai, Imphal and official Ejahar maintained that the said Ch. Sanjit Meitei was again killed in an encounter with the police on 23.7.2008, inside a pharmacy at B.T. Road. Thus, the Ejahar of the police, which appears to be an eye witness account, has identified the culprit, i.e. Ch. Sanjit Meitei, who caused the death of Mrs. Rabina Devi, thereby leaving no scope for further investigation to find out as to who actually fired the bullet which hit the deceased Rabina Devi causing instantaneous death.

8. The official version of encounter leading to the death of Ch. Sanjit Meitei is

belied by pictorial exposures published in the Tehelka magazine, a national magazine, with pictures showing from stage to stage as to how the said Ch. Sanjit Meitei came into the custody of the Imphal West Police Commandos and thereafter his dead body. After the pictorial exposures published in the Tehelka magazine, as discussed above, the mother of Ch. Sanjit Meitei filed W.P. (C) No. 77/2009 before a Division Bench of this Court on the ground that Police declined to register an FIR Case on the basis of Ejahar lodged on 7.8.2009. The Division Bench of this Court, after hearing the parties, directed the Officer-in-Charge, City Police, to register an FIR case on the basis of the Ejahar lodged by the mother of the deceased, Ch. Sanjit Meitei and in compliance with the aforesaid direction of the Court dated 25.9.2009, FIR Case No. 82(8)/2009 u/s 302/34, IPC and Section 27(3) of Arms Act was registered showing some personnel of police commandos as accused in the case, in the format prescribed u/s 154, Cr PC.

9. The facts unfolded with pictorial exposures in Tehelka magazine with regard to the killing of said Ch. Sanjit Meitei would, prima facie, establish the possibility that Ch. Sanjit Meitei was not killed in the encounter as alleged by the respondent and it was a case of custodial killing as observed by the Division Bench in its order dated 25.8.2009. Mr. Kh. Mani Singh, learned Counsel appearing for the petitioner submits that 7 policemen/riflemen including the author of the FIR case No. 75(7)/2009 i.e., Head Constable, Sri Th. Herojit Singh, have now been suspended on suspected complicity with the incident of 23.7.2009, as discussed above. Thus, there is a strong possibility of complicity of these 7 policemen/riflemen in causing the death of Mrs. Rabina Devi as well as Ch. Sanjit Meitei. Mr. Th. Ibohal Singh, the learned senior Government Advocate, has fairly admitted the fact of suspension of the aforesaid 7 Policemen/Riflemen but he declined to give reason for the suspension of the aforesaid policemen/riflemen, for obvious reasons.

10. It is a settled position of law that only the registration of an FIR can set the criminal investigation of a case into motion. The Ejahar lodged by suspended policemen on 23.7.2009 on the basis of which, FIR case No. 75(7)/2009 was registered, leaves no scope to any investigating agency to identify and book other culprits who could have caused the death of Smt. Rabina Devi, inasmuch as the Ejahar has already identified the unknown youth, as Ch. Sanjit Meitei, who is alleged to have fired from his small arm causing the death of Smt. Rabina Devi. By the turn of events and subsequent revelation with pictorial exposures, there is a strong possibility that the FIR case No. 75 (7)/2009 was founded on incorrect/false information. None of the respondents have filed any affidavit except the respondent No. 2, the DGP of the State, who maintains in his affidavit that Smt. Rabina Devi was not killed on 23.7.2009 by the police personnel of Manipur Police Commandos thereby shielding the scope of investigation beyond the official version and the stated stand of the DGP. The Court is constrained to observe that no body is above the law and the investigation of the case to find out the real culprit(s) cannot be scuttled by refusing to register an FIR on an Ejahar lodged by the husband of the victim.

11. Mr. Ibohal, the learned Government Advocate pressed into service a case reported in T.T. Antony Vs. State of Kerala and Others, and submits that there cannot be any second FIR and fresh investigation on receipt of subsequent information in respect of the same cognizable offence with regard to the same occurrence. In the aforesaid case, a case was registered under crime No. 353 and 354 of 1994 and subsequently, after three years, on the basis of a report of a Commission of inquiry, Crime No. 268 of 2007 was registered i.e. after three years of registration of the first case. The accused in the first case was discharged and the assaulted/victims became accused in the subsequent case, perhaps, due to change of regime in the Government. In the aforesaid case, the Apex Court held that in truth and substance, the essence of the offence in the 1994 case, as well as the 1997 case, is the same. Therefore, the facts and circumstances of the aforesaid case is not applicable in the present case. In the instant case, one day after the incident had occurred, an Ejahar was lodged without naming any person as the culprit. But the explanation given by the Government to refuse registration of the FIR case on the ground that an FIR case has already been registered on 23.7.2009 on the basis of the Ejahar lodged by one of the police commandos suspected to be involved in the incident, subsequently suspended, is not very inspiring . The truth and substance of the two cases are absolutely different.

12. In view of the above discussion and on facts and law, this Court is of the opinion that it will be in the interest of criminal administration of justice that an FIR is registered on the basis of the Ejahar lodged by the husband of the deceased Rabina Devi and this cannot be taken to be a Second FIR. Accordingly, in exercise of plenary and equitable jurisdiction of this Court, the respondent Nos. 4 is directed to register an FIR case immediately on the basis of Ejahar dated 24.7.2009 lodged by the husband of the deceased Rabina Devi and proceed the investigation in accordance with law. It is also made clear that the respondent Nos. 2 and 3 shall ensure that the respondent No. 4 complies with the direction given by this Court for registering an FIR immediately. This disposes of the first issue raised in the case.