

(2007) 01 AHC CK 0193
In the Allahabad High Court
Case No : Criminal M.W.P. No. 5955 of 1998

Smt. Usha Devi and Others	Vs	APPELLANT
Union of India(UOI) and Others		RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 302, 307, 323, 406, 409

Citation : (2007) 1 ACR 864

Hon'ble Judges : R.C. Deepak, J;M.K. Mittal, J

Bench : Division Bench

Advocate : B.R. Yadav and Arun Prakash Singh, for the Appellant; Sanjay Singh, S.S.C. and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.C. Deepak, J.—The present criminal misc. writ petition relates to the controversial killing/death of Arvind Kumar Gaur son of late Sri Ram Lolarak resident of village of Sarkoni Bazar, police station Jalalpur, district Jaunpur. There are two versions in regard to his death. The version of the police is that he was killed in police encounter and the other version is that he was eliminated under a planned conspiracy of the police.

2. The reliefs sought in the writ petition are to transfer the investigation of the killing/death of Arvind Kumar Gaur to some other independent agency and to provide adequate compensation to the Petitioner, as her husband has been killed by the police personnel in contravention to the Article 21 of the Constitution of India.

3. The brief facts in regard to the police encounter, as disclosed in Annexure-7 to the writ petition, are that on 6/7.10.1998 R. K. Singh, the Station Officer of Police Station Line Bazar alongwith Sub-Inspector Vijay Raj Singh, Sub-Inspector Raj Hans Shukla, C.P. Vinod Kumar Singh, C.P. Surendra Singh and C.P. Shiv

Mangal Yadav with the official jeep driven by C.P. Sudama Yadav, in order to effect the arrest of the wanted criminals, reached mohalla Kharkera and informed Vijay Kumar Singh Bhadoria, Station Officer of Police Station Zafarabad to reach there, who alongwith C.P. Yogendra Prasad Tripathi with an official jeep driven by C.P. Ram Avtar Yadav reached there. It is further alleged that at about 23.05 hours one motorcycle driven by one and the other was sitting behind him, crossed the assembly of the police personnel ; that the person sitting behind alleged to have opened fire hitting the right palm of C.P. Shiv Mangal Yadav and C.P. Vinod also sustained injuries; that in defence the police party resorted to fire causing death to an unknown miscreant, later on disclosed as Arvind Kumar Gaur referred to above and it is alleged that .32 bore country made revolver and .315 bore C.M.P. were recovered from him and in this regard a recovery memo was prepared, a copy of which is appended as Annexure-7 to the writ petition. The person driving the motorcycle alleged to have escaped and the cases as Case Crime No. 349 of 1998 u/s 307, I.P.C. and Case Crime No. 950 of 1998 u/s 25, Arms Act were registered. The post-mortem on the body of the deceased was conducted, a copy of the post-mortem examination report is filed as Annexure-6 to the supplementary-affidavit.

4. On the other hand, the case of the Petitioner Smt. Usha Devi, wife of Arvind Kumar Gaur above named deceased is that the story of encounter set up by the police is false and concocted. The fact in regard to his death is that the police of police station Jalalpur had falsely implicated him in a case punishable u/s 25, Arms Act registered as Case Crime No. 386 of 1993. The deceased had filed a Complaint Case No. 978 of 1997 against Ram Singh, the Station Officer of Police Station Jalalpur and certain others under Sections 323, 406 and 409, I.P.C., a copy of the complaint is appended as Annexure-12 to the writ petition wherein the accused were summoned. The summoning of the accused in the complaint annoyed the police officials of the said police station and the police personnel started harassing him and his family members, as a consequence the deceased made an application dated 3.6.1997 and 25.11.1997 (Annexures-13 and 14 to the writ petition) to the Superintendent of Police, Jaunpur, alleging therein that the police is trying to kill him in fake encounter. It is further alleged that on 6.10.1998 at about 9.30 p.m. Arvind Kumar Gaur was sitting at Zafarabad Railway Station to board the train. The police personnel of the police station Line Bazar and Zafarabad came there and tried to catch hold of him. In order to save his life, he entered the railway quarter of Santosh Kumar Giri, the then assistant station master, Zafarabad wherein Ramesh Chauhan and Anil Kumar Singh were sitting. The police took Arvind Kumar Gaur away from the quarter and killed him and projected a false case of encounter. Just thereafter, the Petitioner/the widow of the deceased was informed by Ramesh Chauhan and others in regard to so taking away of her husband by the police personnel. She immediately informed the District Magistrate, Jaunpur through Fax at 23.37 hours and Superintendent of Police, Jaunpur, the Hon"ble Chief Minister at 23.47 hours (Annexures-1 and 2 to the writ petition respectively), and made application to Superintendent of

Police, Jaunpur on 9.10.1998 (Annexure-3 to the writ petition). The killing of the deceased was published in the newspaper. The copies of the news item published in "Sahara" dated 13.10.1998 and in "Gaandeev Samachar" dated 14.10.1998 are filed with the writ petition. Santosh Kumar Giri filed an affidavit dated 14.10.1998 before the Chief Judicial Magistrate, Jaunpur (Annexure-9 to the writ petition). Similarly, Ramesh Chauhan filed an affidavit therein (Annexure-11 to the writ petition). The Petitioner made an application to the Chairman, Human Rights Commission on 10.10.1998 (Annexure-10 to the writ petition) and subsequent application dated 18.10.1998 (Annexure-16 to the writ petition) to the Chairman, Human Rights Commission that the police is trying to eliminate her. The Petitioner made an application u/s 156(3), Cr. P.C. for registration of the case of murder of her husband and a case as Case Crime No. C17 of 2000 u/s 302, I.P.C. was registered against the concerned police officers. Since the police personnel were accused in the case, she made an application to the Chief Judicial Magistrate, Jaunpur, that the matter be directed to be investigated by some other Agency, as a consequence, the Chief Judicial Magistrate, Jaunpur, vide order dated 27.7.2000 directed the C.B.C.I.D. to proceed with the investigation, but inspite of this order, the investigation was not transferred to the C.B.C.I.D., as is evidently clear from paragraph 5 to the counter-affidavit dated 22.3.1996 of Satish Kumar Sinha, the Station Officer of Police Station Line Bazar, but R. N. Pandey of Police Station Line Bazar conducted the investigation and he submitted the final report No. 20 of 2006 on 18.3.2006, a copy of the final report is appended as Annexure-3 to the counter-affidavit as disclosed under paragraph 11 to the said counter. The record further reveals that a Magisterial inquiry was also made by the City Magistrate, Jaunpur. A copy of the inquiry report dated 29.1.1999 is filed as Annexure-3 to the counter-affidavit.

5. We have heard Sri B. R. Yadav, learned Counsel for the Petitioners, Sri Sanjay Singh, learned Counsel for the Union of India, learned A.G.A. for the State and perused the record.

6. There is controversy in regard to the death of Arvind Kumar Gaur. The police projected that he was killed in a police encounter whereas the Petitioner Smt. Usha Devi, the widow of the deceased vehemently denies the story of encounter, but submits that her husband was killed under a planned conspiracy of the police and in order to save the skin of the police, the police has given the shape of encounter of his murder.

7. The record indicates that the deceased was suffering from some criminal history, but he had made a complaint against the Station Officer and other Police personnel of the Police Station, Jalalpur and the police personnel were summoned in the complaint case. Prior to his death, he had made certain complaints to the higher authorities apprehending him to be killed in police encounter. Not only this, the affidavit of Santosh Kumar Giri and Ramesh Chauhan indicate that he was taken away by the police from the railway quarter of Mr. Giri and soon thereafter certain telegrams and fax messages were sent by

the Petitioner to the higher authorities in regard to such taking away of her husband by the police expressing apprehension that he would be killed. These circumstances also raise a serious doubt in regard to the mode and manner of the killing of the deceased. The surprising and alarming circumstances of this case are that in spite of order of Chief Judicial Magistrate for transferring the investigation of the murder/the death of the abovenamed deceased to C.B.C.I.D., the order was not given effect to and the local police made the investigation against whom there were allegations to have killed the deceased.

8. We have taken into account the entire facts and circumstances of the case and we are of the view that a fair and an independent investigation in regard to the death of Arvind Kumar Gaur is necessarily required into the Case Crime No. C17 of 2000 u/s 302, I.P.C., Police Station Line Bazar, district Jaunpur. Consequently, we direct that the investigation into the above case crime number shall be entrusted to C.B.C.I.D. forthwith, who shall proceed expeditiously with the investigation and submit its report before this Court within three months.

9. The case shall be listed before us on 21st April, 2007.

10. The final report No. 20 of 2006 dated 18.3.2006 even if accepted and the Magisterial inquiry report dated 29.1.1999 of the City Magistrate shall be kept in abeyance and shall not be given effect to till further order of this Court. In the interest of justice and equity both, we are of the opinion that a reasonable interim compensation be also provided to the Petitioner/the widow of the deceased and, therefore, we direct the Secretary, Home, Government of Uttar Pradesh (Respondent No. 2) to pay a sum of Rs. 1 lac as an interim compensation to the Petitioner within a period of six weeks from the date of presentation of a certified copy of this order through the District Magistrate, Jaunpur, by way of account payee cheque.

11. Let a copy of this order/ judgment be furnished to the learned A.G.A. within three days free of cost for producing the same before the Secretary, Home, Government of Uttar Pradesh-Respondent No. 2 for compliance and learned A.G.A. shall furnish the compliance report before this Court on the date fixed.