
(2014) 02 GAU CK 0015
In the Gauhati High Court
Case No : WP (C) No. 2519 of 2006

Smti. Sufia Begum

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 46(3)

Citation : (2014) 02 GAU CK 0015

Hon'ble Judges : Prasanta Kumar Saikia, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : S.K. Medhi, Advocate for the Appellant; S. Sarma, GA, Assam for the State, Advocate for the Respondent

Judgement

Prasanta Kumar Saikia, J.—This proceeding has been initiated seeking compensation by one Smti. Sufia Begum for alleged illegal killing of her husband by unlawful police firing.

2. Heard Mr. S.K. Medhi, learned counsel for the petitioner. Also heard Mr. S. Sarma, learned State counsel appearing for the State respondents.

3. The facts necessary for disposal of the present proceeding which have emerged from petition under Article 226 of the Constitution of India, in brief, were that the husband of the petitioner, aged about 35 years, was painter by profession. He earned name and fame as painter for which his service was sought for by the people from different parts of, the State of Assam. During the time under consideration, he was too busy with his work since Viswakarma Puja was not very far from such time.

4. On 12.09.2003, at about 11:00 a.m. an unknown man came to the house of petitioner and met her husband and one Samsul Haque (nephew of her husband) and requested them to do some painting work. Her husband and Samsul Haque went with that man stating that they would be late in returning home on that

day. However, her husband did not return home even for next 2 days. In the meantime, one of her neighbors informed her that he came to know from the local news paper that her husband was killed by the police.

5. On coming to know of her husband being killed, on 14.09.2003, she went to the Guwahati Medical College & Hospital wherefrom she went to the Bharalumukh Police Station and requested the police to handover the dead body of her husband for cremation. Since she learnt that her husband was killed by the police without any rhyme and reasons, she also approached the Assam Human Rights Commission on 25.09.2003 having filed complaint seeking justice.

6. On receiving such complaint, the Assam Human Rights Commission registered the case vide AHRC No. 4684/2003 and in due course, it obtained a report from the Superintendent of Police, City, Guwahati. In the meantime, the Assam Human Rights Commission asked the petitioner to furnish the para-wise comment on the report of the Superintendent of Police, City, Guwahati vide its letter dated 10-08-2004. Accordingly, the petitioner submitted para-wise comments on the report of the Superintendent of Police, City, Guwahati.

7. On the receipt of the para-wise comments of the petitioner on the report of the Superintendent of Police, City, Guwahati, the Assam Human Rights Commission disposed of the case by its order dated 28.02.2006 on holding that in killing the husband of the petitioner, the police authority did not violate any human right.

8. The relevant part is reproduced herein below:-

The Complainant Smti. Sufai Begum, wife of the Late Md. Abdul Haque under Fatasil Police Station of Guwahati City, has alleged that on 13.09.2003, at about 11 a.m. an unknown person went to their house and called her husband and nephew for painting work. They went but her husband did not return that night. According to the complaint, while her husband was returning at night the police thought him to be a dacoit and killed him. Now she is living with her minor children.

After receiving the report from the Superintendent of Police (City), Guwahati, and the comments of the complaints we directed the Director (investigation) to get the matter enquired into. The S.P. (Investigation) has submitted his report dated 03.08.2005, he came to the conclusion that violation of human rights of the deceased could be substantiated as the firing was due to police encounter with a gang which is also supported by the local witnesses. The S.P. (Investigation) examined the local witnesses who saw recovery of one 9mm pistol with four rounds of live cartridges along with four empty cartridges from the place of occurrence.

We have perused the report of the S.P. (Investigation) and evidence recorded by him and also the documents.

We accept the report of the S.P. (Investigation) and hold that there was no

violation of human rights. Inform the Sr. Superintendent of Police (City) Guwahati and the complainant.

Send a copy of the order to the Director (Investigation) of the Commission.

The case is closed.

(S. MAHANTA) Member

(JUSTICE SN PHUKAN) Chairperson

9. Being dissatisfied with the order, passed by the Assam Human Rights Commission, Guwahati, the petitioner had approached this court having filed the present proceeding seeking quashing of the report of the Human Rights Commissions and also seeking on compensation for unlawful killing of her husband.

10. On receipt of the proceeding, this court issued notice to the respondents. The respondents entered appearance and contested the proceeding stating that on the night in question, Bharalumukh Police Station got the information that some miscreants were doing preparation for committing dacoity in places under its jurisdiction and as such, they started patrolling in that area.

11. On that day, at about 2:30 p.m. a group of 5 to 6 miscreants were seen loitering in T.R. Phukan Road, Bharalumukh. Therefore, police asked those persons to surrender to the police. But those persons instead of surrendering fled the scene. However, while retreating from such place, they opened fire at the police patrolling party for which the police party on patrolling duty had to retaliate in self defence.

12. In that process, 2 miscreants sustained bullet injuries while other miscreants escaped under the cover of darkness. Immediately, the injured miscreants were taken to the hospital who has succumbed to the bullet injuries. According to police, a pistol with loaded four rounds of cartridges was recovered from one of the stained miscreants. Some used cartridges too were recovered from such place.

13. In due course, an FIR was submitted to the police authority on the basis of which Bharalumukh PS case No. 216/03 was registered and Arms and ammunitions which were recovered from the PO and which were seized soon thereafter were sent the FSL for its opinion. The FSL in its report opined that pistol sent to it was a factory made serviceable pistol and one of the used cartridges was fired from such a pistol.

14. Since two of the miscreants had expired in the incident aforementioned and since other miscreants could not be identified, the I.O. in the case of Bharalumukh PS case No. 216/03 concluded the investigation closing the aforementioned case. The State respondents, therefore, urge this court to dismiss the proceeding.

15. This court during the course of the proceeding came to the finding that a good number of disputes of question of facts are there and as such, the matter need to be enquired into by the District Judge, Kamrup to ascertain the veracity of the claims, made by the parties, more particularly, to ascertain if the husband of the petitioner was killed without being any unlawful excuse vide order dated 22.05.2007.

16. In pursuance to such directions, the District Judge, Kamrup had conducted an enquiry and allowed both the parties to produce evidence in support of their respective case and also allowed them to produce documents. Thereafter, by its report dated 03.12.2007, the learned District Judge concluded that the claim of the opposite parties (the State of Assam) that the husband of the petitioner and another person were killed when police had to open fire in self defence is doubtful and suspicious. Learned District Judge also found the claim of the petitioner equally suspicious.

17. The relevant part of the investigation report is reproduced below:-

But it is quite not understandable as to why a painter would go out for painting works at about 11:00 a.m., instead of leaving in the early morning hours at around 7/8 a.m. which appears to be the usual and well-known timing for the day-labourers either to go for or start works as day-labourers in painting or other such works. The fact that the deceased was a day-labouring-painter had been told by the PW-3 (Ainul) who had stated that the deceased was then doing day-labouring works at some shops on the eve of the then-ensuing Viswakarma Puja.

Although the PW1 stated that her husband sometimes made late in coming back home after doing painting works during the days of some festivals and on the said day also he told her that he might be late, it is not believable that the deceased made late so much so that it became almost the dead of the night when he (Abdul Hoque) was shot dead at around 2:30 a.m. by the police near the T.R. Phookan Park at Bharalumukh, Guwahati.

It is pertinently noteworthy herein that despite the fact of the death of said Samuel Hoque also in the firing operation not being whispered by any of the three PWs including the PW1 (petitioner), for the reason best known to them, it remains that said Samsul also died together with Abdul Hoque in the police firing on the spot. What did they do at the place of the occurrence at around 2:30 a.m. remains to be answerless question as it is not on record that the place of incident falls on their way homes in order to presume that they were then proceeding or about to proceed to their houses after retuning form painting works at Mirza or Dhupdhara or at some other place, or the ill-fated spot happens to be a bus or other vehicle stoppage/terminus where they got down from some vehicle enroute to their homes.

Yet another interesting aspect is that the petitioner went to the police station on the next following day in search of her husband before any information came to her after her husband did not return at that night. What prompted her to go to

the police directly without going near said Samsul Hoque who accompanied her husband when she had no knowledge by then that Samsul died in the previous night, is also enigmatic.

But there was none except for the concerning police personnel to vouch for the fact as to who fired first, if both the parties had exchange of firings, or for the fact that there was no firing from the side of the two deceased for being retaliated by the police. However the question remains as to why the two independent witnesses (PWs No. 5 & 6) could not say that they were shown a pistol with some ammunitions by the police on the spot where they were taken by them (police) immediately after the occurrence and their respective signatures were obtained on the seizure list concerned. While the PW 5 (T.R. Phookan) stated that his signature was taken by he could not say if anything was seized by the Police, the PW 6 (J.N. Bharati) deposed that his signature was taken by the police told him that some arms were recovered but he did not know what arms were seized. The other two witnesses of the alleged seizure, viz., Basudew Deuri and Nilam Das, vide the Ext. Gha (seizure list copy) were not examined for the OPS. There was no finger-print (impression) found as per the FSL report, upon the said pistol, as so stated by the DW 2 (the I.O., Taher Ali) for which it could not ascertained as to who fired from the pistol, if that pistol was used at the fateful time and place in firing there from. Thus, the seizure of the arms and the ammunitions appears to be shrouded with doubts and the resultant doubt also arises regarding the alleged miscreants including the two deceased who were gunned down by the police for being alleged dacoits or such other were gunned down by the police for being alleged dacoits or such other wrong-doers purportedly taking aid u/s. 46(3), Cr.P.C. as per which the police can cause the death of a person being accused of an offence punishable with death or with imprisonment for life.

The case for the OPs on contest is also found therefore to be a suspicious one.

The facts leading to the death of the petitioner's husband as a result of the firing incident on 12/13-09-03 are thus found out which are hence submitted in the form of the instant report before the Hon"ble High Court for which they are worth.

18. The report of the learned District Judge was disputed by both the parties before us. According to them, the report is self contradictory and therefore, unacceptable. In that connection, it has been pointed out that while the District Judge, Karmup, at one point of time, did not believe the claim of the petitioner but at another point of time, he also disbelieves the version put up by the State respondents vis-a-vis death of the husband of the petitioner.

19. We have considered the rivals submissions having regard to the report in question as well as the evidence on the basis of which such report was rendered. On such perusal, we have found that at some point of time, the learned District Judge found the conduct of the husband of the petitioner to be very doubtful. On

the other hand, he also disbelieves the claim of the State respondents that police had to open fire in self defence killing two of the miscreants. A bare perusal of the report, the relevant part of which has already been reproduced before, makes us position more than clear.

20. Further, some of the vital aspects of the dispute in question were also not addressed to by learned District Judge which makes the report incomplete. In the result, we have no other option but to reject the report and to refer the matter to the learned District Judge, Kamrup to submit a fresh report on the dispute under scrutiny. It may be stated that the parties will be at liberty to adduce additional evidence, both oral and documentary, if they so desire.

21. It is needless to say that the opponent would have the right to cross-examine the witnesses, so produced. On the conclusion of the inquiry, conducted in accordance with law, learned District Judge, Kamrup would submit his report within 3(three) months from the date of receipt of the copy of this order along with relevant documents.

22. Registry would immediately send copies of the entire proceeding together with a copy of this order to the learned District Judge, Kamrup for his doing needful as indicated above.

23. List this matter after the receipt of the report from the District Judge, Kamrup, Guwahati.