

(2005) 06 GAU CK 0055

In the Gauhati High Court

Case No : Writ Petition (C) No. 82 (SH) of 2001

S.P. Mahanta

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 167
Penal Code, 1860 (IPC) — Section 302

Citation : (2005) 4 GLT 211

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : S.P. Mahanta, for the Appellant; B. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This case which has come to light at the initiative of a practicing advocate makes shocking revelation of violation of constitutional mandates as enshrined in Article 21 of the Constitution of India at the hands of the State instrumentalities. But for the intervention and timely action on the part of the advocate concerned, who is the Petitioner in this proceeding, the person concerned who was imprisoned by the State authorities for about 14 years under wrong identity, would not have seen the light of the outside world and would possibly have died a pathetic death.

2. The Petitioner is a legal practitioner who was appointed by the Court of Additional Sessions Judge, Shillong for defending one Sri Deep Charan Kaipang, an accused in Sessions Case No. 5/2000 (State v. Deep Charan Kaipang). He found from the records that the accused was sent to the mental home in the year 1995 on the basis of the report furnished to the effect that the accused had mental disorder. However, for the first time on 18.8.2000, during the course of the trial and on production of the accused from the jail hazot, the trial court noticed the abnormality and incapacity of the accused to understand the

proceeding. Under those circumstances the Trial Court recorded in its order that the accused was not in a position to be tried and he needed immediate medical attention. The Superintendent, District Jail was directed to examine the accused through a qualified medical officer immediately and to furnish the report on or before 1.9.2000.

3. It will be pertinent to mention about the case in which the accused was involved. The FIR. lodged on 20.4.92 on the basis of which the criminal case was registered reads as follows:

To The Officer incharge, Laithumkhrah Police Station, Shillong,

Sir,

I have the honour to report about that (Today) (Date 20.4.92) around 5 PM while my brother Doyalian Kaipang was busy preparing curry at my room he was stepped by Depcharan Kaipang of Village Taidu, District South Tripura P.O. Taidu. As a result of which he died in Civil Hos pital in Shillong just after he was taken to Hos pital. I therefore, request you to kindly to take neces sary action.

Yours faithfully Rawgii Kaipang Date:20.4.92 Written by Sitesh D/Barma Son of Hemanta Devbarma Village-Naba Sardar Para P.O. Jampai Jala P.S. TakarJala Dist-(W) Tripura

4. It was on the above basis, Shillong PS Case No. 390 (4) 92 u/s 302 IPC was registered. It appears that the accused Deep Charan Kaipang was arrested and forwarded to the Chief Judicial Magistrate, Shillong by forwarding report dated 21.4.92 and as per the proceedings of the Trial Court, he was in custody since then. During the course of trial, the aforementioned order dated 18.8.2000 was passed directing examination of the accused by a qualified medical officer. On 1.9.2000 the accused was once again produced alongwith the medical report dated 26.8.2000 prepared by the Senior Medical and Health Officer, District Jail, Shillong. As per the report the accused was stated to be not abnormal. However, the learned Additional District Judge could not believe the report seeing the apparent abnormal behaviour of the accused in the Court room. In such a situation he passed an order directing the District Superintendent of Jail to take immediate necessary step to produce the accused before a Medical Board consisting of atleast one pshychopathist and to get him examined thoroughly. The report thereof was directed to be submitted on or before 15.9.2000. Considering the fact that the accused had been languishing in jail custody without any prayer for bail, the advocate concerned who is the Petitioner in the instant proceeding was appointed as the defence counsel of the accused.

5. On 15.9.2000, the medical report was submitted. As per the said report the accused was examined on 12.9.2000 at Civil Hospital and the Board which was constituted for the purpose found that the accused was not responding to verbal cues and his behaviour was inappropriate and was not fit to stand trial. The Board recommended the treatment of the accused at Meghalaya Institute of

Mental Health and Neurological Science (MIMHANS). The learned Additional District Judge, on the basis of the report and the prayer made by the engaged defence Counsel issued direction for medical treatment of the accused in the said institute and to submit report every fifteen days informing the progress of treatment of the accused.

6. The learned Additional District Judge noticing the fact that the accused had been in jail custody for more than 8 years, issued a direction to the Superintendent of Police, East Khasi Hills to send urgent message to the relatives of the accused informing the present state of affairs in respect of the accused. The criminal proceeding was kept in abeyance till recovery of the accused.

7. On 12.2.2001, the MIMHANS submitted the final report recommending treatment of the accused at Down Town Hospital, Guwahati and the Trial Court after obtaining the report of the Director of Health Services, Meghalaya, issued an order on 14.3.2001 directing treatment of the accused at Down Town Hospital, Guwahati fixing the matter on 28.3.2001 for further report.

8. On 10.4.2001, the accused was produced in the court and to the much relief of all concerned, it was found that the accused could talk normally free from insanity and was fit to stand the trial. The accused on being questioned by the Court disclosed that his name is Rusith D. Sangma, son of Moren D. Marak and ordinary resident of Gulpani, P.O. Baghmara, Williamnagar, in the district of South Garo Hills. He also denied his involvement in the criminal case. He stated that he never stayed at anyplace in Shillong. As per his statement, he had been brought from Tura Jail where he was languishing for 7 years and thereafter, in Shillong Jail for the last 7 years. Thus, altogether he was behind the bar for long 14 years without any trial. He also made the revelation about his wife and daughter namely Smt. Miyariana Sangma and Smt. Jbis Sangma respectively. Some of the statements made by Sri Sangma on 16.4.2001 are quoted below:

I am a married man and my wife's name is Smt. M. Sangma out of our wedlock a daughter was born and my daughters name is Smt. Jbis Sangma and my daughter will be aged about 16 years now. I was caught by police at Baghmara in connection with theft case, alleging that I use to smuggle goods between India and Bangladesh. I do not know the exact year but it was 14 years back when I was caught. When I was caught police did not get anything to my possession. Thereafter I remained in Tura Jail for about 7 years. While I was in Tura Jail for 7 years I was never taken to the Court even once also. While I was at Tura Jail none of my family members came to see me. My wife did not know that I was in jail. Apart from the address of my wife I do not have any other relatives.

...I was brought to Shillong jail by the police from Tura Jail. And I was taken to Tura Jail now about 7 years. Now altogether 14 years I am in jail...I was never informed by the police for what reason I was kept in Shillong jail. I was never been a sick person. I could not speak after staying at Shillong jail and I feel that something is blocking my throat. I have taken lot of medicine as per the

prescriptions of doctors. I was taken before the doctor once only. The medicine prescribed by doctor, I am taking now. I do not have any problem now. (Emphasis added)

9. With the above shocking revelation of confining said Sri Rusith D. Sangma under wrong identification in place of the accused Sri Deep Charan Kaipang, the Trial Court took a serious view in the matter and directed the SP, East Khasi Hills to make contact with the family members of Shri Sangma and to bring them to the Court on the next date. On 16.4.2001, the accused was examined on oath. While disclosing his identity as aforesaid, he also stated that he was caught by police at Baghmara border in connection with a theft case, alleging that he was involved in smuggling goods between India and Bangladesh. He stated that he was in jail custody for 7 years and was confined to Tura Jail from where he was brought to Shillong Jail where he remained for last 7 years.

10. The statement of the Investigating Officer was also recorded on oath and he could not identify the accused. In such a situation, the Superintendent of Tura Jail was directed to be present before the Court alongwith the Jail Entry Register and Hazat Register and all other related documents in connection with the case of Sri Sangma. The Superintendent of District Jail, Shillong was also directed to be present with all related documents in connection with the criminal case. Further direction was issued to the SP, South Garo Hills to verify the address as was given by Sri Sangma and to comply with the earlier order directing production of the family members of Sri Sangma.

11. On 23.4.2001, the SP South Garo Hills furnished a report dated 21.4.2001 confirming that Sri Rusith D Sangma was born and brought up at Gulpani under Baghmara PS, Garo Hills. As per the report, his relatives could not come to the Court due to poor financial condition. The learned Additional District Judge, in such a situation issued direction for bringing the family members at the State expenses. Further direction was issued to SP, South Garo Hills as to whether Sri Sangma had any case in any of the courts during the last 14 to 20 years. It was noted that the identification mark shown in the Jail Register in respect of the accused was not present on the body of the alleged accused.

12. Apart from the above developments, the statements of the IO followed by the statements of the Superintendents of Jail, Shillong and Tura were recorded. As per the statements of the Superintendent of Tura, he was not in a position to disclose anything about Sri Sangma inasmuch as all the documents including the Entry Register had been destroyed in the year 1989 due to cyclone.

13. It is in the aforesaid fact situation, the instant writ petition was filed by the engaged defence counsel in the year 2001 claiming adequate compensation for such illegal detention of said Sri Sangma on the basis of wrong identification with the under trial prisoner Sri Deep Charan Kaipang.

14. While entertaining the writ petition by order dated 25.4.2001, learned State Counsel was directed to obtain instruction. By order dated 1.5.2001, the records

of the criminal case referred to above were called for. Adequate provision for stay of the relatives of Sri Sangma at Shillong was also ordered to be made. On perusal of the records of the Trial Court, this Court vide order dated 2.5.2001 noticed that the alleged accused had been in Shillong Jail from 29.4.92. It was also noticed from the records that the accused was detained in Mental Jail, Shillong without any proper treatment. Noticing the fact that the Additional Sessions Judge, Shillong was in session of the matter and the next date was fixed on 8.5.2001 for hearing about the identity of the person, this Court ordered for consideration of release of Sri Sangma by the Additional Sessions Judge. It was further noticed that Sri Sangma was arrested in 1987 and have been in Tura Jail since then till his transfer to Shillong Jail. Nothing could be brought on record as to in what connection Sri Sangma was arrested in 1987.

15. The Trial Court by its order dated 9.5.2001 upon evaluation of the materials and the statements made by Sri Sangma and others ordered release of the alleged accused in the custody of his brother Sri Thomas D Sangma with condition that he would take care of his accused brother with the undertaking for his production before the Court as and when found necessary. The following observations made by the learned Additional District Judge in his order dated 9.5.2001 are to be noted.

From the evidence discussed above, I am of the view that the person produced before this Court and the person arrested in connection with this case in the year 1992, are two different persons, as because: (I) I/O concerned failed to identify the accused produced to the Court, rather from his deposition it is clear that the person produced in this Court is not the same person whom he had arrested in the year 1992 in the angle of language, height and state-hood. (II) The identification mark as discussed above shown in the Jail Admission Register does not tally with the person produced to the court. Beside that the statement of the Superintendent, District Jail, Shillong has no consistency and it is not a fact that prior to 2.7.95 accused was produced to the court on every date fixed by the Court Lower record speaks that since 9.11.94 accused was not produced on all the date fixed, it is only on 18.11.95 report was submitted to the court by the Health Officer of Jail that accused is suffering. It is only 2.7.96 court was informed by letter No. DJ 47/96/22 dated Shillong the 2.7.96 by Superintendent, District Jail that accused Dipcharan Kaipang has been transferred to Mental Jail Mawlai on 27.7.95 for treatment. I could not understand why Jail Authority did not take prior permission to the Court transferring the accused to Mental Jail, since the accused is in under judicial custody. I could also understand what prevented the Jail Authority to inform the court immediately but it took almost a year to inform the Court. This gave a serious doubt about the authenticity of the statement given by the Superintendent District Jail, Shillong. Since the prosecution could not established the identify of the person produced to the court beyond reasonable doubt, the entire benefit of doubt goes in favour of the accused produced to the court, as such I do not see any reason, why he should be detained any further. And accordingly I direct to release the accused in the

custody of his brother Sri Thomas D Sangma with condition that he will take all the care of the accused and prevent the accused from doing any injury to himself or to any other person as the accused Sri Rusith D Sangma as per the record is the periodical mental patient. And also will be liable to produce the accused as and when necessary before the Court.

(Emphasis supplied).

16. After the aforesaid release of Rusith D Sangma in custody of his brother Thomas D Sangma, this Court by order dated 8.6.2001 express the opinion that the mystery as to how Deep Charan Kaipang, a UTP, had disappeared and in his place Rusith D Sangma, a non-criminal lunatic came to be produced in the Court has to be investigated by the CBI. Accordingly, a direction was issued to the CBI to investigate the matter and submit the report. The Court also observed that the detention of Sri Sangma from 1990 initially as a non-criminal lunatic and thereafter as an UTP treating him as Deep Charan Kaipang, accused in Sessions Case No. 5/ 2000, was on the face of it in violation of the fundamental right under Article 21 of the Constitution and thus, he was entitled to compensation from the State. Pending decision on the quantum of compensation, interim direction for payment of Rs. 2500/- per month to the brother of Sri Rusith D Sangma for maintaining his brother and family was passed. The said amount was ordered to be paid to the brother Sri Thomas D Sangma through the Deputy Commissioner, Baghmara within 7th of every month. Further direction was issued for treatment of Sri Sangma at Down Town Hospital in Guwahati.

17. After the aforesaid proceeding at the interim stage, this Court vide order dated 6.2.2003 noticed that as per the affidavit filed on 3.2.2003, by the Director General of Police, Meghalaya, that there was no effort on the part of the Meghalaya Police to trace out the real accused Sri Deep Charan Kaipang.

18. Interim affidavits have been filed by various authorities of the State relating to interim directions of this Court. As per the affidavit filed by the DGP, Meghalaya on 24.6.2003, the Superintendent of Police, East Khasi Hills District deputed a team of officers to Tripura which conducted a raid in the house of Sri Deep Charan Kaipang at Kaipingpara, North Taidu, Tripura, but could not find him. As per the said affidavit, the police party recorded the statement of Sri Manju S.K. Kaipang, the father of Deep Charan who stated that Deep Charan had already expired in Shillong Jail. He further stated that his wife i.e. mother of Deep Charan accompanied by one Sri Gurudhan Kaipang had visited Shillong to enquire about their son and the Jail Authority allowed them to go inside the jail and she physically checked all the inmates but could not find Deep Charan.

19. The State of Meghalaya has filed an application on 12.10.2001 seeking alteration and modification of the interim order dated 8.6.2001 by which a direction was issued for monthly payment of Rs. 2500/- to the brother of said Sri Rusith D Sangma. As per this application, the correct factual position was not available to the State Respondents and thus could not be brought to the notice of

this Court. It has been stated in the application as to how Sri Sangma has been discharged from the Sessions Case and consequent non-liability of the State to pay compensation. It has also been stated in the application that the family members of Sri Sangma never bothered to know his whereabouts during his stay at Shillong Jail and Mental Institute. Referring to the report of the Deputy Commissioner, Baghmara, it has been stated that Sri Sangma used to stay with his sister at Gulpani. He had married one Smt. Miarin M Sangma in the year 1985 but they got separated in the year 1987 and the said wife of Sri Sangma remarried another person of the same village. The daughter of Sri Sangma namely Smt. Jemish M Sangma, as per the said application, was aged about 15 years and had been staying with her mother and step father as per customary practice. Thus, in the said application it has been contended that Sri Sangma having no family to support, is not entitled to monthly allowance of Rs. 2500/-. In the application the State Respondents have also referred to the representation made by the sister of Sri Sangma namely Smt. Chomoni Sangma stating interalia as to how Sri Sangma used to stay with her before confinement in the Mental Institute. She also questioned the propriety of payment of Rs. 2500/- per month to the brother of Sri Sangma for the maintenance of his family.

20. I have heard Mr. SP Mahanta, learned Advocate, who is the Petitioner in the instant case appearing in person and Mr. B. Bhattacharjee, learned State Counsel. Mr. Mahanta, submitted that apart from passing appropriate order and direction to the State Respondents, so as to avoid future recurrence of such a sad incident, adequate compensation is required to be paid to Sri Rusith D Sangma. Mr. Bhattacharjee, learned State Counsel submitted that after the submission of the report by the CBI in terms of the direction of this Court pointing out the irregularities and illegalities committed by various authorities of the State, the factum of wrongful detention of said Sri Sangma being established, it will be entirely upto this Court to pass appropriate order having regard to the facts and circumstances of the case.

21. I have considered the submissions made by the learned Counsel for the parties and the materials available on records. The CBI to whom the matter was entrusted to carry out a thorough investigation has submitted its preliminary and final report. After the final report submitted by the CBI, the glaring omission and commission on the part of the various authorities of the State have come to limelight. The CBI has made a commendable job in this case. It examined as many as 63 witnesses and 166 documents, which in fact were taken into possession. The enquiry conducted by the CBI has, interalia, made the following revelations:

(i). On 8.7.92 accused Deep Charan Kaipang was not taken out from the jail nor lodged in the court lock up as confirmed by the Jail Gate Register and Hazot Register maintained in the office of the Prosecuting Inspector of the Court. But strangely, the accused was shown to have been produced in the court on 8.7.92. Similar anomalous situations were noticed regarding the production of the

accused on 8.8.92, 23.10.92, 24.11.92, 16.5.94, 4.2.97 and 10.12.99. Alongwith the enquiry report the copies of relevant entries have been annexed as Annexure-A series.

(ii). As per Jail Gate Register accused Deep Charan Kaipang was taken out from the jail on 19.1.95, 2.2.95, 2.3.95, 5.7.95, 6.1.97, 19.2.97, 6.3.97, 20.3.97, 19.4.97, 28.10.99, 25.11.99 and 6.1.2000. On all these dates the accused was lodged in the Court Hazot as per entries in the Court Hazot Register. But on none of these dates, the accused was produced before the Court as confirmed from the order sheets of the respective dates. The photocopies" of relevant entries have been annexed as Annexure-B series to the report.

(iii). On 11.7.94, the accused Deep Charan Kaipang was taken out from the Jail alongwith 24 other accused persons for their production before the Court of CJM, Shillong as revealed from the entries in the Jail Gate Register. The name of Sri Kaipang appears at serial No. 16 of the Jail Gate Register at page 117. He was produced before the Court on 11.7.94 and the next date was fixed on 25.7.94. Copy of the relevant entries of the Jail Gate Register has been annexed as Annexure-C to the report.

(iv). As per the Hazot Register of the Court of CJM, Shillong (Page 21), the accused Kaipang was entrusted to the Assistant Jailor and was received by the Assistant Jailor alongwith other accused on 11.7.94. However, as per the Jail Gate Register out of 25 UT Ps taken out from the jail on 11.7.94, accused Deep Charan Kaipang and one Sri Raju Dorjee were not received back in the jail. The total numbers of UT Ps received back in the jail on 11.7.94 were 26 which included two new entrants. It was the duty of the jail authorities to verify the identify mark of the accused with the entry made in the Jail Admission Registrar before receiving the persons (UT Ps). Copy of the relevant entry of the Jail Gate Register and Hazot Register of CJM, Shillong have been enclosed as Annexure-E to the report.

(V). On 11.7.94, though UTP Deep Charan Kaipang was not received back in the jail, none of the UT Ps including Kaipang was found/shown absent on that date. This was because the attendance of UT Ps was not taken with reference to their identification marks. It was thus reasonable to infer that on 11.7.94 Deep Charan Kaipang was substituted by Sri Rusith D Sangma. This position was further fortified from the statement of Dr. J.R. Rana, Assistant Psychiatrist, MTMHANS. Sri Kaipang was shown to have been admitted at MIMHANS on 27.7.95 and since then he was under treatment of Dr. J.R. Rana. Dr. Rana in his statement confirmed that right from that date i.e. 27.7.95, he had been treating only Rusith D Sangma, who had been declared, shown as Deep Charan Kaipang. He identified Sri Sangma who was shown as Sri Kaipang.

(vi). After 11.7.94, accused Deep Charan Kaipang was shown to have been taken out from the jail on different dates for being produced in Shillong Court, but was not being produced during any effective date of hearing. On some occasions, the

accused was available in the jail, court lock up but was not produced in the court, although no adverse comments was passed by the Court nor any explanations of the Jail Superintendent for non-production of the accused in the court on several successive dates were called for.

(vii). On 5.7.95, while receiving Sri Kaipang back from the court, the Assistant Jailor put his signature in the Hazot Register as a token of receiving Sri Kaipang and noted down his next date of production as 5.8.95. But on 5.8.95 neither Sri Kaipang was produced in the Court nor was any report sent to the Court intimating reasons for his non-production. As per the report,

This shows that there some inexplicable reason/ulterior motive in doing so. Since as mentioned earlier after 11.7.94, production of Deep Charan Kaipang in any effective hearing was avoided most possibly due to the fear that the replaced R.D. Sangma might reveal his real identity if produced in the court thereby revealing the misconduct of Jail Authorities. To mention here again, for almost a year court was not informed about the transfer of UTP Kaipang to MIMHANS Shillong.

(viii). Adding to the above mischief, the pages of Shillong Jail Hospital in Patient Register after 1.4.95 have consciously been removed for creating a favourable defence for the authorities to plead that during that period the accused was admitted in the Hospital and hence could not be produced in the court.

(ix). Sri R.D. Sangma was lodged in Tura District Jail, on 8.9.90 who was subsequently transferred to MIMHANS on 22.9.90 on the basis of the order of the ADM, Tura Court dated 15.9.90. After his treatment, he was returned back to Tura Jail on 14.10.90 and was finally released from Tura Jail on 22.11.90 pursuant to the order of ADM, Tura, dated 30.10.90. Thereafter, Sri Sangma was neither lodged in Tura Jail or Shillong Jail nor admitted again at MIMHANS, Shillong. Hence, the defence of Shillong Jail Authorities that Sri Deep Charan Kaipang was replaced/substituted with Sri R.D. Sangma in MIMHANS is incorrect. Copies of the relevant entries in order sheets of ADM, Tura Court, Tura Jail Gate Register etc. have been annexed as Annexure-F to the report.

(x) During the court hearing, signatures/thumb impressions of the accused was not taken on the order sheets as warranted under provisions of Section 167 Code of Criminal Procedure Explanation JJ. Had this procedure been followed, the anomalies in respect production of accused Sri Kaipang as pointed out in the report could have been easily avoided.

(xi). Sri Rusith D Sangma was never lodged officially either in District Jail, Shillong or in Tura Jail after 22.11.90. One Sri Hebel Abel Koloy of Village-North Taidu, South Tripura, who was a co-prisoner alongwith Sri Kaipang for a few days from 7.6.93 subsequently, after seeing Sri Sangma proved that the person whom he had identified as Deep Charan Kaipang during his tenure in the jail was not the same person.

(xii). During enquiry the CBI made all out efforts to locate Sri Deep Charan Kaipang by contacting his relatives and friends but he could neither be located nor anyone could give any information. Sri RD Sangma was examined during enquiry to find out as to how he landed up in District Jail, Shillong and to elicit other such relevant informations, but he could not give any coherent and proper reply to any question due to his mental imbalance.

22. With the above revelations, the CBI in its report has concluded as follows:

Inquiry has revealed that accused Deep Charan Kaipang who was lodged in the District Jail, Shillong remained there up to 11.07.94, on which date he was taken out from the Jail but was not returned back to the Jail on that date when he was replaced by Shri Rusith D Sangma, a non criminal lunatic, in some assumed and fictitious name. Inquiry has further revealed that replacement of Accused Deep Charan Kaipang could take place due to negligence and dereliction of duties of Jail staff of District Jail Shillong though it has not been possible to pin point who exactly is/are responsible for this replacement/substitution. But undoubtedly it was Smt. Felcita Wahlong who after receiving the accused from the Hajat lockup on 11.07.94 did not ensure his dispatch to Jail on 11.07.94. Non adherence of provisions of Jail with regard to verification of identity of the U.T.P. from the identification marks recorded in the Jail Admission register further facilitated the above act of substitution of one accused by another person. Even thereafter, had all concerned, namely staff of the District Jail, Prosecution staff, presiding officer of Ld. Court done their duties sincerely, this state of affair, i.e. showing Rusith D. Sangma as accused Deep Charan Kaipang would not have continued till it was detected by Ld. Addl. Distt. Session Judge on 10.04.2001. Therefore, it is obvious that acts of negligence and commissions and omissions on the part of the officials of District Jail, Shillong, officials of the office of Prosecuting Inspectors of Shillong Court including prosecution Inspectors and the Ld. Court were responsible for this sorry state of affairs to have occurred and continued till long.

23. With the aforesaid conclusion, the CBI in its report has also indicated the various acts of commissions and omissions of the officials/officers involved in the entire episode. For a ready reference, they, as indicated in Para-C of the report are quoted below:

C.I. Shri C.R. Shabong, the then Superintendent, District Jail, Shillong, (presently AIG, Prison, Meghalaya, Shillong): (i) Being the Supdt. of the Jail, it was his overall responsibility to ensure adherence to rules that when UT Ps are taken out from the Jail or are returned to the Jail their identifications are checked.

(ii) Likewise, no action was taken by the Jail Supdt. for causing production of the accused Deep Charan Kaipang on 5.8.95 although this fact was noted down by Asstt. Jailor on the previous hearing held on 5.7.95 as discussed under Para B.I3.

(iii) As Jail Supdt. Sh. Shabong failed to take any action on several successive dates for causing production of the accused Deep Charan Kaipang in the court

and failed to submit any report about his absence. On the contrary, after several reminders, Sh. Shabong intimated to the court on 02.07.96 about the admission of the accused in MIMHANS although the accused was admitted there almost a year back on 27.07.95.

(iv) Sri Shabong would also be held responsible for the delay of 22 days in the release of Shri R.D. Sangma who was actually released on 22.11.90 from Tura Jail although the court's order was issued on 30.10.90. The signature of Sh. C.R. Shabong in the cash book showing payment of fare to Shri R.D. Sangma would prove that he was well aware of the above facts. In his defence Sh. C.R. Shabong has passed the buck to the jailor which is not tenable, as Sh. C.R. Shabong was in overall charge of the jail. (i) He was primarily responsible for the accused Deep Charan Kaipang being let off from the jail on 11.07.94 when he was replaced by Sh. Rusith D. Sangma.

(ii) As stated by Dr. D.R. Dkhar Shri Paize Warjiri had asked him to request the court for releasing accused Deep Charan Kaipang from Jail custody on P.R. Bond. This out of way interest taken by Paize Warjiri indicates that he might have been aware of the escape/letting off of accused from jail custody.

C.3. Smt. Felicita Wahlang, the then Assistant Jailor: (now Jailor, District jail, Shillong) : (i) She was mainly responsible for not returning accused Deep Charan Kaipang to Jail on 11.07.94 even though she had received back the accused from the court and had signed in the Hajat register in acknowledgement thereof.

(ii) She is also responsible for not ensuring proper verification about identities of accused (UT Ps) while being taking out from the Jail or while receiving them back in the Jail, as state in the letter No. DIS.30/2001/CBI/92 dated, Shillong the 10 December, 2001 issued by Superintendent District Jail, Shillong to IG (prisons), Meghalaya, Shillong.

C.4. Shri K. Saikia, the then P.I. Shillong court, Shillong, {Now Dy. SP, SB (INFIL), Police headquarters, Meghalaya, Shillong}: (i) Sh. K. Saikia being overall in charge of the court's matters should be held primarily responsible when on several occasions, as discussed above, the accused Deep Charan Kaipang had been received in the court lockup but was not produced in the court on those dates. (iii) Again on a number of dates such as on (i) 19.01.95, (ii) 02.03.95, (iii) 13.04.95, (iv) 09.06.95 and (v) 22.06.95 although accused Deep Charan Kaipang was reported sick in the order sheets but no sick report was sent by the Jail authorities/available in the court records.

C.5. Shri NR. Deb, PSI, Shillong Court: The lapses of Sh. N.R. Deb are similar to that of Sh. K. Saikia which has been discussed earlier. C.6. Shri D.N. Goswami, the then Jailor, Tura Jail (now Superintendent, District Jail, Tura): (i) Sh. D.N. Goswami had attested the fitness certificate on behalf of the Jail Superintendent, Tura Jail which, on face of it, appears to be irregular although no motive has been established for doing so. It is possible that Shri Goswami might have

fabricated this report to get Shri R.D. Sangma released so that he can later on be substituted in place of accused Deep Charan Kaipang. (ii) He was primarily responsible for the delay of 22 days in the release of prisoner R.D. Sangma who was actually released on 22.11.90 although the court had passed order on 30.10.90.

C.7. Shri E.K. Sangma, Judicial Magistrate, 1 Class, Shillong:

(i) Sh. E.K. Sangma had recorded in his order sheet the present of the accused on several dates such as on (i) 18.08.92, (ii) 23.10.92, (iii) 16.05.94, (iv) 04.02.97 and (v) 10.12.99 although the accused was in the Jail on those dates. (vi) On 18.08.92 and 23.10.92 though the accused was not brought from the Jail but only the Custody warrant was sent yet the presence of the accused was shown in the court on these dates as recorded in the order sheets.

C.8. Dr. D.R. Dkhar, the then Senior Medical and Health Officer, District Jail, Shillong (now District Maternal and Child Health Officer, Shillong). (i) Dr. Dkhar vide his medical certificate issued in respect of accused Deep Charan Kaipang requested the Court to get him released on PR. Bond Shri Dkhar explained to have done this on the verbal order of the Jailor (Paize Warjiri). (ii) He is also responsible for destruction of relevant pages of Inpatient Register after 01.04.95, as he was the custodian thereof and could not explain how these pages were removed and where the inpatient register of his period existed.

C.9. Shri L.K. Buragohain, the then P.I. Shillong Court, {now Dy. SP (Crime) Home Department, Meghalaya}: (i) Shri L.K. Buragohain being overall in charge of the Court's matter should be held primarily responsible when on several occasions are discussed above in Para B.5, the accused Sh. Deep Charan Kaipang has been shown to have been produced in the Court though he did not come out of Jail on those dates. (iii) Again on a number of dates such as on (i) 20.1.94, (ii) 3.2.94, (iii) 17.2.94 and (iv) 3.3.94 although accused Deep Charan Kaipang was reported sick in the order sheets but no sick report was sent by the Jail authorities/available in the court orders.

C.10. Shri H.K. Gogoi, the then P.I. Shillong Court, Shillong, (now Inspector, Officer In-charge, Sadar Police Station, Shillong): (i) On 10.12.99 he had shown the accused to have been produced in the court although the accused was never taken out from the Jail, as proved from the Jail Gate Register and Hajat Register. (ii) Although the accused was kept in the court lock-up on (i) 28.10.99, (ii) 25.11.99, (iii) 09.12.99 and (iv) 06.01.2000 but he was not produced on these dates in the Court as proved from the order sheets of the court.

24. Apart from the above, the affidavit filed by the Director General Police, Meghalaya on 24.6.2003 and the document annexed thereto make the revelation that on 27.1.95, the Assistant Jailor, Mental Jail, Mawlai, Shillong in the office of the Superintendent, District Jail, Shillong, Mawlai Wing addressed a letter to the Chief Executive Officer, Municipality, Shillong seeking permission for burial of one unclaimed dead body from Mawlai Wing Jail in the municipal burial ground.

Similarly, on 8.3.96 and 8.4.96, the Superintendent of District Jail, Shillong, Mawlai Wing Sri C.R. Shabong, AIG (Prisons) sought for similar permissions for burial of two unclaimed dead bodies, one on each date, from Mawlai Mental Jail. On 30.3.96 also, the Superintendent of District Jail, Shillong Sri Montu Wahlong sought for similar permission in respect of burial of one unclaimed dead body from Mawlai Mental Jail. On 16.7.96 also, the Superintendent of District Jail, Shillong, Mawlai Wing made similar prayer in respect of one unclaimed dead body.

25. In none of the aforesaid communications, the particulars of the persons concerned such as their names, addresses, dates of expiry, efforts made for contacting their relatives etc. were mentioned. Since all the persons were admittedly inmates of Mawlai Mental Jail, it cannot be that their identities etc. were not known. It is not a case of seeking permission for burial of an unclaimed body lying on the roadside without any identification and resultant failure to contact his relatives and friends. Even in such cases also, wide publicity is required to be given by the district administration furnishing necessary particulars with photographs so that his relatives and friends can come forward to claim the body.

26. In the instant case, all the purported unclaimed bodies seeking permissions for burial of which were sought for, were admittedly the inmates of the Mental Jail. Thus, necessarily, their particulars including photographs must have been recorded in the related register. Thus, it is not understood as to how they could be regarded as unclaimed bodies for the purpose of burial. It was incumbent on the part of the Jail Authorities to inform the relatives and friends of the deceased intimating death of persons concerned enabling them to claim the body. Instead of doing so, the Jail Authority simply by writing letters on piece of papers to the authorities of the Municipal Board sought for permission for burial of the dead bodies describing them as unclaimed and as per the permission accorded, buried them. Needless to say, all of them went for the heavenly abode, unsung and unwept.

27. The above position which has emerged from the records also depicts serious lapses on the part of the Jail Authority for which appropriate action is required to be taken against the responsible officers. It may be so that the accused Sri Kaipang was one of those five, who were buried in the above manner. It reflects sheer callous and mechanical approach on the part of the Jail Authorities and lack of human aspects and approach on them. Be it stated here that all the above five communications have been annexed as Annexure-D, E, E, F and G respectively. The said affidavit also contains the photographs of Sri Deep Charan Kaipang at page 18 and thus it is not understood as to how Sri Rusith D Sangma could be projected as Sri Deep Charan Kaipang, even on a mistaken view of the matter. There could not have been any occasion even on a mistaken view of the matter to treat Sri Sangma as Sri Kaipang.

28. With the aforesaid revelations made by the records of the case and the CBI report, there is no manner of doubt that Sri Rusith D Sangma was kept behind

the bars for long 14 years, by none other than the authorities and officials of the State about whom mention has been made above. In the process he lost his wife and daughter and for that matter his entire family. If we are to go by the statement made by him which has been extracted above, he was a normal human being, but made to suffer with resultant mental injury by none other than the officials of the State. Within months he could be cured by rendering treatment at Down Town Hospital, Guwahati. Shri Sangma, in his statement has narrated as to how his voice was blocked and after getting treatment he could speak. Apart from this, he was kept behind the bars on a wrong identity to be an UTP in the form of said Sri Deep Charan Kaipang.

29. It remains still a mystery as to what happened to Sri Kaipang, but the facts remains that he was substituted by Sri Sangma at the behest of the officials of the State. Learned Counsel for the parties, during the course of hearing submitted that in all possibility Sri Kaipang died an unnatural death and to suppress the same, Sri Sangma was found to be the easy scape-goat. As observed above, the possibility cannot be ruled out that Sri Kaipang was one of those five purported unclaimed bodies.

30. The entire episode is horrifying. It not only discloses the helpless condition in which Sri Sangma had to remain in jail for long 14 years which naturally has taken away the prime of his youth and life. At the first instance he was made to remain in jail custody without any trial and at the second instance, he was made to be the accused in substitution of the real accused. As observed by the Apex Court in *D.K. Basu v. State of West Bengal*, the expression "life or personal liberty" in Article 21 of the Constitution of India includes the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State and its functionaries. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21. The Apex Court observed that if the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. It further observed that no civilized nation can permit that to happen. Torture, rape, death in police custody etc. infringe Article 21 as well as basic human right and strikes a blow at rule of law. Torture of any kind involves not only physical suffering but also mental agony. It is naked violation of human dignity and destructive of human personality.

31. Sri Rusith D Sangma is the victim of atrocious act noticed above, perpetrated by none other than the officials of the State who are under its deep and pervasive control. The mental agony and trauma experienced by Sri Sangma at their hands and its persisting effects can well be imagined. The question arises as to whether for the commissions and omissions on the part of the officials of the State, the State is vicariously liable or not. A similar question came up before the Apex Court in *Chairman, Railway Board v. Chandrima Das* as reported in

(2000) 2 SCC 465.

32. In the aforesaid case relating to gang rap of a Bangladeshi lady by the employees of the Railways, the Apex Court referring to its various earlier decisions, also dealt with the question of vicarious liability and held that the Union of India and for that matter its instrumentalities are liable for the acts committed by their employees. It observed that functions of the State not only relate to the defence of the country or the administration of justice, but they extend to many other spheres which cannot be said to be related to sovereign power.

33. By various judicial pronouncements, such violation of human rights as in the instant case has been unequivocally condemned and the need has been emphasized for protection of lives and liberties of human being. As regards the payment of compensation in such matter, it has been held that, claim in public law for compensation for unconstitutional deprivation of fundamental right and liberty, 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 for tortious act of public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringements of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power, but also to assure citizens, that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceeding under Article 226 of the Constitution of India for the established violation of fundamental rights guaranteed under Article 21, is an exercise of the courts 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 right of the citizen.

34. The above findings and conclusions now necessarily lead us to the moot question as to what relief(s) can be granted to the victim of the entire episode Sri Rusith D Sangma.

There cannot be any second opinion that apart from entitlement to compensation, he is also entitled to get relief by way of initiating disciplinary/criminal proceeding against the erring officials named above and any other such erring officials, who are found to be involved in the episode.

35. I first proceed to quantify the amount of compensation to be paid to Sri Sangma. It is on record that his wife is remarried to another person and his daughter is also living under her care and custody. Presently, Sri Sangma is under care and custody of his brother Sri Thomas D Sangma to whom a monthly payment of Rs. 2500/- has been ordered by this Court as an interim arrangement towards maintenance of Sri R.D. Sangma and his family. The records have revealed that Sri Sangma is now living without any family. Thus, there is no question of payment of any money to his family members. It is for

him only, adequate compensation will have to be paid by the State, which I quantify at Rs. 2,00,000/- (Rupees two lakhs). The amount shall be paid to Sri Sangma directly, a part of which shall be deposited by way of fixed deposit in any nationalized Bank, preferably with the State Bank of India in its any branch as per the desire and convenience of Sri Sangma. The District Administration and the learned Counsel Sri S.P. Mahanta, who has espoused the cause of Sri Sangma shall in collaboration ensure deposits of the amount in the Bank accounts to be opened in the name of Sri Sangma in the manner and method best suitable for Sri Sangma.

36. In addition to the above, the Respondents will ensure providing medical assistance to Sri Sangma as per his necessity with periodical checkup at Down Town Hospital, Guwahati or any other institution, if and when found necessary as per the recommendation of the said Hospital Authority. If he is found to be capable of managing his affairs independently without any support of anyone and if he expresses his desire to be maintained as such, he will be at liberty to do so. Otherwise, as per his desire he will remain under care and custody of his brother Sri Thomas D Sangma or his sister Smt. Chomoni Sangma.

37. This now leads us to the crucial question as to whether the erring officers should be allowed to go Scot free of their prima facie misconduct and negligence of duty. Certainly not. It is hereby directed that the State shall take and initiate criminal and departmental proceeding against the erring officials immediately giving them opportunity of being heard. Based on the materials on record, charges should be framed against them. Everything shall be finalized with utmost expeditions making no room for further complaint of inaction on the part of the State Respondents. Sri S.P. Mahanta, learned Counsel, who is instrumental in bringing the entire episode to light, is requested to make a vigil on the follow up action, now required to be initiated and completed by the State Respondents in terms of this order. Any lapses in this regard may be brought to the notice of this Court for appropriate action.

38. In addition to this, the State will be entitled to realize the aforesaid amount of compensation or any other expenses which might be incurred on account of further treatment of Sri Sangma from the respective salary of the erring officials in equal proportion and on due installments.

39. Before parting with the case records, I place on record my appreciation for the commendable job done by Mr. S.P. Mahanta, learned Counsel representing the case of Sri Rusith D Sangma. I also place on record my appreciation for timely action taken by the learned Additional District Judge, Shillong, Sri S.R. Sen, but for which the state of affairs with Sri Sangma would perhaps gone unnoticed. I shall be failing in my duty if I do not make a mention of the commendable job done by the CBI and the officer namely Sri Tanmaya Behera, DSP, CBI, ACB, Shillong Unit, Shillong who submitted the report. The report bears the testimony of painstaking efforts made by the CBI to bring out the truth.

40. I only hope that the aforesaid incidents) depicting sorry state of affairs with the State Administration in the Home Department will not be repeated in future and the State shall take all measures ensuring curbing altogether recurrence of such incidents). It is not known as to whether the aforesaid true story of Sri Sangma is the solitary instance or many more such Rusith D Sangma are rotting in the jail custody without any trial. Much has been said about jail reforms, legal literacy, etc. Seminars are being organized by various organizations including NGOs and at time at the State expenses. It is really doubtful as to what purpose it serves unless the desired jail reforms are taken at the ground root level taking to task to the practical reality.

41. It is not known as to how many such Rusith D Sangma have gone with the wing, unsung and unwept. It is true story of one Sri Rusith D Sangma which has shocked the judicial conscience. Can such an episode be expected of the members of a well to do family? Certainly not. Since Sri Sangma belongs to the lower stratum of the society, his plight and agony for long 14 years went unnoticed. But for the intervention of the Trial Court and Mr. Mahanta, Sri Sangma's case would have gone to oblivion and that too at the hands of the officials at the helm of affairs of the State.

42. With the above, observations and directions, the writ petition stands disposed of imposing a cost of Rs. 15,000/- on the State to be recovered by the Registry as per High Court Rules so as to be paid to Sri Mahanta, learned Counsel, who, needless to say incurred expenses apart from rendering his sincere service to the cause of Sri Rusith D Sangma and for that matter, the common people.

43. Writ petition stands answered in the above manner and allowed to the extent indicated above.