

(2005) 09 GAU CK 0048
In the Gauhati High Court
Case No : W.A. No. 77 of 1999

State of Tripura and Others		APPELLANT
	Vs	
Smt. Narayani Sharma		RESPONDENT

Date of Decision : 01-09-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 380, 457

Citation : (2005) CriLJ 4239 : (2006) GLT 1 Supp

Hon'ble Judges : T. Vaiphei, J;B.P. Katakey, J

Bench : Division Bench

Advocate : U.B. Saha, Government Advocate and T.D. Majumder, for the Appellant; P. Roy Barman, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—This appeal by the State of Tripura and others, who were respondents in civil Rule No. 482 of 1998, is directed against the judgment and order dated 23-6-1999 (reported in Smt. Narayani Sharma Vs. State of Tripura and Others, passed by the learned single Judge in the said writ petition, directing the appellants to pay a sum of Rs. 2,50,000/- as compensation to the writ petitioner/respondent herein for the custodial death of her son who was about 16 years old, at the relevant point of time.

2. The facts leading to the filing of the writ petition is that on the basis of a complaint lodged by one Birendra Debbarma, Assistant Sub Inspector of Police, Ambassa Police Station, in the State of Tripura, Ambassa Police Station Case No. 9(7) of 1991 u/s 457/380 of the Indian Penal Code was registered on the allegation that on the night of 27/28th July, 1991 in between 1.30 hours to 5.00 hours some unknown miscreants entered into his Government quarter by opening the back door and stole away one V.I.P. Suitcase and one black trunk containing of one Service Pistol and one magazine. The police on suspicion

arrested Krishna Sharma, son of the writ petitioner on 28-7-1991 and on production before the learned Sub Judicial Magistrate, Kamalpur on 29-7-1991 the police obtained the police remand for 5 days i.e. up to 2-8-1991. After expiry of the police remand, the learned Magistrate on 2-8-1991 sent the accused Krishna Sharma to Jail custody till 16-8-1991. While in jail custody the accused fell ill in the night of 9th and 10th August, 1991, and he was shifted to Kamalpur Hospital in the morning of 10th August, 1991, but immediately thereafter, he died in the hospital. The writ petitioner respondent herein thereafter approached the authority but as nothing was done, she filed the writ petition before this Court, which was registered as Civil Rule No. 482 of 1998, praying for compensation of Rs. 12 lakhs for the custodial death of her son. The learned single Judge, on the basis of the pleading of the parties as well as the records produced before him, by judgment and order dated 23-6-1999 awarded a sum of Rs. 2,50,000/- as compensation for the custodial death of the son of the writ petitioner and directed the State respondents to pay the said sum. Hence, the present appeal.

3. We have heard Mr. U. B. Saha, learned Senior Government Advocate assisted by Mr. T. D. Majumder, learned Additional Government Advocate for the appellants and Mr. P. Roy Barman, learned counsel appearing on behalf of the respondent.

4. Mr. Saha, learned senior Government Advocate appearing on behalf of the appellants has submitted that for awarding compensation for the custodial death of any person, the Court must: first come to the definite finding that there was negligence on the part of the officers of the State Government, for such custodial death and in the present case, according to the learned counsel, it is evident from postmortem report submitted by a team of Doctors who conducted the postmortem examination of the dead body of the deceased accused that he died of cardiorespiratory failure for broncho-pneumonia, which was opined as natural death. Therefore, according to the learned senior counsel, there was no negligence on the part of either of the State Government or the Jail authority for the death of the accused person who was given the appropriate medical treatment in Kamalpur hospital. Hence the learned senior Government Advocate has submitted that the judgment passed by the learned single Judge is required to be interfered with.

5. Mr. P. Roy Barman, learned counsel appearing on behalf of the respondent controverting the submission made by the learned Senior counsel for the appellant and supporting the judgment passed by the learned single Judge, has submitted that it is apparent from the statement made in the writ petition that the accused was hale hearty and he had no medical back ground before he was arrested on 28-7-1991 and the said statement has not been denied by the respondent in their affidavit in opposition. Mr. Roy Barman, learned counsel has further submitted that Krishna Sharma was arrested on suspicion on 28-7-1991 and he was in police custody up to 2-8-1991, on which date he was sent to

judicial custody till 16-8-1991. According to the learned counsel, it is evident from the order dated 10-8-1991 passed by the Sub Divisional Judicial Magistrate, Kamalpur, in G. R. Case No. 181 of 1991 u/s 457/380 I. P. C., corresponding to Ambassa Police Station case No. 9(7) of 1991, in connection to which Krishna Sharma was arrested, that the allegation of police torture in custody was made before the learned Judicial Magistrate. The fact of police torture is also evident from the Sick Book of the prisoners of Ambassa Sub-Jail produced by the learned Government Advocate before the learned single Judge, wherein one of the doctors, who conducted the post-mortem examination, has recorded that when he examined Krishna Sharma in jail custody on 5-8-1991, he noticed the injuries in his body which was also confirmed by the, x-ray report. According to the learned counsel, the injuries which have been described by the petitioner in the writ petition as well as the police torture has not been denied by the respondents (appellants herein) in the affidavit-in-opposition filed by them. The story of the appellants that Krishna Sharma was suffering from broncho-pneumonia, according to the learned counsel for the present respondent, is not at all believable as the ailment of broncho pneumonia cannot be developed over night. The accused was in fact found to be normal by the doctor while he was examined in jail custody on 5-8-1991, but suddenly, according to the respondents (appellants herein), the accused fell seriously ill in the night of 9/10-8-1991 at about 2.30 a.m. and was shifted to Kamalpur Hospital in the next morning. Mr. Roy Barman learned counsel has submitted that if the accused fell seriously ill at 2.30 a.m. on the previous night, it was the bounded duty of the jail authority to extend all possible medical help immediately to the accused but the appellants could not say that any such medical treatment was given to the accused till he was shifted to Kamalpur Hospital in the next morning. Therefore, the accused was lying in the jail without any treatment for hours together. According to the learned counsel, even if the story of the appellants that the detenu suddenly fell ill on the night of 9th August, 1991, is taken to be true, then also the jail authority has failed in their duty to extend medical treatment to the detenu which amounts to negligence and which has ultimately taken away the life of a young boy of 16 years old and who was the only son of the writ petitioner, mother, therefore, the learned counsel for the respondent has submitted that the learned single Judge has rightly directed the State to pay sum of Rs. 2,50,000/- as compensation, though the said sum cannot compensate the mother for the loss of her only son.

6. We have considered the submission of the learned counsel for the parties and also perused the materials made available on record.

The detenu Krishna Sharma was arrested on 27-8-1991 by Ambassa Police in connection with Ambassa Police Station Case No. 9 (7) 91, on suspicion, which corresponds to G.R. Case No. 181 of 1991 u/s 457/380, I.P.C. The said police case was registered on the basis of first information submitted by one Assistant Sub-Inspector of Police, alleging theft in his official residence in the night of 27/28-7-1991. Admittedly, the detenu Krishna Sharma was in police custody up

to 2-8-1991 by virtue of the order of remand passed by the Sub-Divisional Judicial Magistrate, Kamalpur on 29-7-1991, when he was produced before the learned Magistrate. Thereafter, the detenu was sent to Jail custody up to 16-8-1991 vide order passed by the learned Magistrate on 2-8-1991. On 5-8-1991 one Dr. Keshab Debbarma examined Krishna Sharma, who was about 16 years of age and found injuries in his body on that date. Doctor did not find any sickness, not to speak of broncho pneumonia, which has been duly recorded in the Sick Book Register of the prisoners of Kamalpur Sub-Jail where Krishna Sharma was lodged. The petitioner in the writ petition has made a categorical statement to the effect that Krishna Sharma was brutally assaulted by police while he was in police custody and the said fact was also reported to the Sub-Divisional Judicial Magistrate, which is evident from the order dated 10-8-1991 passed by the learned Sub-Divisional Judicial Magistrate, Kamalpur, South Tripura, on the basis of the communication received from the Superintendent of Kamalpur Sub-Jail for taking necessary action for disposal of the dead body of under-trial prisoner, Krishna Sharma, who expired at 9.30 a.m. in Kamalpur Hospital on 10th August, 1991. The said order is quoted below :

IN THE COURT OF THE SUB-DIVISIONAL

JUDICIAL MAGISTRATE

KAMALPUR, NORTH TRIPURA

Case No. G. R181/91 u/s 457/380, IPC

P.S. Case No. 9(7) 91

"ORDER DATED 10-8-1991

Received copy of letter from Supt. Kamalpur. Sub Jail, forwarding another copy of the same to O/C Kamalpur P.S. Vide his No. F. 2 I/NMP/SJ/91/384-85 dt. 10-8-91 for taking necessary action for disposal of dead body of U.T.I. Krishna Sharma who expired today at 9.30 a.m. at KMP as reported by Dr. K. Debnath who also filed separate death report.

It appears from case record that allegation made for obtaining of the said S.P. in police custody at ABS PS.

As the U.T.P. died at KMP and under the circumstances raised a reasonable suspicion that some other person had committed offence in this respect.

So, ask O/C Kamalpur P.S. and deal with the matter immediately under the provision of Section 174, Cr. P.C. and intimate the result.

Also inform the matter of death of the a/p Krishna Sharma & the O/C, ABS (KMP) and S.P. (N) KIS.

Also inform District & Sessions Judge and C.J.M. (N) KLS.

Sd/- B. Mahajan, Sub-Divisional Judicial Magistrate, Kamalpur, North Tripura."

7. It appears from the pleadings of the parties, more particularly the affidavit in opposition filed by the respondents (appellants herein) that U.T.I. Krishna Sharma suddenly developed illness at about 2.30 a.m. on the night of 9/10-8-1991 while he was in Kamalpur Sub Jail and was shifted to Kamalpur Civil hospital where he died around at 9.30 a.m. on 10-8-1991. The appellants herein in their affidavit though has made statement that detenue Krishna Sharma fell ill on the night of 9/10 August, 1991, they have not stated at what time they shifted the detenue to Kamalpur hospital and what were medical facilities made available to him in the jail when he fell ill at about 2.30 a.m. on that night.

8. After the death, the postmortem examination was conducted on the dead body of Krishna Sharma by a team of three doctors on 10th August, 1991 and in the said postmortem report doctors have found severed injuries on the dead body of Krishna Sharma which are anti-mortem in nature. However, it was opined by the doctor that the cause of the death was cardio-respiratory failure and is a case of broncho pneumonia, which was natural in nature. For better appreciation, the relevant portion of the postmortem reports quoted below :

1. Injury 2. Disease of deformity 3. Fracture 4. Dislocation.

1) Penetrating injuries to tip and nail beds of left middle and index finger and right Index and middle finger of around 1/2 cm. x I/ 100 m. Attended blood of varying length, seen below the mentioned nail. These injuries are single old anti mortem in nature and sharp pointed weapon has been sued.

(2) Four smelling discharging sinus at the dorsal aspect right forearm about 1/2" above the wrist joint us Antemortem in nature, hard blunt weapon used. Old nature of injury is subject to the confirmation of X-ray taken on 6-8-1991.

Sd/- illegible

29-9-1994

MORE DETAILED DESCRIPTION OF INJURY OLD DISEASE

1. Infected sinus at the back side of right forearm around "/2 cm above the right wrist Joint. It discharged foul smelling pur on pressure.

2. Multiple penetrating injuries to the tip and nail beds of finger mentioned.

3. Two grayish patches and are such patch in the middle and lower lobes respectively of right lung and serial gravish patches Involving wide areas of both lobes of left lung. Suggestion of broncho pneuminae.

OPINION OF DOCTOR AS TO CAUSE OF

Cause of death in this patient is cardio respiratory failure in a case of broncho pneumonia which is natural in nature.

Time of death 9-30 a.m. on 10-8-1991 as per bed head tickets."

9. It is, therefore, evident from the said postmortem report that the stand of the writ petitioner that her son was subjected to torture by the police while in police custody, has been vindicated. The fact that there was allegation of police torture while in custody is also evident from the order dated 10-8-1991 passed by the learned Sub Divisional Judicial Magistrate, Kamalpur which has already been quoted above. But, surprisingly in spite of the allegation available on record about the police torture meted out to the under trial prisoner, the Sub Divisional Judicial Magistrate has not taken any further action on such allegation, which is naturally depreciable.

10. The writ petitioner in the writ petition has made a categorical statement about the torture of under trial prisoner Krishna Sharma while he was in police custody and the appellants herein in their affidavit in opposition have also admitted that the postmortem report discloses some anti-mortem injuries in the tip and nail beds in some of the fingers of the detainee which was caused by sharp pointed weapon. It has further been stated in the affidavit-in-position that an old anti-mortem injury at the dorsal part of right forearms above the wrist joint from which foul smelling sinus and pus were being discharged, was also found. It is, therefore, evident and in fact, an admitted position of fact that some anti-mortem injury were found on the body of the deceased. The petitioner in the writ petition has made a categorical statement that the detainee before his arrest on 28-7-1991 had no ailment and was hale and hearty. The respondents in their affidavit in opposition has not denied the said statement and, hence, admitted that Krishna Sharma before his arrest was not suffering from any illness or he was no way injured in any manner. The son of the petitioner was admittedly in police custody from 28-7-1991 to 2-8-1991 i.e. for 6 days and during which period he complained to the learned Magistrate about the police torture in custody. The Magistrate has also duly recorded the availability of such allegation on record in his order-dated 10-8-1991. The fact that some injuries were found on the body of Krishna Sharma is also fortified by the post-mortem report submitted by the doctor.

11. One doctor Keshab Debnath who examined the detainee while he was in jail custody on 5-8-1991 also recorded the injuries on the body of the Krishna Sharma which has been duly recorded in the Sick Book register of Kamalpur Sub Jail, which was produced before the learned single Judge. It is, therefore, evident that Krishna Sharma was subjected to brutally police torture while he was in police custody from 28-7-1991 to 2-8-1991, more so when the appellants have failed to explain those injuries.

12. According to the respondent, Krishna Sharma suddenly fell ill on the night of 9/ 10th August, 1991 at about 2.30 a.m. and in the next morning he was shifted to Kamalpur hospital where he died at 9-30 a.m. Doctors who conducted the postmortem examination, though noticed the injuries found on the body of Krishna Sharma, has opined that the death was due to cardio-respiratory failure and is a case of broncho pneumonia, but most interestingly one of the doctor

who conducted postmortem examination namely, Dr. Keshab Debnath examined Krishna Sharma in jail on 5-8-1991 and had not found anything to suggest that the patient Krishna Sharma was suffering from broncho pneumonia. It is very intriguing as to how a person can develop the broncho pneumonia over night, who had no symptoms of that disease four days prior to the date he fell ill. The postmortem report submitted by doctor therefore, does not inspire the confidence of the Court to accept that Krishna Sharma was suffering from broncho pneumonia and, as a result of which he had cardio-respiratory failure. Even assuming that Krishna Sharma suddenly developed illness on the night of 9/10th August, 1991 at about 2.30 a.m. it was the bounded duty of the Jail authority to extend immediate medical help to the detainee so that the life of an upcoming young man is not lost. But the appellants have failed to produce anything before the Court, even to suggest that the Jail authority took immediate steps for extending medical help to Krishna Sharma, who suddenly fell ill on that night at about 2.30 a.m. On the other hand,, he was shifted to the Kamalpur hospital only in the next morning, therefore, he was without treatment before he was shifted to Kamalpur hospital where he died at 9-30 a.m. The death occurred, according to the appellants within 7 hours of falling ill which goes to show that he was seriously ill but no required medical facility was immediately extended to him with a view to save his precious life. Therefore, in our view the Jail authorities were negligent in discharging their duties, which violated the fundamental right of the detainee guaranteed under Article 21 of the Constitution of India. The torture in the police custody, as held above, is also violative of the fundamental right of the detainee under Article 21 of the Constitution of India.

13. The Apex Court in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, has held that enforcement of Constitutional right and grant of redress embraces award of compensation as part of the legal consequence of its contravention. Award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 of the Constitution, is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be applicable as defence in private law in an action based on Tort. The Apex Court has held that the convicts prisoners are not denuded of their fundamental rights of Article 21 and its only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such person. It has further been held that it is an obligation of the State to ensure that there is no infringement of any indefeasible rights of a citizen to life except in accordance with the procedure established by law, while the citizen is in its custody, where he be a suspect, under trial or convict. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. Apex Court in paragraph 34 has held as under (para 33) :

"The public law proceedings serve a different purpose than the private law

proceedings. The relief of monetary compensation, as exemplary damages in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the Court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, or not protecting the fundamental, rights of the citizen. The compensation is in the nature of exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a Court of competent jurisdiction or/and prosecute the offender under the penal law."

14. In *State of M.P. Vs. Shyamsunder Trivedi and Others*, the Apex Court has observed that tortures in police custody, which of late are on the increase, receive encouragement by unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to them if an odd prisoner dies in the lockup because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excess and the maltreatment of detainees/ under trial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in "Khaki" to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The Court must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad day.

15. In *D.K. Basu Vs. State of West Bengal*, the Apex Court has held that though the police has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but the law does not permit use of third-degree

methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

16. In the instant case, it has come out from the materials available on record that Krishna Sharma was subjected to brutal police torture while he was in police custody and though he fell ill no immediate medical assistance was extended to him. Such action on the part of the respondent authorities therefore, infringes the fundamental rights guaranteed to an under trial under Article 21 of the Constitution. The consequence is that mother has lost her young son who is about 16 years of age and who was the only son. Though no mother can be compensated in terms of money for the loss of the son, but with a view to tie over the immediate hardship and to give solace, the compensation has to be awarded for the illegal action of the authorities, which violated fundamental rights guaranteed under Article 21 of the Constitution of India.

17. Therefore, in our considered view, the learned single Judge has rightly awarded the compensation of Rs. 2,50,000/- in favour of the petitioner, who is the respondent herein and directed the State authorities (appellants herein) to pay the sum. It appears from the record that the amount of Rs. 50,000/- has already been paid by the appellants authority in terms of the order passed by this Court to respondent herein. Therefore, the appellants are directed to pay the remaining sum of Rs. 2,00,000/- to the respondents within a period of two months from today. It is, however, open to the State of Tripura to realize the amount of compensation, so awarded, from the erring officials after making an administrative enquiry and fixing the responsibility on such officers.

18. The appeal is accordingly dismissed with cost of Rs. 5,000/- (rupees five thousand) to be paid by the appellants to the respondent.