
(2005) 06 GAU CK 0037
In the Gauhati High Court
Case No : C.R. No. 3868 of 1997

Suriya Begum

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-06-2005

Acts Referred:

Constitution of India, 1950 — Article 2
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2005) 3 GLR 624 : (2005) 3 GLT 327

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : G. Uzir, B. Buragohain, M. Ahmed, T. Kuro and H. Handique, for the Appellant; S.K. Nurmahammad, S. Rahman, A. Syed, M. Rahman and G. Soren, for the Respondent

Judgement

Ranjan Gogoi, J.—The writ petitioner, Smti. Suriya Begum, is the widow of deceased Nazmui Rasid, who died on 1.8.1995 as a result of a bullet injury sustained by him on the said date in the office chamber of the Officer- in-Charge of Gohpur Police Station. The petitioner lodged a F.I.R. on the next day, i.e., on 2.8.1995 in respect of the incident and on the basis thereof Gohpur P.S Case No. 92/95 was registered u/s 302 IPC. After investigation of the aforesaid case, police submitted a final report on 2.1.1997 taking the view that the death in question was accidental. The final report was accepted by the court under the provisions of the Code of Criminal Procedure. Aggrieved, the writ petitioner instituted the present proceeding before this Court and by an order dated 8.1.2004, this Court had directed a re-investigation of the case to be made at the instance of the Inspector General of Police (CID). The matter was investigated and the IGP (CID) had filed an interim report before this Court on 1.3.2004 to the effect that the death of the petitioner's husband was on account of a negligent act on the part of the respondent No. 4, who was then working as the Officer-in-Charge of the Gohpur Police Station. It must also be noticed herein that the incident in question occurred while the respondent No. 4 and the

deceased were involved in the examination of certain defects in a seized fire arm, to understand which, the service revolver of the respondent No. 4 was also examined in the course of which the service revolver went off leading to the death in question. In the interim report of the IGP (CID) dated 1.3.2004, it was further mentioned that sanction for prosecution of the respondent No. 4 has been sought and as soon as the same is received, will be filled against the said respondent. Thereafter, a final report of the IGP (CID) along with a report signed by the Investigating Officer on 27.2.2004 was placed before the court, wherein, it has been, inter alia, recorded that there were certain defects in the earlier investigation of the case and that on re-investigation of the same, prima facie, commission of an offence u/s 304 IPC by the respondent No. 4 herein, is disclosed. It is the common case of the parties before this Court, at the hearing, that sanction for prosecution has in the meantime been granted and pursuant thereto charge-sheet against the respondent No. 4 has been filed and the said respondent No. 4 is now facing trial before the competent Criminal Court. In the above circumstances, the prayers made in the writ petition for further enquiry in the matter and for necessary action against the wrong doer as per the provisions of law appear to have been well taken care of. The only surviving cause of action in the writ petition, therefore, will be the entitlement of the writ petitioner to compensation or ex gratia, as has been raised in the writ petition, which claim has been argued by Mr. G Uzir, learned Counsel for the petitioner.

2. Shri Uzir, learned Counsel for the petitioner has contended that in the facts of the present case, as evident from the detailed report submitted by the Investigating Officer, the State must be held to be vicariously liable for the act committed by the respondent No. 4. The death of the petitioner's husband having resulted from the incident in question, compensation of such amount as may be adjudged by the court to be adequate, should be made in favour of the writ petitioner. Reliance has been placed on the judgments of the Apex Court in the cases of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , and The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, A judgment of this Court in the case of Lilabati Baishya v. State of Assam and Ors., reported in 2004 (2) GLT 366 has also been relied upon by the learned Counsel for the petitioner.

3. According to the petitioner, death of her husband having been caused by a negligent action on the part of the respondent No. 4, the State must be held to be vicariously liable for such act either on account of its failure to impart adequate and proper training in handling firearms to the respondent No. 4, who is a police officer or on account of the fact that the State had engaged employees like the respondent No. 4, who are negligent and who do not exercise due care and caution in the performance of their duties.

4. The arguments advanced on behalf of the petitioner have been resisted by Mr. G. Soren, learned Government Advocate, Assam as well as Mr. N. Mahammad, learned Counsel for the respondent No. 4. Learned counsels for the respondents

in unison have argued that the criminal proceeding against the respondent No. 4 being presently pending and the criminal act on account of which the death had occurred being alleged to be a negligent act, it would be improper and premature for this Court to come to any conclusion even prima facie, with regard to any alleged negligence on the part of the respondent No. 4 and to award compensation in favour of the petitioner on that basis. Learned counsels for the respondents have further argued that the petitioner had been appointed as a Woman Constable by the State, sometime in the year 1997, on compassionate ground, and all dues of the deceased having been paid to the petitioner as the wife/widow, the award of any compensation as claimed, must be withheld by the court and the question may be appropriately adjudicated by the competent forum once the respondent No. 4 is found guilty in the criminal case, if any such occasion arises.

5. The rival submissions made on behalf of the contesting parties have received the due and anxious consideration of the court. Award of compensation as a remedy in public law has been made by the courts from time to time in cases of established breach of the basic rights of the citizens as enshrined by Part III of the Constitution. It is on the aforesaid basis that compensation has been awarded, for custodial death in the case of Lilabati Behera (supra) and in case of rape in the decision rendered in Chairman Railway Board (supra). It is also on the aforesaid basis also that this Court had proceeded to award compensation for rape by Army personnel in the decision rendered in Lilabati Baishya (supra). In all the above cases, as also in other cases, compensation awarded in public law has followed established violation of the fundamental rights enshrined under Article 2 of the Constitution. Whether the aforesaid principles would apply to the facts of the present case is the moot question that calls for a resolution by the court.

6. In the present case, the materials available on record would indicate that the allegation against the respondent No. 4, on the basis of which learned Counsel for the petitioner contends that the State will be vicariously liable, is one relating to commission of a negligent act. The said allegation against the respondent No. 4 is pending in a Criminal Court, which is conducting a regular trial against the respondent No. 4. The liability of the respondent No. 4, if any, in tort, and the consequent vicarious liability of the State for such tortuous act of the respondent No. 4 can follow that only if this Court records a finding with regard to the alleged negligence of the respondent No. 4. In a situation where the stand taken by the respondent No. 4 in the affidavit filed is that the incident in question leading to the death was accidental and when the said defence has also been put up before the Criminal Court, any finding of this Court, even prima facie, with regard to negligence of the respondent No. 4 may have the effect of impairing the rights of the respondent No. 4 to a fair trial in the Criminal Case. Without recording any such finding of negligence on the part of the respondent No. 4, no liability in tort can follow and consequently the State cannot be held to be vicariously liable. As a Criminal Case is pending on the very same allegation and

the Criminal Court would be required to come to a finding with regard to the alleged negligence on the part of the respondent No. 4, this Court is of the considered view that no such finding ought to be recorded by this Court in the present proceeding even for the purposes of grant of compensation. The logical and natural consequence of the aforesaid view expressed by the court would be a disinclination on the part of the court to award any compensation to the petitioner, at this stage in coming to the said conclusion, the court has also taken into account that since the year 1997 the petitioner is engaged and she is working as a police constable, which engagement has been made by the State on compassionate ground.

7. Insofar as the question of payment of ex gratia to the petitioner is concerned, it has been consistently held by the courts that no mandamus can be issued for payment of any amount on account of ex gratia ; ex gratia being an act of gratis, no legal right to receive any such payment can be recognised in any person. The rule of the court in such matters has been to ensure uniformity in governmental action and to prevent discrimination in grant of ex gratia by the State to its citizens. No discrimination with regard to payment of ex gratia having been asserted by the writ petitioner before this Court, the matter has to be allowed to be set at rest at that and ought not be carried any further.

8. For the reasons aforesaid, and in view of the discussions that have preceded, I consider it appropriate to close this writ petition in terms of the directions and observations as contained above and by refusing the relief of compensation and/or ex gratia, as claimed by the petitioner.