
(2003) 03 GAU CK 0021
In the Gauhati High Court
Case No : WP (C) No. 6170 of 1999

Swarna Kalita alias Jan

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 392, 394, 395

Citation : (2003) CriLJ 4197 : (2003) 2 GLR 395

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : A.K. Goswami, for the Appellant; G.A., for the Respondent

Final Decision : Allowed

Judgement

B.B. Jain, J.—By this petition under Article 226 of the Constitution of India, the mother of the deceased Prasanta Kalita sought for adequate compensation for custodial death of her son on 21.10.1999.

2. In short compass, the petitioner's case is that on 2.10.1999, her son, namely, Prasanta Kalita was arrested by the Police in connection with Mathurapur PS case No. 42/99 The Police took him on remand and on expiry of remand her son was sent to Jail. During Police custody on the prayer of the Police officials her son was shown arrested in other cases, namely, Sonari PS case No. 52/99 u/s 394 IPC Sonari PS case No. 108/95 u/s 395 IPC and Mathurapur PS case No. 96/99. He was further shown arrested in connection with Moranhat PS case No. 73/99 u/s 395 IPC and another two cases of the said Police station being 13/99 u/s 392 IPC and 96/99 u/s 392 IPC. Though the deceased had been shown arrested in a good number of cases as mentioned above, but the Police authority never informed the petitioner or any other inmates regarding the arrest and detention of the deceased. Hearing the detention of her son from other sources, the petitioner came to the court of learned SDJM Charaideo on 28.10.1999 and applied for certified copies of the papers and documents, but she came to know that her son

Prasanta Kalita already died in Jail on 21.10.1999 and on the following day, the dead body was cremated. Before cremation of the dead body neither the petitioner nor any other inmates had been informed of and as such the petitioner apprehended that due to atrocities committed on her son while in custody he succumbed to the injuries. Hence, this petition,

3. This court vide order dated 28.6.2000 asked the District Judge, Shivsagar to hold an inquiry and to submit the report. The report has been submitted and the copies have been supplied to both sides.

4. I have heard learned counsel of both sides.

5. I have perused the report of learned District Judge. From the report of the learned District Judge, the following facts remain admitted :

(I) The petitioner's son Prasanta Kalita was arrested on 2.10.1999 in connection with Mathurapur PS case No. 42/99. Subsequently, he was shown arrested in connection with as many as 7 Police cases under different provisions of Indian Penal Code ;

(II) Since there was no separate Jail at Charaideo, the accused Prasanta Kalita was lodged in the District Jail, Shivsagar ;

(III) While in custody in District Jail, Shivsagar, he died there on 21.10.1999 ;

(IV) The dead body of Prasanta Kalita was cremated on 22.10.1999.

6. Now, the points to be answered are formulated below :

(I) Whether Prasanta Kalita died as a result of physical assault committed on him while in custody ;

(II) Whether the arrest and detention of Prasanta Kalita had been intimated to his family members by the detailing authority ;

(III) Whether the death of Prasanta Kalita while in Jail was intimated to his family members.

7. From the report of the learned District Judge, it appears that the learned District Judge recorded the statements of good number of witnesses from both sides. Learned District Judge found the following circumstances in course of inquiry :

(I) The younger brother of the deceased was also in the same Jail for some time while the deceased was there. But his younger brother never claimed before the learned District Judge during inquiry that his elder brother complained of assault having been committed on him by the Police/Jail officials ;

(II) There was no mark of external injuries found at the time of post mortem. Though the deceased Prasanta Kalita had been produced before the learned Magistrate many times, he did not make any complaint regarding any assault

having been committed on his body by any person.

(III) The doctor who conducted the autopsy was examined as DW 1,1. He deposed that no mark of external injury or ligature mark had been found on the dead body. The doctor found the Liver being enlarged and the cause of death, according to the doctor was cardiac failure. The DW 3 is the doctor who attended the deceased Prasanta before death. He deposed that on his arrival "the deceased was gasping for life and then he pushed two injections, namely, one decadrone and one deriphylline". He further deposed that before the UTP could be shifted to civil hospital, he collapsed within ten minutes.

8. Though the learned District Judge held that "the petitioner has failed to establish the allegation of physical torture either by Police or by Jail authority", I do not share with his finding." Because, a young boy like the deceased Prasanta Kalita could not die on a sudden cardiac failure unless he suffered from some ailment previously. It is also there that the Liver of the deceased found to have already been enlarged. Why that was happened, the Jail authority did not produce the hospital records showing the reason for such enlargement of Liver of the deceased. He was in custody from 2.10.1999 till he died on 21.10.1999. What happened in between had not been divulged either by the Police authority or by the Jail authority. Admittedly, the deceased Prasanta Kalita was arrested on 2.10.1999. But the fact of his arrest and detention had never been intimated, to the members of his family and it is undoubtedly a deliberate violation of the dictum announced by the Hon'ble Supreme Court in the case of D.K. Basu Vs. State of West Bengal, The directives given by the Hon'ble Apex Court in the case of D. K. Basu (supra) had not been complied with in the present case and that undoubtedly cast a reasonable doubt as to the cause of death of Prasanta. From the report, it appears that after death, one wireless message was transmitted to Sonari PS on 21.10.1999 vide ext. A, but the Sonari PS informed that no member of the deceased's family was available at home on 21.10.1999 and as such the Gaonbura was requested to communicate the same to the bereaved family. But that Gaonbura was not examined by the learned District Judge. On 22.10.1999 another attempt was made and a written notice was served upon Smt. Purnima, Kalita, the sister of the deceased. The said notice has been produced as ext-D before the learned District Judge during inquiry. It is not intelligible as to why instead of serving notice upon the sister of the deceased, any family member was not brought to the Morgue where the dead body was kept before cremation and as such I am not in a position to endorse the finding of the learned District Judge to the effect that "it was clarified that the dead body had to be cremated since no family member turned up to claim the dead body". The conclusion arrived at by the learned District Judge is reproduced below :

"In view of my finding, given hereinabove, I hold that the petitioner has failed to establish that the deceased Prasanta Kalita was subjected to physical torture during the custody. I also hold that the dead body was cremated after intimation to the all concerned authorities as well as the family members of the deceased,

but at the same time, I hold that the District Jail, Shibsagar cremated the dead body in a haste without waiting for arrival of the family members for a reasonable time."

9. From the aforequoted conclusion of the learned District Judge, it reveals that the learned District Judge wrongly put the burden upon the petitioner to establish that the deceased Prasanta was subjected to physical torture during the custody. Admittedly, the deceased Prasanta Kalita died on 21.10.1999 while had been in custody since 2.10.1999. There is nothing on record that at the time of arrest and detention on 2.10.1999, deceased Prasanta had been suffering from any disease which could result in cardiac failure. During post mortem, the Liver of the deceased was found enlarged. But there is no hospital record to show that the Police/Jail authority made any arrangement for his treatment before, death. The non-compliance of the decision of the hon'ble Apex Court in the case of D.K. Basu (supra) is in itself indicative of concealment of real fact by the Police authority. The Police/Jail authority should have waited a reasonable time for arrival of the relatives of the deceased or could have arranged the transportation to the relatives of the deceased before cremation. The cumulative effect of all these omissions on the part of the Police/Jail authority would lead a prudent man to infer that due to some foul play committed on the deceased Prasanta, sudden death happened while in custody and as such the respondents cannot absolve their responsibilities.

10. The writ petition is allowed.

11. The petitioner-mother of the deceased Prasanta Kalita is entitled to be compensated. But what would be the just and fair compensation in the present case is very difficult to assess in absence of materials on record. There is nothing on record to infer how much amount of money the deceased used to earn at the relevant time. Had he any business to earn or a day-labourer, nothing has been put on record and as such I roughly assess the compensation at Rs. 75,000 being loss of earning and Rs. 50,000 on account of deprivation from love and affection and as such the respondents, particularly, the respondent Nos. 1 and 2 are directed to pay the aforesaid amount of compensation of Rs. 75,000 + Rs. 50,000 = Rs. 1,25,000 (rupees one lakh twenty-five thousand only) to the bereaved mother-petitioner herein within a period of six weeks from today failing which the amount would carry interest @ Rs. 6% per annum.

12. The writ petition is disposed of accordingly. No cost.