
(2014) 09 MAN CK 0018
In the Manipur High Court
Case No : Writ Petition (Cril) No. 68 of 2009

Thiyam Ongbi Tanoubi Leima

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Arms Act, 1959 — Section 25 (1-C)
Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2015) 1 GLD 578 : (2014) 4 GLT 508

Hon'ble Judges : N. Kotiswar Singh, J; Laxmi Kanta Mohapatra, J

Bench : Division Bench

Advocate : M. Rakesh, Advocate for the Appellant; Y. Ashang, GA and Amarjit Naorem, CGSC, Advocate for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—The present writ petition has been filed by the petitioner, who is the mother of one Thiyam Amit Meitei, who the petitioner claims to have been killed by a combined team of the Imphal East Manipur Police Commandos and 23 Assam Rifles in a fake encounter at Nongren Chinglak, Imphal East District on 29th December, 2008.

2. According to the petitioner, on 28.12.2008 her son, Thiyam Amit Meitei had left their house along with another friend namely Moirangthem Inaobi Meitei in a Yamaha Motor cycle for Tshomyang village, carrying a sum of Rs. 10,500/- for making payment to the chief of the Tshomyang Village for certain timbers purchased by his father. However, on the way to the said village when they reached Sabungkhok village they were intercepted by a team of 23 Assam Rifles and were taken to the Assam Rifles camp at Yaingangpokpi and were severely tortured and were separated. Moirangthem Inaobi Meitei, who was arrested along with the petitioner's son was subsequently handed over to the police and was brought to the official quarter of the then Deputy Speaker, Manipur

Legislative Assembly by the police commandos where he was released.

3. The respondents have denied the allegation of fake encounter. On the other hand, it is the case of the respondents that an encounter took place between some underground cadres and combined team of commandos and 23 Assam Rifles at Nongren Chinglak at around 7 p.m. of 29.12.2008, in which one unknown person, later identified as Thiyam Amit Meitei, was found dead and one 9 mm pistol with magazine, 4 live rounds of 9 mm ammunition, one small diary, one demand letter of KCP (MC), two empty cases of AK 47 rifles ammunitions were found near the dead body and a regular case under FIR No. 159(12)08 LLI PS u/s. 307/34 IPC, 20 UA(P) A Act 2004 and 25 (1-C) Arms Act was registered at Lamlai Police Station.

4. Considering the dispute in the manner in which the petitioner's son died, this Court, vide order dated 6.7.2010 ordered for an inquiry by the District Judge, Manipur East to ascertain the facts leading to the death of the petitioner's son. Accordingly, an inquiry was conducted by the learned District Judge, Manipur East, who submitted his report before this Court on 27.07.2012, copies of which were made available to the learned counsel for the parties.

5. We have perused the report and also heard the learned counsel for the parties. As we proceed, it may be apposite to reproduce certain relevant paragraphs of the report which was in favour of the petitioner as follows.

"15. On careful examination of the testimonies of the PWs and R.Ws it is an admitted fact that the son of the petitioner, Thiyam Amit Meitei was killed by the combined Force of Manipur Police Commando and 23 Assam Rifles on 29.12.2008 at Nongren Chinglak, but, the assertions of the petitioner are that her son was arrested on 28.12.2008 by the personnel of 23 Assam Rifles and killed him in a fake encounter. On the other hand, the assertion of the respondents is that the son of the petitioner was killed in a genuine encounter between the combined force of the Manipur Police Commandos and 23 Assam Rifles and members of so called unlawful organisation, Kangleipak Communist Party (KCP) at Nongren Chinglak on 29.12.2008.

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On having synthetic perusal of the testimonies of the PWs it is axiomatic that the PWs are well corroborated each other and more particularly, PW No. 2 is the person who went to Tshomyang village along with the deceased, Amit Meitei on 28.12.2008 and he clearly deposed about the arrest of himself and Amit Meitei by the personnel of Assam Rifles on their way to Tshomyang village from Sabungkhok village area and releasing him later on and informing him about the killing of Amit Meitei earlier by one personnel of Assam Rifles. All the PWs were cross examined by the counsel of the respondents but their testimonies were not shaken at all except mere denial.

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R.W. No. 1 in his cross examination has admitted that normally 7 pm. In the month of December is dark and there was no light as there were no street lamp and any source of light in that day in the said area and the visibility was poor on the said day as it was dark during that day but on that day they were using torch light and small search light during the time of making search. However, R.W. No. 2 on the contrary, has deposed that their party was having two night vision instrument on the said day. Further, RWs No. 1, 2 and 3 have stated that as soon as they spotted the movement of 5/6 individuals, they challenged them by shouting Stop, Halt, Rukho, etc but the said persons suddenly fired towards them very heavily from the above nearby hill and also from the foot of the hill and they retaliated from their side and the encounter was lasted about 10 minutes. Surprisingly, no personnel of the alleged combined team of Manipur Police Commando and 23 Assam Rifles go injured during the said heavy encounter of 10 minutes where the insurgents groups were firing from above the hill as well as from the foot of the hill. Moreover, after having heavy encounter of 10 minutes only 2(two) fired cases of 9 mm and 4(four) fired cases of AK Rifles were recovered from the place of occurrence. There is also no material to show that the said recovered 9 mm pistol is a serviceable one or not. Thus, the respondents have failed to establish that there was an encounter or exchange of firing on 29.12.2008 at about 7.00 p.m. at Nongren Chinglak between them and unknown armed youths of KCP organisation and in that encounter Th. Amit Meitei was killed."

6. Thereafter, the Learned District Judge gave the following finding:

"17. In the result of the foregoing observations, I find the testimonies of PWs are more convincing and trustworthy than that of the RWs.

Therefore, I have decided that the son of the petitioner, namely Thiyam Amit Meitei was killed by the personnel of 23 Assam Rifles and Manipur Police Commando on 29.12.2008 at about 7.00 p.m. after having in their custody in a fake encounter at Nongren Chinglak, Imphal East District. I have also decided that there was no exchange of firing or encounter with the combined force of Manipur Police Commando and 23 Assam Rifles along with unknown armed youths of KCP organisation on 29.12.2008 at Nongren Chinglak, Imphal East District."

7. We have gone through the report. Though we are not sitting as an appellate authority over the report submitted by the learned District Judge, Manipur East, nevertheless, we have given due consideration to the evidences on which basis the findings were made in the said report for our own satisfaction. The petitioner had produced as many as six witnesses and five documents in support of her claim. On the other hand, the respondents examined four witnesses in support of their case.

8. Mr. Moirangthem Inaobi Meitei, who had gone with the petitioner's son on the fateful day on 28.12.2008 towards Tshomyang village was examined as PW. 2. He testified that he was arrested along with the petitioner's son on the Imphal-Ukhrul road when they reached near Sabungkhok village by the Assam Rifles on 28.12.2008 and they were blind folded and he was taken to the Assam Rifles camp at Yaingangpokpi where he was severely beaten and interrogated by the Assam Rifles personnel. However, he did not see the petitioner's son as he was not kept along with him. On the next day he was taken to the Assam Rifles camp at Sagolmang and subsequently handed over to the police. He stated that while he was in Assam Rifles camp at Yaingangpokpi, he was informed that the petitioner's son was killed earlier but he will be released as he was found to be innocent.

9. The evidence of this witness who had been detained by the Assam Rifles along with the petitioner's son on the fateful day had not been shaken as observed by the District Judge. We also do not find any reason to disbelieve the testimony of the PW 2, who was with the petitioner's son when he was apprehended by the Assam Rifles. Once it was reliably shown that the petitioner's son was apprehended by the Assam Rifles along with the PW 2 who was subsequently released, the onus lay on the Assam Rifles how the petitioner's son was dealt with by them. The learned District Judge did not find the testimonies of the witnesses produced on behalf of the respondents to be trustworthy and convincing to the effect that there was an encounter and they were silent about the apprehension of Moirangthem Inaobi Meitei, who was handed over to the police.

The evidence of the PW 2 corroborated by other evidences would belie the version of the Assam Rifles that the petitioner's son died in an encounter. We find nothing in the testimony of the PW 2 that would make it doubtful. Therefore, the only legitimate inference that can be drawn in the facts and circumstances of the case is that the Assam Rifles were responsible for the death of the petitioner's son.

10. On perusal of the inquiry report and examination of the evidences on record we do not find any reason to differ from the view taken by the learned District Judge, Manipur East that the petitioner's son did not die in an encounter. We are prima facie satisfied that the petitioner's son had met his death at the hands of the Assam Rifles as indicated in the report.

11. Having held that the petitioner's son had died at the hands of the Assam Rifles, the next question that arises for consideration is to the quantum of compensation which may be awarded by invoking the principle of constitutional court remedy.

This issue, however, is fraught with certain difficulties in as much as no uniform criteria had been adopted by the constitutional courts to measure the damage of compensation that may be liable to be imposed on the State. The Supreme Court

in *Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others*, observed that there is no system or method to measure damages caused in such situation and quite often Courts have a difficult task in determining damages in various facts and situations and yardsticks normally adopted for determining compensation payable under the law of torts are not as such applicable when a constitutional Court determines the compensation in cases where there is violation of fundamental rights guaranteed to its citizens. The Supreme Court in the said Uphaar case (supra) noted various yardsticks adopted in various cases as "palliative" for measuring damages as done in *Rudul Sah Vs. State of Bihar* and Another, in which it was observed that the right to compensation is some palliative for the unlawful acts of instrumentalities and therefore, the State must repair the damage done by its officers to the petitioner's rights. In *Sebastian M. Hongray Vs. Union of India (UOI)*, the Supreme Court used the expression "exemplary" costs and "punitive" measure, or "monetary compensation" as used in *D.K. Basu Vs. State of West Bengal*, The Supreme Court also in Uphaar (supra) also cautioned against adopting the various methods such as loss of earning, impairment of future earning capacity, medical expenses, mental and physical suffering, property damage etc. for computing damages for violation of constitutional torts as mentioned in para 101 thereof:-

"101. Constitutional courts all over the world have to overcome these hurdles. Failure to precisely articulate and carefully evaluate a uniform policy as against State and its officials would at times tend the court to adopt rules which are applicable in private law remedy for which courts and statutes have evolved various methods, such as loss of earnings, impairment of future earnings, impairment of future earning capacity, medical expenses, mental and physical suffering, property damage, etc. Adoption of those methods as such in computing the damages for violation of constitutional torts may not be proper."

Yet, the Supreme Court also observed in para 108 that several factors may be taken into consideration at the time of awarding compensation.

"108. Several factors may gauge on a constitutional court in determining the punitive damages such as contumacious conduct of the wrongdoer, the nature of the statute, gravity of the fault committed, the circumstances, etc.. Punitive damages can be awarded when the wrongdoers' conduct "shocks the conscience" or is "outrageous" or there is a wilful and "wanton disregard" for safety requirements. Normally, there must be a direct connection between the wrongdoer's conduct and the victim's injury."

The Supreme Court also suggested that framing of a comprehensive legislation dealing with tortuous liabilities of the State and its instrumentalities, absence of which results in not following the uniform pattern while deciding those claims and sometimes leads to undesirable consequences and arbitrary fixation of compensation amount.

12. However, in absence of a legislation and of uniform criteria in this regard would not come in the way in awarding such damage or compensation as the constitutional courts may deem fit and appropriate for the injuries received by the victim at the hands of the State instrumentalities and for violating the fundamental rights and the courts may have to take recourse to all the relevant factors and peculiarities as may be disclosed in the case.

13. In the present case, as per finding of the learned District Judge, the petitioner's son along with his friend, namely, Moirangthem Inaobi Meitei, were apprehended by the Assam Rifles. The said Moirangthem Inaobi Meitei was ultimately set free but the petitioner's son was alleged to have been killed in an encounter which the District Judge held to be false. Therefore, the only legitimate inference that can be drawn is that the petitioner's son was killed by the Assam Rifles after being apprehended by them without following the procedure established by law thus depriving his life as guaranteed under Article 21 of the Constitution of India. It has been brought to the notice of this Court that petitioner's son was about 21 years and had been assisting his father's timber business in connection with which the petitioner's son was proceeding towards the Tshomyang village on the fateful day for payment of the cost of certain timbers purchased from the said village chief. It may be also observed that no case has been also made out that the petitioner's son was involved in any criminal or anti-national activities.

14. Accordingly, taking into consideration all these factors, this Court is of the view that awarding the compensation amount of Rs. 5 lakhs to the petitioner for the death of her son during the custody of the Assam Rifles will be appropriate. In the result, the writ petition is allowed. The respondent Nos. 2, 3 and 4 are directed to pay a sum of Rs. 5 lakhs to the petitioner within a period of 4(four) months from today.

It is, however, open to the petitioner to claim a higher amount of compensation, if so desired by resorting to the appropriate civil law remedy.