

THE HIGH COURT OF TRIPURA
AGARTALA

W. P.(C) No. 151 of 2013

Petitioner :

Smt. Anima Deb, (Sukla Baidya),
W/o. Late Benu Sukla Baidya,
Manik Bhandar Bazar,
Kamalpur, P.S- Kamalpur,
District : Dhalai Tripura.

By Advocates :

Mr. A. Roy Barman, Adv.
Ms. L. Laskar, Adv.

Respondents :

- 1.** The State of Tripura,
Represented by the Secretary, Department of
Home, Govt. of Tripura, New Secretariat
Building Capital Complex. P.O. Kunjaban,
Pin-799008.
- 2.** The Secretary,
Department of Home, Govt. of Tripura, New
Secretariat Building Capital Complex. P.O.
Kunjaban, Pin-799008.
- 3.** The Director of Police, Government of
Tripura, Police H. Q, Fire Service
Choumohani, Agartala-799001.
- 4.** The Superintendent of Police, Dhalai
District, P.O. Ambassa, Pin-799285.
- 5.** The Officer-in-Charge,
Kamalpur Police Station, P.O. Kamalpur,
799285.
- 6.** Md. Allaudin Majumder,
S.I of Police, Now posted at Kamalpur Police
Station, P.O. Kamalpur, Pin-799285.
- 7.** Sri Sujit Debnath,
HV. Of Police, Now posted at Kamalpur
Police Station, P.O. Kamalpur, Pin-799285.

By Advocates :

Mr. B.C. Das, Adv. Gen.,
Ms. A. S. Lodh, Addl. G. A.
Mr. S. Sarkar, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing : **9th June, 2014.**

Date of Judgment & Order : **30th June, 2014.**

Whether fit for reporting :

Yes	No

JUDGMENT & ORDER

(Deepak Gupta, C.J.)

The petitioner is the widow of late Benu Sukla Baidya and has filed this petition alleging that her husband is the victim of police torture and died in custody.

[2] The undisputed facts are that Sri Benu Sukla Baidya (deceased) was accused in Police Case No. 21 of 2013 registered at Police Station Kamalpur under Section 457 and 380 of the Indian Penal Code. It is not disputed that he was arrested by the police on 21.04.2013 as a suspect in the case. Benu Sukla Baidya was produced by the Investigating Officer in the Court of the SDJM, Kamalpur on 22nd April, 2013. A prayer was made that the accused be remanded to police custody for 10(ten) days. The Magistrate vide his order dated 22nd April, 2013 allowed 5(five) days police remand and also directed that the accused should not be unnecessarily harassed and should be got examined by a Government Medical Officer after every 48 hours. The accused was also directed to be produced before the Court of the SDJM, Kamalpur on 26.04.2013 along with medical report of the accused.

[3] The petitioner's husband was therefore, admittedly in the custody of the police. The dispute arises hereinafter. According to the petitioner her husband was tortured and killed by the police whereas the

case of the police is that the deceased attempted to commit suicide. He was found hanging and his body was pulled down and was shifted to the hospital at Kamalpur. Thereafter he was brought to the hospital at Agartala and then taken to Kolkata. Unfortunately, he expired at Kolkata.

[4] The law is well settled that when death of an undertrial prisoner takes place in custody then the Court must be fully satisfied that the case set up by the police is a truthful case. In case the Court finds that the story put up by the police is false or is not believable then the Court may raise a presumption that death has taken place due to third degree methods applied by the police. However, at the same time, every death of an under trial prisoner in custody cannot be presumed to be a death due to torture by police or due to the illegal acts of the police. Each case has to be decided on its own merits.

[5] Sri Roy Barman has placed reliance on the judgment of the Apex Court in *D.K. Basu Vrs. State of W. B: (1997) 1 SCC 416* wherein the Apex Court laid down a number of guidelines to be followed by the police while interrogating the under trial prisoners. The Court noted with concern that custodial violence and abuse of police power is wide-spreaded all over the world. The Apex Court further held that no person could be deprived of his life or personal liberty except according to procedure established by law. The following observations of the Apex Court are relevant.

"22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution required to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. 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 anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

24. Instances have come to our notice where the police has arrested a person without warrant in connection with the investigation of an offence, without recording the arrest, and the arrested person has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case property or for extracting confession etc. The torture and injury caused on the body of the arrestee has sometimes resulted in his death. Death in custody is not generally shown in the records of the lock-up and every effort is made by the police to dispose of the body or to make out a case that the arrested person died after he was released from custody. Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even the higher police officers turn a blind eye to such complaints. Even where a formal prosecution is launched by the victim or his kith and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting in death as the police lock-up where generally torture or injury is caused is away from the public gaze and the witnesses are either police men or co- prisoners who are highly reluctant to appear as prosecution witness due to fear of retaliation by the superior officers of the police. It is often seen that when a complaint is made against torture, death or injury, in police custody, it is difficult to secure evidence against the policemen responsible for resorting to third degree methods since they are incharge of police station records which they do not find difficult to manipulate. Consequently, prosecution against the delinquent officers generally results in acquittal.*****"

At the same time the Apex Court further held as follows:

"31. There is one other aspect also which needs our consideration. We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal

riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals, Many hard core criminals like extremists, terrorists, drug peddlers, smugglers who have organized gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalization and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go scot-free without exposing any element or iota or criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This all the more so, in view of expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worst than the disease itself."

Thereafter the Apex Court laid down certain guidelines and in this judgment which was the pioneering judgment in this field the Apex Court summed up its views in the following manner:

"54. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act

committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

There can be no manner of doubt that compensation can be awarded in a case where the custodial death is a result of violence by the police. The High Court in exercise of its writ jurisdiction can award compensation under public law jurisdiction. However, the compensation under public law jurisdiction can be awarded only when it is "**established**" that there has been infringement of the fundamental right of the citizen by the public servant of the State. As pointed out above, the Court may in cases of custodial death seek better explanation from the police than in a normal case and in that sense the burden may shift on to the officials in whose custody the deceased was to explain the circumstances of the death. If they cannot give proper explanation then the Court may grant compensation. But if the explanation given by the public officials is just and proper then it would not be just to award compensation because the breach of the fundamental right has not been established.

[6] Sri Roy Barman has also relied on a judgment of the Imphal Bench of the Gauhati High Court in ***K.L. Thariktha Vrs. State of Manipur & Ors. ; 2012 (2) GLT 977***. This judgment only reiterates what has been said by the Apex Court in ***Radul Sah Vrs. State of Bihar : (1983) 4 SCC 141***, ***Nilabati Behera Vrs. State of Orissa : (1993) 2 SCC 746*** and ***D. K. Basu Vrs. State of West Bengal: (1997) 1 SCC 416***.

[7] There can be no quarrel with the principle laid down that the Court in exercise of its writ jurisdiction can award compensation. However, the main question is whether the petitioner has been prima facie able to establish the violation of the fundamental rights of the deceased or not? As pointed out above, this is not a case of an illegal arrest. A case had been registered. The deceased who was the accused was produced before the Court and a police remand order was obtained. The Court while granting remand, directed the investigating officer not to unnecessarily harass the accused and also to get him medically examined after every 48 hours.

[8] The stand of the police is that after the remand order was passed at about 3.30 pm on 22.04.2013 the deceased was taken to the police station lock up after observing all legal formalities and an entry was made in the G. D. Entry register at Sl. No. 95 on 22.04.2013 at 8.15 hours. Thereafter the deceased was interrogated by the Police Officers including the Investigating Officer of the case as is apparent from the G. D. Entry No.961. On the night intervening 22.04.2013 and 23.04.2013 the police was interrogating the accused in the room of the Investigating Officer located in the first floor of the police station building. Entry in this regard has also been shown as G.D. Entry No. 973. It is alleged that the accused asked for water and at about 1.40 hours the Investigating Officer himself came down to the ground floor to get drinking water for the accused. The accused was kept in the room of the Investigating Officer on the first floor. According to the police there was no other police staff present in the room. When the Investigating Officer returned to the room on the first floor at about 1.45 hours along with head constable Sujit Debnath, he found the accused person

hanging from the ceiling fan. The accused had allegedly used his pant (long pant) to hang himself. Thereafter Head Constable Sujit Debnath caught hold of the legs of the accused while the Investigating Officer removed the knot by which pant was tied with the ceiling fan. The accused was brought down and taken immediately to the hospital at Kamalpur, from there he was referred to the AGMC, Hospital, Agartala. The police thereafter registered a case of attempt to suicide against the accused. At the same time, the wife of the accused also lodged a complaint that her husband had been tortured to death.

[9] It is not disputed that the accused was taken to the AGMC Hospital at Agartala from where he was referred to the SSKM Hospital, Kolkata. The accused was air-lifted to Kolkata and treated there at the hospital where he unfortunately died on 03.05.2013. We have gone through the medical reports. The first medical report is from Kamalpur Hospital. In the history recorded at the hospital itself it was stated that the patient was brought with the allegation that he had attempted to commit suicide by hanging. The patient was unconscious. His pulse was 88 per minute and Blood pressure 110/70 mm of HG. He was having respiration distress and Ligature mark was seen near the neck. He was brought to the hospital on 23rd April, 2013 at 1.55 am and referred to the hospital at Agartala at 2.30 a.m.

[10] As per the medical bulletin issued by the Chairman, Agartala Medical Collage the deceased was in a very serious condition when he was admitted. After initial resuscitation at the casualty he was shifted to the ICU. Even at that time the prognosis was not very hopeful. The C.T Scan of the

neck showed retro-lis thesis of grade-I of C₅-C₆ vertebrae. However, the patient showed no sign of improvement, his condition deteriorated and he was referred to the SSKM Hospital in a serious condition. We have also perused post mortem report which has been produced. The post mortem report states that death was due to effect of hanging which was ante mortem in nature. This also supports the case of suicide.

[11] We have discussed the evidence in detail only for the purpose of satisfying ourselves. We do not find this is a case where it can be said on the basis of the material on record that the deceased was tortured by the police. We are of the view that the breach of the fundamental right in terms of the D. K. Basu's case has not been established to such an extent that we can say with certainty that the deceased died due to the police torture.

[12] Mr. Roy Barman has drawn our attention to that portion of the post mortem report wherein two small injuries, one an abrasion and one small haematoma have also been found on the left arm and scalp of the deceased. These injuries may or may not have been caused while bringing the deceased down from the ceiling fan or while he was transported to various places. In any event, these injuries did not cause his death and death is due to hanging.

[13] Sri Roy Barman has also submits that the story of hanging appears to be false because the deceased could not have hang himself so fast. We are not commenting on the merits of the case in view of the decision which we propose to take. However, we definitely cannot say with certainty that the deceased did not die of hanging. The story of the police

that the Investigating Officer had gone to get water and in the meantime the accused attempted to commit suicide cannot be lightly brushed away.

[14] At this stage, we may make reference to the judgment of the Apex Court in ***Sube Singh Vrs. State of Haryana and Others ; (2006) 3 SCC 178*** wherein after discussing all previous cases including ***Nilabati Behera*** and ***D.K. Basu's*** case the Apex Court held as follows:

"45. Cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human rights violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. The courts should, therefore, while jealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable the police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture."

[15] We must bear in mind that every death in custody is not a result of custodial death or torture. When death takes place during custody the Court should examine the records very carefully and should not accept the statement of the police officers at their face value. At the same time, one must remember that all police officials are not monsters or criminals. If after carefully examining the case no torture is established then it would not be proper to grant compensation under public law.

[16] We are clearly of the view that in the present case, we cannot lightly brush aside the version of the police which appears to be supported by the medical evidence. Therefore, we dismiss this petition. However, liberty is reserved to the petitioner to file an appropriate suit or take any other appropriate proceedings to establish her claim by leading proper evidence. We also make it clear that what we have said above is only in the context of deciding the writ petition where evidence is normally not recorded and any observation made by us shall not bind any Civil Court which the petitioner may approach for redressal of her grievance.

[17] With these observations, the writ petition is disposed of. No order as to costs.

JUDGE

CHIEF JUSTICE