

(2012) 10 P&H CK 0197

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 5939 of 1994

Amandeep

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: Oct. 12, 2012

Acts Referred:

- Arms Act, 1959 - Section 25, 27
- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 432, 433, 433A
- Penal Code, 1860 (IPC) - Section 302, 449
- Prisons Act, 1894 - Section 27

Citation: (2013) 3 Crimes 184 : (2013) 169 PLR 191 : (2013) 2 RCR(Criminal) 12

Hon'ble Judges: R.P. Nagrath, J

Bench: Single Bench

Advocate: P.P.S. Duggall with Mr. M.S. Sidhu, for the Appellant; Munish Chaudhary, AAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

R.P. Nagrath, J.

The petitioner, a minor son of Surinder Mohan (deceased), was about 11/12 years old when this petition was filed in the year 1994. He has thus attained majority long ago. He invoked the jurisdiction of this Court under Articles 226/227 of Constitution of India through his grandmother as next friend, on account of death of his father taking place while undergoing life imprisonment in Central Jail, Ferozepur. Surinder Mohan was a life convict in FIR No. 115 dated 13.08.1990, P.S. Guruharsahai. According to the petitioner, his father was murdered while in custody in the Central Jail, Ferozepur on the night of 25/26.09.1993. There were injuries on the head and other parts of body of Surinder Mohan. The petitioner was not aware about the manner in which his father suffered injuries and killed, but it was apprehended that

he was murdered by the Jail Authorities or suffered injuries due to torture by the police or murdered in conspiracy with the Jail Authorities. Nothing untoward can otherwise happen without notice of Jail Authorities. Even immediate medical aid was not provided to the deceased. The deceased was in serious condition. His family members took him to Civil Hospital, Ferozepur and then to Medical College, Faridkot from where he was referred to CMC Ludhiana. However, the escort party took Surinder Mohan first to the Central Jail, Ludhiana instead taking him straight to the Hospital. Due to delay in providing medical aid, Surinder Mohan succumbed to the injuries on reaching CMC Ludhiana.

2. It is the version of petitioner that the State and its functionaries owed a duty to protect the life of the jail inmates. Otherwise, the Central Jail, Ferozepur is a high security jail and there is day and night watch duty inside and outside the jail. There is a provisions of "Alarm" in case of emergency. The prayer was, therefore made for award of compensation on account of cutting short the life of Surinder Mohan while in Jail custody. Surinder Mohan was 32/33 years old and a teacher by profession and earning about Rs. 3000/- per month.

3. The respondent-State in the reply stated that one Gurbachan Singh was also confined in B-Class ward of the Central Jail, Ferozepur in FIR No. 162 dated 17.05.1993 for offences under Sections 302, 449 IPC and 25/27/54/59 Arms Act, 1959. During the night of 25/26.09.1993 at about 3.45 a.m., Gurbachan Singh aforesaid hit Surinder Mohan who was lying asleep, with a steel chair on his head. Some other jail inmates caught hold of Gurbachan Singh and the security staff of the jail also reached there. It is admitted that Surinder Mohan ultimately died at 05.30 p.m. on. 26.09.1993 at CMC, Ludhiana. It is, therefore, contended that the State is not liable to pay compensation, as there was no negligence on the part of the State/Jail Authorities in the performance of its duties. The necessary steps were promptly taken to save the life of the deceased by providing medical aid. In fact, an FIR dated 26.09.1993 for offence u/s 302 IPC was registered against Gurbachan Singh for committing murder of Surinder Mohan.

4. Learned counsel for the petitioner and the State Counsel have been heard.

5. State Counsel on receiving instructions from the Superintendent of the Central Jail, Ferozepur stated that Gurbachan Singh, the culprit, was convicted and sentenced to life imprisonment vide judgment dated 02.12.1994 in FIR No. 87 dated 26.09.1993 for offence u/s 302 IPC for committing murder of Surinder Mohan and sentenced to imprisonment for life and also convicted of the offences in earlier the FIR No. 162 dated 17.05.1993 in which he was an under-trial vide judgment dated 31.10.1995 passed by the Sessions Judge, Ferozepur and sentenced to undergo imprisonment for life. The instructions received by the State Counsel from the Superintendent, Central Jail, Ferozepur in this regard, received vide letter No. 1384 dated 10.07.2012 has been taken on record.

6. I am of the considered view that the respondent-State cannot escape liability to compensate the family of the deceased, because it was due to sheer negligence in ensuring safety of jail inmates that life of Surinder Mohan was shortened. The State cannot absolve itself from the responsibility simply on the contention that it was a case of assault by a co-prisoner, who was later on tried of the offence for committing murder of Surinder Mohan for the said incident and sentenced. There has to be round the clock foolproof security of the jail inmates. The State cannot even escape liability in a case where a prisoner commits suicide by hanging or otherwise, because that would also amount to negligence in not keeping constant watch on the prisoners.

7. Para 393 (b) of Punjab Jail Manual says that the barracks shall be visited once in every hour throughout the night by a patrolling officer who should examine the gratings and doors and satisfy himself that they are secure and that the convict-officer on duty inside is on the alert. He should frequently challenge him with this object and enquire the number of prisoners and if all are present.

8. Para 394 of the Punjab Jail Manual is also relevant and says as under:-

Roster of officers for duty. Beat at night to be changed Record to be kept - (1) A roster showing the turns of day duty of each warder and convict-warder shall be prepared every week, in advance, by or under the orders of the Deputy Superintendent and posted up in some prominent and accessible place. All subsequent changes of duty of officers on the roster should be noted thereon.

(2) No officer should be placed on the same beat two nights in succession, nor informed of his beat till he is about to be posted. A record shall be kept showing the officer put on each beat during each watch.

9. Para 395 provides as under:-

every ward or compartment in which prisoners are confined shall be patrolled inside by convict-officers who should be changed daily and relieved at the time the patrolling officer is changed. A roster showing the names of the prisoners told off to patrol each ward with the hours of duty shall be kept. The patrolling officer shall satisfy himself that the convict watch inside the ward is changed at the time the patrolling officer is relieved. When exceptional precautions are necessary or a ward is of unusual length, two or more convict-officers may be placed on duty at one time, each being allotted a definite beat. Convict-officers whilst on duty shall patrol their wards, prevent, as far as lies in their power, the commission of any breach of jail discipline, satisfy themselves by frequent counting that the prisoners are all present and intimate the fact to the outside patrol at least once every fifteen minutes. At each change of watch the relieving convict-officer shall report to the patrolling officer the number of prisoners present; in case of any unusual occurrence, he shall give immediate notice to the patrolling officer to take any action that may be necessary.

10. Under Para 396 of the Jail Manual every ward and camp occupied by prisoners shall have suitable lighting arrangement preferably electric installed at suitable strategic points both inside and outside. Besides arrangements in the form of emergency battery operated lights or patromax or hurricane kerosene oil lanterns should be kept ready for instant use in case of power failure.

11. Para 398 says that the head warder on patrol at night shall keep on the move, visiting the warders and convict-officers. He shall, on taking over charge, satisfy himself that the correct number of prisoners is reported to be in custody and that everything is secure. When changing guard at night, both the relieved and relieving head warder or senior warder shall change the guard in company. In cases of serious sickness the patrolling head warder shall forthwith send notice to the Medical Subordinate and Deputy Superintendent who shall, if necessary, take steps for the removal of the sick prisoner to hospital. Should any irregularity on the part of warders or prisoners come to his notice he should report the matter to the Deputy Superintendent next morning. Immediate notice shall be given to the Deputy Superintendent of any occurrence requiring prompt action, such as an escape, attempt at escape, riot, fire or serious sickness. He shall see that the main-gate sentry is at his post between the gates and on the alert. Each patrolling head warder or senior warder shall carry a control watch to record the time at which he visits each part of the jail. Punctually at the hour for the relief of the guard, the head warder or senior warder who is to take the next watch shall bring in the relieving warders. He shall search them between the gates both on entering and leaving the jail. This search should be personally conducted at least once a week by the Deputy or Assistant Superintendent. In large jails the Superintendent may, to save time, arrange for the relief of the guard in two places simultaneously.

12. Except making reference to the factum of registration of FIR for the incident of killing Surinder Mohan, by Gurbachan Singh, another jail inmate, the respondents have not placed on record any report of enquiry that may have been conducted by the Jail Authorities to find out the security lapses on the part of the Jail staff or the convict-officers.

13. In [Kewal Pati \(Smt\) Vs. State of U.P. and Others](#), the deceased was a convict and working as Nambardar in the Jail. He was strict in maintaining discipline amongst the co-accused. It was due to this strictness in his behaviour as Nambardar, that he was attacked and killed by a co-accused. It was held that even though the victim was a convict and serving his sentence yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. The prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law. He was entitled to the protection. Since the killing took place when he was in jail, it resulted in deprivation of his life contrary to law. It was held that his untimely death deprived his family of his company and affection. Since it has taken place while he was serving his sentence due to failure of authorities to protect

him, they were entitled to be compensated.

14. In Court on its [Court on its Own Motion Vs. State and Another](#), before Delhi High Court, from the inquest report submitted by the Metropolitan Magistrate, who conducted the enquiry into the incident of killing of a life convict, it was found crystal clear that the death had occurred while the victim was in jail custody and certain persons were responsible for the same. No comment was made with regard to the persons who were responsible in mercilessly assaulting the said victim to death. But it was noticed that the life spark of the victim got extinguished because of the said assault. The compensation was awarded to the family of the victim.

15. A similar matter came up before the Patna High Court in case, Malti Devi v. State of Bihar, 2011(6) R.C.R. (Criminal) 433, wherein it was observed that the Court was not concerned as to whether the death was caused by some other co-prisoners or by excessive or illegal action of any of the jail officials. The basic fact remains that when the husband of the petitioner was in custody the homicidal death had taken place. The jail authorities were to ensure the safety and protection of all the inmates and there is definitely lapse in the security. In that case uncle of the petitioner filed an FIR with the police raising suspicion on the co villager of the deceased, who were also lodged at the relevant time and the matter was still under investigation. The compensations in that case were awarded.

16. Even in the present case had there been strict observance of various guidelines given in the Jail Manual, there would not be any possibility of a prisoner, who was lying asleep at night being killed by co prisoner by hitting him with a steel chair.

17. In my view there was a total failure of the Jail Authorities in keeping proper security to guarantee the life and safety of the inmates, resulting into homicidal death of Surinder Mohan. The disturbing feature is that Gurbachan Singh, culprit, who was an under-trial prisoner in FIR No. 162 dated 17.05.1993 under Sections 302, 449 IPC and 25/27/54/59 Arms Act, 1959 and Surinder Mohan, a life convict, were kept together in the same ward of the Central Jail.

18. Section 27 of Prisons Act, 1894 says that the requisitions of this Act with respect to the separation of prisoners are as follows:-

(1) XX XX XX XX XX

(2) xx xx xx xx

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and

(4) xx xx xx xx xx

Therefore, there was blatant violation of the above provision of the Prisons Act, 1894 for which any kind of justification cannot be accepted.

19. The State cannot oppose and choke the voice of a person solely on the ground that he was suffering imprisonment. There may be unruly elements in jail but they cannot be allowed to become unruly and granted licence to kill another, may be out of vengeance or may be for reasons best known to them. When the duty of the State comes into play, it amounts to violation of the human rights.

20. Therefore, the petitioner is entitled to be awarded compensation for the wrong committed by the State through its functionaries in protecting the life of Surinder Mohan, deceased, while in prison.

21. Now coming to next question, the petitioner's counsel mainly relies upon the judgment of this Court in Court on its [Court on its own Motion Vs. State of Punjab](#), wherein the amount of Rs. 10 lacs as compensation was awarded. That was a case of death resulting due to torture and brutal beating of the jail inmate by the Jail staff and taking place in the year 2007 and cannot be cited as an instance for awarding the amount of compensation in this case.

22. Surinder Mohan father of petitioner was 32-33 years old and teacher by profession. He was supposed to have been removed/dismissed from service, on account of his conviction on a murder charge and could not come out of the Jail before the expiry of 14 years, in terms of Section 433A Cr.P.C., and that too if life term was commuted under Sections 432 and 433 Cr.P.C. In such an event he would have been about 47 years old after his release. At that time, his income could be considered @ Rs. 2000/- per month. It is stated that the mother of the petitioner, died while he was just about 11/4 years old. Since petitioner was the only dependent of Surinder Mohan, half of the income would have been incurred by him on his personal expenditure. So an amount of Rs. 1,000/- per month could be assessed as loss of dependency and annual dependency would come to Rs. 12,000/-. The incident took place about 19 years ago and some amount must be added towards interest as the decision has been delayed.

23. In Kewal Pati's case (supra) decided in the year 1995 an amount of Rs. 1 lac was awarded as compensation. This court in [Joginder Kaur Vs. State of Punjab and Others](#), awarded an amount of Rs. 1,50,000/- on account of the death of convict while in the jail. That was pertaining to the incident which took place on 16.08.1991. Keeping all these facts into consideration, the petition is allowed and an amount of Rs. 2 lacs is found to be just compensation to be awarded to the petitioner. The respondent-State would pay this amount within a period of 3 months from the date of receipt of certified copy of this judgment, failing which the petitioner would be entitled to interest @ 6% per annum over this amount, with effect from today. Allowed in above terms.