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(2002) 09 GAU CK 0033

Gauhati High Court

Case No: Civil Rule No. 596 of 1998

Jagat Dhar Sharma	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision: Sept. 3, 2002

Acts Referred:

- Constitution of India, 1950 - Article 21

Citation: (2004) ACJ 603 : AIR 2003 Guw 101 : (2003) 2 GLR 34 : (2002) 3 GLT 731

Hon'ble Judges: D. Biswas, J

Bench: Single Bench

Advocate: A.K. Bhattacharya, P.O. Barpujari, N.J. Nath, E. Kakati and A. Kalita, for the Appellant; H.K. Mahanta, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

D. Biswas, J.
The petitioner aged 65 years has filed this petition under Article 226 of the Constitution claiming compensation for death of his son Kalyan Sarrha aged 29 years, working as Junior Engineer in the Assam Tourism Development Corporation. At about 7 P.M. on 24.10.1997, Kalyan went out for an evening stroll and was hit by a bullet fired by a policeman. Kalyan was taken to Gauhati Medical College Hospital where the authorities refused to admit him. Thereafter, he was rushed to Down Town Hospital. The petitioner and his wife getting the information rushed to Down Town Hospital where they found Kalyan lying dead.

2. The petitioner''s case is that while Kalyan along with his friends were standing on the footpath on the western side of R.G. Baruah Road, Guwahati, a person came and told them that a policeman was chasing him to shoot. The man was advised to take shelter in a nearby PCO. The policeman in uniform appeared and the people started running and the policeman fired a shot which hit Kalyan who fell on the footpath and died, as stated

above. Geetanagar Police Station Case No. 97 of 1997 and 98 of 1998 were registered under various provisions of law. The policeman in an inebriated state while on duty committed the offence. The family of the deceased is shocked and bewildered beyond description and rendered helpless on the death of Kalyan. The State did not come forward to render any assistance to the petitioner''s family and nothing tangible came out of the police investigation in the aforesaid cases registered at Geetanagar Police Station.

3. The State in their affidavit submitted as follows :-

"6. That with regard to the statements made in paragraphs 5 and 6 of the writ petition, the deponent admits that on 24.10.1998 at about 9.45 p.m. ABC/264 Shri Naren Deka was on duty at the Guwahati Doordarshan Kendra alongwith his party. Rifle No. 1384 was in his custody for his duty. It revealed on enquiry that during that time on his duty a nearby tea stall keeper came to him and asked Sri Deka about the immoral proposal made by him to his wife and on that point a quarrel broke up between the two and on provocation, the ABC Naren Deka opened a blank fire, on hearing that sound the tea stall keeper ram away and entered into a Public Call Booth to inform the matter to the police. Then Sri Naren Deka again opened the 2nd round fire aiming at the tea stall keeper and unfortunately the bullet hit one Kalyan Sarma who was standing nearby the P.C.O. owned by Nayanjyoti Pathak. As a result of hitting by the bullet, Sri Kalyan Sarma sustained grievous injury on his person and succumbed to the injuries on way to the Down Town Hospital for his treatment. This case has been registered in the Geetanagar Police Station as Geetanagar P.S. Case No. 97/97 u/s 302 1 PC read with Section 27(3) Arms Act.

13. That the deponent denies the statements made in paragraph 13 of the writ petition and states that the authority never allowed intoxicated armed policeman to remain on duty and to use and handle the arms in any manner. As such, the deponent denies the allegation of the petitioner and states that the State as well as the concerned authority, viz., Respondent Nos. 1, 2, 3, 4 and 5 are not responsible and liable for killing of the person.

15. That with regard to the statements made in paragraph 15 of the writ petition, the deponent states that the allegations of the petitioner are baseless and wrong. The deponent strongly denies that criminal act of the Respondent No. 6 resulted from the neglect and lack of supervision and control of the "other respondents". The deponent denies that there was any neglect or lack of supervision and control of the other respondent in the suddenly occurred incident caused by Respondent No. 6 and as revealed on enquiry the said Respondent No. 6 on provocation snooted aiming at the person of the tea-stall keeper and accidentally the bullet hit the person of Kalyan Sarma.

16. That with regard to the statements made in paragraphs 16, 17 and 18 of the writ petition, the deponent says that the State and the Respondent Nos. 1, 2, 3, 4 and 5 have neither violated any law nor taken away/denied any right of the petitioner or of his son in

any way for the killing of Kalyan Sarma caused by Respondent No. 6 and as such the State alongwith the Respondent Nos. 1, 2, 3, 4 and 5 are not liable to pay any compensation to the petitioner or to his family."

4. The stand taken by the respondent authority clearly show that they admit the death of Kalyan Sarma caused by gun shot fired by ABC/264 Shri Naren Deka who was on duty near Guwahati Doordarshan Kendra armed with rifle No. 1384. It is also clear that Naren Deka had fired two gun shots, one of which hit Kalyan Sarma causing his death.

5. Shri A.K. Bhattacharyya, learned Senior Counsel raised two-fold issues. At the first instance, it is argued that the offender Shri Deka has to be brought to trial and on the second count it is argued that the State cannot avoid its liability/responsibility in the matter and has to pay adequate compensation. The learned Counsel relied upon the decision in D.K. Basu Vs. State of West Bengal, and Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, in order to bring home that the State in the given situation is not exempt from its liability.

6. It is an admitted fact that Kalyan Sarma was killed by gunshot fired by ABC/264 Shri Naren Deka on duty. The gunshot was fired in a crowded place with the full knowledge that he was likely by such act to cause fatal injuries to the members of the public. Such reckless act resulted in deprivation of a precious life. The degree of offence committed by the policeman on duty is extremely grave, article 21 provides that no person shall be deprived of his life and personal liberty except in accordance with the procedure established by law. This is a case of desperate exuberance of a policeman on duty with arms indulging in a shooting spree without least care of the consequences. The State is obliged to protect the life and liberty of the citizens and cannot shake off its hands on the ground that it was a case of exception where a policeman under grave provocation acted violently causing death. The State, being the employer, is liable for the misconduct of its employees which ended in deprivation of the precious life of an Engineer. The affidavit by the State shows that Shri Naren Deka was on duty with his party. No other member of the party also tiled to desist Shri Deka though it was incumbent on them to restrain Shri Deka even if necessary by application of force. All of them failed in their duty. The ratio available in D.K. Basu and Nilabati Behera (supra) would be apt in the circumstances of the given case. The petitioner in the instant case is, therefore, entitled to appropriate relief. In so far the Criminal Cases at Gootanagar Police Station are concerned, in the absence of any statement about the status thereof, it has to be presumed that the offender is yet to be brought to trial. This Court considers that directions to complete the investigation within a time-schedule and to compensate the family are necessary not only to vindicate the grievance of the petitioner, but also to ensure that the Government exist for the people.

7. It is on record that the deceased was a Junior Engineer having an annual income of Rs. 46,704 which would have risen to Rs. 72,000 in due course. He had 29 years left to attain the age of superannuation. The computation on the basis of annual income and

future prospects in service career would mean something enormous. Considering all these facts, this Court is of the opinion that the State has to compensate the bereaved family for loss of an earning member killed young. For this purpose a sum of Rs. 5 lakhs is considered just and proper.

8. In the result, the writ petition is allowed. The Respondents No. 5 is directed to complete the investigation in the above mentioned two cases within a period of three month from today, if not already done, and submit the report before the appropriate Court in accordance with the provisions of law. Respondent No. 4, the Superintendent of Police (City), Guwahati is directed to ensure, that this order is carried out by the Officer-in-Charge of Geetanagar Police Station within the period mentioned above. Respondent Nos. 1, 2 and 3 are directed to pay the compensation of Rs. 5 lakhs to the petitioner within a period of three months from today failing which the petitioner will be entitled to recover the amount with interest at the rate of 9% per annum from the date of default. The State is further directed to recover this amount from Sri Deka and other members of the party who did nothing to prevent the murderous attack and failed in their duty. The exercise in this behalf shall be completed within a period of six months. Respondents No. 3 and 4 are directed to initiate appropriate enquiry/proceedings to comply with this direction.

9. The cost of the petition is quantified at Rs. 10,000 to be paid by the State within three months.