

(2008) 11 JH CK 0015
Jharkhand High Court
Case No: None

Tapti Sadhu

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Nov. 11, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 173
- Penal Code, 1860 (IPC) - Section 166, 167, 306, 309, 366

Citation: (2009) CriLJ 1904

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

Petitioner has invoked the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India for monetary compensation to the tune of Rs. 20,00,000/- (Twenty Lakhs) for the death of her son Sanjay Kumar Sadhu, aged about 25 years on account of 72% burn injury sustained by him in the Central Jail, Dumka It was requested for setting up an enquiry into the custodial death of Sanjay aforesaid and to punish the real culprits.

2. The fact of the case, in short, is that the petitioner's son Sanjay Kumar Sadhu (since deceased) had surrendered in the Court of Chief Judicial Magistrate, Dumka on 26-10-2006 in connection with Masalia P.S. Case No. 67 of 2006 for the alleged offence u/s 366 of the Indian Penal Code and he was remanded to judicial custody on the same day. On 17-12-2006 it was alleged that during his such custody fire was lit in the body of his son Sanjay Kumar Sadhu after pouring kerosene oil over his body as a result of which he sustained burn injury up to 6th stage. Sanjay Kumar Sadhu

was immediately removed to Patliputra Medical College Hospital, Dhanbad (PMCH, Dhanbad) for better management of his burn injury and from there he was referred to Rajendra Institute of Medical Sciences, Ranchi (RIMS, Ranchi) where he succumbed his burn injury on 30-12-2006. According to the petitioner-mother, her son Sanjay Kumar Sadhu was subjected to custodial death and hence, prayer was made for payment of compensation to the tune of Rs. 20,00,000/- (Twenty Lakhs) and to set up a judicial and administrative enquiry to find out real culprits.

3. The Superintendent of Police, Dumka (Respondent No. 5) filed a counter-affidavit stating therein that the son of the petitioner, namely, Sanjay Kumar Sadhu had surrendered in the Court of Chief Judicial Magistrate, Dumka on 26-10-2006 for the allegation of kidnapping a girl Anuradha Kumari and accordingly, he was remanded to the judicial custody on the same day 26-10-2006 for the alleged offence u/s 366 of the Indian Penal Code. On 17-12-2006 O.D. slip was issued from the Sadar Hospital, Dumka, addressed to the Dumka Police, stating therein that Sanjay Kumar Sadhu, aged about 25 years, was brought to the Sadar Hospital from Central Jail, Dumka for his treatment. Statement of Sanjay Kumar Sadhu was recorded on 17-12-2006 at about 10:45 a.m. in Sadar Hospital, Dumka in course of his treatment and in presence of his mother-writ petitioner Tapti Sadhu and father Sapan Kumar Sadhu in which he admitted that on the same day i.e. on 17-12-2006 at about 9:00 a.m. he had poured kerosene oil over his body and lit the body with the help of matchstick with the intention to commit suicide. He sustained severe burn injuries all over his body. On the statement of the victim Dumka Town P.S. Case No. 281 of 2006 was registered for the offence u/s 309 of the Indian Penal Code for attempting to commit suicide against the victim himself on 17-12-2006. On affidavit the respondent stated that the victim informant was very much conscious at the time of delivering his statement before the police in presence of his parents (Annexure-A). At the same time, a complaint petition was filed before the Chief Judicial Magistrate, Dumka, which was received at the police station, u/s 156(3) of the Code of Criminal Procedure on the basis of which Dumka Town P.S. Case No. 80 of 2007 was registered on 19-3-2007 after about three months for the alleged offence under Sections 306/166/167 of the Indian Penal Code against the Superintendent of Central Jail, Dumka, Gurupado Pandit, wife of Gurupado Pandit and one Damodar Pandit.

4. A separate counter-affidavit has been filed on behalf of the respondent Nos. 1 to 6 almost supporting the contentions of the affidavit earlier filed by the Superintendent of Police, Dumka (Respondent No. 5) in the present writ. It was stated on affidavit therein that Sanjay Kumar Sadhu, informant had complained pain in his abdomen and he was admitted to the Jail Hospital, Dumka on 9-12-2006 wherein Chief Medical Officer, Dumka Jail diagnosed his ailment as a case of Teratoma-Testila and recommended transfer of the prisoner Sanjay Kumar Sadhu to RIMS, Ranchi for better management and in this connection permission was sought for from the Chief Judicial Magistrate, Dumka for proposed transfer of the prisoner

Sanjay Kumar Sadhu. Simultaneously, requisition was made to the Superintendent of Police, Dumka for providing escort guards to carry the prisoner to RIMS, Ranchi. It was further stated in the counter-affidavit that in the morning of 17-12-2006, prisoner Sanjay Kumar Sadhu tried to commit suicide in the toilet by pouring kerosene oil over his body and lighting fire where he had been on the pretext of attending natural call. The Jail personnel and other prisoners immediately rushed there on his scream and tried to save him by putting out fire from his body. The prisoner Sanjay Kumar Sadhu was immediately sent to Dumka Civil Hospital at the first point in time and information in this regard was given to the Chief Judicial Magistrate, Dumka. Again requisition was sent to the Superintendent of Police, Dumka to provide escort guard for carrying the burn-prisoner to PMCH, Dhanbad. An information was also given to the members of the family of Sanjay Kumar Sadhu that he sustained burn injury in attempting to commit suicide (Annexure-F). Prisoner was further referred and accordingly sent to RIMS, Ranchi from PMCH, Dhanbad on 19-12-2006 but he succumbed his injury on 30-12-2006 to which an information was immediately given to the Chief Judicial Magistrate (Annexure-G). President of National Human Rights Commission, New Delhi was also informed on the same day 30-12-2006 (Annexure-H). Jail Superintendent by his letter dated 19-1-2007 requested S.D.O. Ranchi for magisterial enquiry and inquest report of the deceased. Other authorities were also informed on 9-4-2007 with the copies of the letters on the record as annexures.

5. Finally, it was stated that in spite of due care and proper treatment provided to the prisoner Sanjay Kumar Sadhu, he could not survive. He was mentally perturbed as he had married to the girl against the wishes of her parents and that the father of the girl had lodged a case u/s 366 of the Indian Penal Code and since the girl had later on betrayed as she refused to live with him as pointed out by Mr. Shamim Akhtar, S.C-II, the prisoner Sanjay Kumar Sadhu was under deep frustration and depression who opted to commit suicide and accordingly attempted by pouring kerosene oil over his body and lighting it with matchstick. Statement of the injured was recorded at the first instance before the police in presence of his parents and his statement has got bearing of the signatures of his parents in token of acquiescence of the statement of their son which cannot be denied. Mr. Akhtar submitted that since the fingers of the victim were burnt the carbon impression of the left too of the prisoner was taken on his statement which was recorded by the police. Mr. Akhtar, learned S.C.-II appraised the Court that the police is investigating the police case which was registered on transfer u/s 156(3) of the Code of Criminal Procedure on the basis of the complaint which was filed after three months of the alleged occurrence by the petitioner narrating altogether a different allegation against the parents of the girl that only on their instance victim was burnt by the jail authorities.

6. Mr. Akhtar concluded his argument by submitting that from the statement of Sanjay Kumar Sadhu, recorded first point in time in Sadar Hospital, Dumka in

presence of his parents, it would be evident that he attempted to commit suicide out of frustration in love as the girl to whom he claimed having married betrayed and, therefore, in any event no case is made out for custodial death. The entire allegation as brought about against the respondents are baseless, flimsy and moreover, the matter is still under investigation.

7. There are certain relevant facts that after the statement of Sanjay Kumar Sadhu, referred to hereinabove, Dumka Town P.S. Case No. 281 of 2006 was instituted for the offence u/s 309 of the Indian Penal Code against him on 17-12-2006 itself. Post mortem of the deceased was held in RIMS, Ranchi on 31-12-2006 and it was found that burn injuries were ante mortem caused by flame and the death was also due to burn. Time since death was assessed between 12 to 36 hours of the post mortem examination.

8. Mr. Priyadarshi, learned Counsel for the petitioner submitted that on the instance of the parents of the girl, especially Gurupada Pandit (Respondent No. 7), prisoner Sanjay Kumar Sadhu was burnt to death by the authority and staff of Central Jail, Dumka and therefore, it was a clear case of custodial death. The matter was informed to the National Human Rights Commission. Parents of the girl were terrorizing and threatening that they would not allow reunion of the boy and the girl at any cost and ultimately, boy sustained burn injuries in mysterious condition and therefore his parents are entitled to adequate compensation as they lost their son, in his early age of 25 years, having much expectation in their old age.

9. The Black's Law Dictionary defines the detention of the person by virtue of lawful process or authority as judicial custody. The word "custody" in the Code of Criminal Procedure always means judicial custody, save only where the context clearly indicated either that it is police custody or judicial custody. Custodial death in general parlance means death of a person or any accused or a prisoner mainly either in police lockup or in judicial custody.

10. Admittedly, the deceased Sanjay Kumar Sadhu, 25 was remanded to judicial custody for the alleged offence u/s 366 of the Indian Penal Code and thereby lodged in Central Jail, Dumka. According to the writ petitioner, her son sustained burn injuries all over his body and succumbed in course of treatment at RIMS, Ranchi and in this connection she raised finger against the parents of the girl to whom the deceased had claimed to marry against their will suspecting their nexus with the personnel of Central Jail, Dumka. The writ petitioner had filed complaint case before the Chief Judicial Magistrate, Dumka by alleging the aforesaid facts after three months of the death of her son. The case was referred to the police directing for investigation u/s 156(3) of the Code of Criminal Procedure and that the investigation of the case is in progress. No final form as required u/s 173 of the Code of Criminal Procedure has so far been submitted according to the learned Standing Counsel-II. Therefore, in my view, it would be too early to hold an opinion that it was literally a case of custodial death of Sanjay Kumar Sadhu.

11. On the contrary, the statement of the prisoner Sanjay Kumar Sadhu recorded first point in time after short while of the fire incidence, at the Sadar Hospital, Dumka in presence of his parents, reveals an attempt to commit suicide, giving rise to Dumka Town P.S. Case No. 281 of 2006 on 17-12-2006 for the alleged offence u/s 309 of the Indian Penal Code. The statement of the injured prisoner was recorded in presence of his parents and the statement has got bearing of the signatures of the parents including the mother petitioner herein.

12. In the circumstances, I find that the petitioner failed to show or project any prima facie situation to observe that the death of his son Sanjay Kumar Sadhu out of sustaining burn injuries during his detention in the Central Jail, Dumka was a custodial death. The writ petition is premature as the police case arising out of the complaint of the petitioner Is still under investigation and it would be too early to form an opinion.

13. Under the above situation, I find no merit in the writ petition so as to call for interference and accordingly, it is dismissed at this stage.