

Dulari Devi Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-20-1997

Judge : Choudhary S.N. Mishra, J.

Appeal No. : Cr. W.J.C. No. 707 of 1996

Appellant : Dulari Devi

Respondent : State of Bihar and ors.

Advocate for Def. : P. Ranjan, Adv.

Advocate for Pet/Ap. : Siya Ram Singh and Radha Raman Sharma, Adv.

Disposition : Application allowed

Judgement :

Choudhary S.N. Mishra, J.

1. The widow of late Rajendra Mandal has approached this Court through the instant criminal writ application under Article 226 of the Constitution of India for a direction to the State for grant of adequate compensation and also for setting up a judicial enquiry to enquire into the custodial death of her late husband with a further prayer to launch a criminal proceeding against respondent Nos. 7 to 10, who are police personnel responsible for causing the death of the husband of the petitioner.

2. As the allegation stands, on 24.7.94 at about 6 p.m. respondent Nos. 7 to 10, namely, Deputy Superintendent of Police, Law and Order, Assistant Sub-Inspector of Police, Jagdishpur Police Station, driver-cum-constable of the Deputy Superintendent of Police, Law and Order and the constable, body guard of the said Deputy Superintendent of Police came to the house of Surendra Mandal for his arrest. The house of late Rajendra Mandal is just near the house of Surendra Mandal. The respondents aforesaid enquired from the late Rajendra Mandal regarding the whereabouts of Surendra Mandal. Respondent No. 7 Shailesh Kumar Singh, the Deputy Superintendent of Police held Rajendra Mandal responsible for concealing the whereabouts of Surendra Mandal and thereby the said Rajendra Mandal was held responsible for giving protection and hiding the said Surendra Mandal. On protest by the late Rajendra Mandal the respondent Deputy Superintendent of Police abused and not only started assaulting him but also directed respondent Nos. 8 to 10 to assault late Rajendra Mandal. On the said order respondent Nos. 8 to 10 tied Rajendra Mandal with rope, started assaulting with lathi, as a result he became senseless and reached the point of death. Though the villagers came and assembled at the place of occurrence, yet due to fear they could not protest the police personnel. One of the persons, namely, Shankar Mandal came forward to save Rajendra Mandal but he was also assaulted by respondent Nos. 7 to 10. Respondent Nos. 7 to 10, thereafter, brought the said Rajendra Mandal and Shankar Mandal to Jagdishpur Police Station where they were again assaulted mercilessly by respondent Nos. 7 to 10. It is alleged that in order to save themselves from the rigour of law and to conceal their guilt, respondent No. 8 Ram Sevak Pandey, Assistant Sub-Inspector of Police, Jagdishpur Police Station recorded his own statement showing recovery of country made pistol from the possession of Shankar Mandal and Rajendra Mandal. On the basis of which, Jagdishpur P.S. Case No. 130 of 1984 was registered for an offence punishable under Sections 25, 26 and 33 of the Arms Act, a copy of the said F.I.R. is made Annexure 1 to this writ application. On the next day, i.e., on 25.7.1994 the late Rajendra Mandal along with Shankar Mandal were produced before the Chief Judicial Magistrate, Bhagalpur. The Chief Judicial Magistrate himself noticed the swelling and pain in the legs of late Rajendra Mandal and, accordingly, directed the jail doctor to take immediate steps for his

treatment and on the same day the petitioner's husband was sent to the Central Jail, Bhagalpur where he died on 28.7.1994. Respondent No. 6 Superintendent of Central Jail, Bhagalpur, sent a letter bearing No. 1528 on the same day informing the father-in-law of the petitioner to receive the dead body. The said letter is made Annexure 3 to this writ application. On 2.8.1994 the petitioner filed a complaint petition before the Chief Judicial Magistrate, Bhagalpur, against respondent Nos. 7 to 10 for initiating a criminal proceeding under Section 302 and other sections of the Indian Penal Code on the basis of the occurrence that took place on 24.7.1994, which was registered as Complaint Case No. 557 of 1994. On 23.9.1994 Shankar Mandal was examined under Section 200, Criminal Procedure Code wherein he has fully supported the case of the prosecution. Copy of the said complaint petition is made Annexure 4 to this writ application. The Superintendent of Central Jail, Bhagalpur, submitted a report dated 3.9.1994, on the basis of which the officer-in-charge of Kotwali Police Station registered a case being Kotwali P.S. Case No. 449 of 1994 under Section 304, Indian Penal Code against unknown, copy of which is made annexure 5 to this writ application.

3. This writ application was filed by the widow of the deceased on 8.10.1996 and the respondents were directed to file separate counter affidavits right from 29.1.1997 till 8.4.1997 but no counter affidavit has been filed and ultimately a joint counter affidavit has been filed on behalf of respondent Nos. 5 and 6, namely Inspector General of Prison and the Superintendent of Central Jail, Bhagalpur on 23.4.1997. Respondent No. 7 Shailesh Kumar Singh, Deputy Superintendent of Police, Law and Order, has filed counter affidavit on 18.4.1997 and respondent No. 10 Surendra Singh, body guard of the said Dy. Superintendent of Police, has filed counter affidavit on 17.4.997. Respondent Nos. 5 and 6 in their counter affidavit have admitted the date and time of the occurrence and have further admitted that the said under trial prisoner Rajendra Mandal was sent to the Central Jail, Bhagalpur, on 25.7.1994 at 4.15 p.m. It was further admitted that custody warrant was issued by the Chief Judicial Magistrate with a direction for providing medical treatment as the accused Rajendra Mandal had pain due to injury sustained in both the legs. It is further admitted that the said Rajendra Mandal was being treated by the jail doctor in the jail hospital itself and in course of treatment he died in the hospital on 28.7.1994 at 8.30 a.m. It is alleged that as per the

inquest report the accused died because of assault. Specific statements made in para 5 (iv) and (v) of the counter affidavits are as follows :

That it appears that the deceased prisoner was brutally assaulted by the police as alleged by this prisoner. The multiple scattered injury caused by hard and blunt substance and also multiple scattered injury resulting in swelling of both lower legs and body. That from 25.7.1994 to 28.7.1994, this deceased prisoner was kept in jail hospital for treatment of injuries in view of the directions of the Court and during the course of treatment the prisoner died on 28.7.1994 at 8.30 a.m. The deceased prisoner was given medicine and treatment by the jail doctor and in this regard details of the medicine prescribed are enclosed. From the inquest report it would appear that the cause of death is assault on the prisoner.

However, it is stated that the allegation of assault cannot be attributed either to the jail authority and/or inmates of the jail. So far as providing the proper treatment as per direction of the Chief Judicial Magistrate is concerned, the jail authorities took all necessary steps in this regard and proper medicines were made available to the victim during the course of treatment. According to the respondent Nos. 5 and 6 the sum and substance of the statement made in their counter affidavit is that the accused was sent to jail after having sustained injury at the hands of the police personnel, who ultimately died during the course of his treatment in the jail hospital and the jail authorities cannot be held responsible for the death of the accused. They have also denied that the respondents were in any way in collusion with the police authorities, respondent Nos. 7 to 10. However, surprisingly they have made a contradictory statement in para 20 to the effect that Rajendra Mandal died a natural death because of respiratory failure.

Respondent No. 7, namely, the Deputy Superintendent of Police, has filed a counter affidavit wherein the date and the place of occurrence have not been denied. However, it is stated that he joined as Deputy Superintendent of Police, Law and Order, Bhagalpur, in June, 1993. One Jagdishpur P.S. Case No. 118 of 1994 was registered on 8.7.1994 under Section 366, Indian Penal Code against one Sulho Mandal and two other named accused persons. The accused Sulho Mandal is the brother of deceased Rajendra Mandal. Being a supervising authority

he raided the house of one Sulho Mandal alias Surendra Mandal. Surendra Mandal fled away seeing the police and on enquiry it was found that Sulho Mandal alias Surendra Mandal fled from his house seeing the police personnel. It is further stated that when he raided the house of the said accused Surendra Mandal, the deceased Rajendra Mandal wrongly informed him that he was out of station. During the course of search of the house of said Surendra Mandal one unlicensed country made pistol was recovered from the possession of Rajendra Mandal, the deceased. One Shankar Mandal was also present in the room of Rajendra Mandal at the relevant point of time. On the basis of which a case being Jagdishpur P.S. Case No. 130 of 1994 was registered under Sections 25, 26 and 33 of the Arms Act on 24.7.1994 against the deceased Rajendra Mandal and Shankar Mandal. It is admitted in the counter affidavit that on the basis of the aforesaid case both Rajendra Mandal and Shankar Mandal were arrested on 24.7.94 and produced before the learned Chief Judicial Magistrate, Bhagalpur on 25.7.1994, who found some swelling on their person and remanded them to judicial custody till 8.8.1994. He has further admitted that Dulari Devi, widow of late Rajendra Mandal, has filed the complaint petition before the learned Chief Judicial Magistrate, Bhagalpur on 2.8.1994 against him along with others. It is further alleged by respondent No. 7 that the petitioner, namely, Dulari Devi, widow of the deceased, has also filed an application before the Chairman, Human Rights Commission and, thereafter, the entire matter was handed over to C.I.D. Bihar, Patna, for enquiry. It is alleged that on spot enquiry the C.I.D. submitted interim report stating therein that respondent No. 7 has not assaulted the deceased Rajendra Mandal, and is further stated that the petitioner has not stated specifically as to who has assaulted as a result of which the deceased Rajendra Mandal died. It is stated that the said Rajendra Mandal died because of cardiac respiratory failure, as opined by the Bhagalpur jail doctor. The sum and substance of the statements made in one counter affidavit is that there is no specific allegation against respondent No. 7, Deputy Superintendent of Police, particularly the injury found on the person of the deceased was simple in nature. It is further alleged that after arrest of Rajendra Mandal and Shankar Mandal, at the place of occurrence the arrested persons were put in the police station lockup and on the next day they were produced before the Chief Judicial Magistrate, Bhagalpur.

Similarly, respondent No. 10 Surendra Singh, body guard of Deputy Superintendent of Police has filed counter affidavit wherein it is stated that he being body guard of Deputy Superintendent of Police went in connection with the investigation of P.S. Case No. 118 of 1994 and the police conducted raid on the house of Surendra Mandal but he never participated in the said raid as he was only acting as a personal security of the Deputy Superintendent of Police and his primary duty was to protect the officer. In sum and substance he was not, in any way, connected with assault of the deceased Rajendra Mandal.

4. Having regard to the pleadings of the parties with reference to the allegations made by the petitioner in this writ application, the first and foremost question is to be decided as to whether the deceased died because of torture and assault at the hands of respondent Nos. 7 to 10 aforesaid as alleged by the petitioner who is widow of the deceased. The admitted fact, which has been stated above, is to the effect that the police personnel, namely, respondent Nos. 7 to 10 raided the house of the petitioner in connection with a pending case and the deceased along with his brother Shankar Mandal were assaulted, arrested and sent to Central Jail, Bhagalpur. It further stands admitted that the deceased was having pain in his both legs as a result of the assault sustained by him at the hands of the police personnel, which is apparent from the statement made by the deceased himself before the Chief Judicial Magistrate and the learned Chief Judicial Magistrate has, accordingly, recorded the said statement while remanding the accused persons to the Central Jail, Bhagalpur with a direction to immediately provide medical treatment to the accused. As has been stated above, the mode and manner of assault and the injury sustained by the victim have not only been fully supported but had been admitted by respondent Nos. 5 and 6, namely, Inspector General of Prisons, Bihar, Patna and Superintendent, Central Jail, Bhagalpur in their counter affidavit, which will be apparent from the specific statements made by them, details of which have already been quoted above. The Superintendent of Central Jail, Bhagalpur, on seeing the accused has specifically stated that the said Rajendra Mandal was brutally assaulted by the police. The Superintendent of Central Jail, Bhagalpur, has further stated that multiple scattered injury caused by hard and blunt substance resulted in swelling on both legs and the body of the deceased. The inquest report also corroborates the statement of the

Superintendent of Central Jail, Bhagalpur, indicating that the victim died due to assault. The husband of the petitioner Rajendra Mandal died during the course of treatment in the jail hospital itself, which stands admitted by all concerned. In the background of the aforesaid admitted facts, the defence taken by the respondents that the husband of the petitioner died due to cardiac failure seems to be wholly misconceived and not based upon any material, particularly the said defence stands falsified because of the statement made by the Jail Superintendent as well as primary inquest report on body of the deceased. Regarding lodging of the case against the deceased and others for an offence punishable under Sections 25, 26 and 33 of the Arms Act as well as complaint case filed by the petitioner against the respondent police personnel, this Court, at this stage, is not in a position to express any opinion on the merits of these pending cases and the same shall be considered and disposed of in accordance with law on their own merit. However, having regard to the law laid down by the different High Courts as well as Apex Court the liability of the State of Bihar in the instant case to pay compensation neither can be denied nor doubted and the learned Counsel for the State has rightly not disputed the principle laid down in catena of decisions, both by the different High Courts as well as Apex Court. It is well established principle of law that aggrieved persons can approach the High Court under Article 226 and/or the Supreme Court under Article 32 of the Constitution of India for award of compensation when fundamental right enshrined in the Constitution is contravened by the State and its instrumentalities. In the instant case, the claim of compensation is sought for both under law and on compassionate ground. The claim of compensation, in the circumstances stated above, on account of the contravention of fundamental right guaranteed under the Constitution is an acknowledged and efficacious remedy available to the aggrieved persons under Article 32 and/or 226 of the Constitution of India. It is this remedy which justified the grant of monetary compensation for contravention of any fundamental right guaranteed by the Constitution and, in my view, this is the only immediate and practical remedy which can be resorted to by invoking jurisdiction of this Court under Article 226 of the Constitution. This is not only the remedy to the aggrieved persons but also the constitutional obligation of the Courts to come to the rescue of the aggrieved persons by awarding suitable compensation and do complete

justice by enforcing the constitutional right. Reference may be made to the case of *Kewal Pati v. State of U.P.* 1995 ACJ 859 (SC), wherein the Apex Court has held that prisoners do not cease to have their constitutional right except to the extent deprived in accordance with law. Their Lordships held that since the deceased was killed by co-accused in the jail, which resulted in deprivation of his life not sanctioned by law, the authority has failed to protect his life while in custody and as such the widow is entitled to be compensated by the State. In *Nilabati Behera alias Lalita Behera v. State of Orissa* 1993 ACJ 787 (SC), their Lordships relying upon earlier decisions have held that the Court is not helpless, rather it has not only wide power to protect the fundamental right of a citizen but also imposes constitutional obligation, so as to lay down a law which is necessary for doing complete justice and enforcing the fundamental right guaranteed under the Constitution. Their Lordships have further held that the grant of monetary compensation is the only mode of immediate redress available. In the case of *Rudul Sah v. State of Bihar* AIR 1983 SC 1086, it has been held as follows :

It is true that Article 32 cannot be said as a substitute for the enforcement of the rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases..The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil Court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damage would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its

significant content if the power of this Court were limited to pass an order to release from illegal detention. One of the telling ways in which the violation of the right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringement of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative in the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to mention, it is necessary to educate ourselves to accepting that respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's right. It may have recourse against those officers.

In the case of *Shakuntala Devi v. State of Bihar* 1994 (2) PLJR 494, the wife of the deceased filed a criminal writ for direction to the State for grant of compensation. The fact of this case was that the deceased has attacked the police men who were deputed in law and order duty in rural areas when they were trying to molest the wife and in protest he was later on killed in a fake encounter. During the pendency of the criminal case the wife of the deceased filed writ application for the payment of compensation. The Division Bench of this Court after taking into consideration the various decisions, both of High Court as well as Apex Court has allowed the prayer of the petitioner and granted compensation on account of the murder of her husband caused by the police constable. In the case of *Levitha v. Director General of Police, Madina*, a Division Bench of the Madras High Court has held that unlawful and illegal act committed by the instrumentalities of the State in purported exercise of power vested with them, the State is responsible for the said illegal act of its employee. It was further held that it was the duty of the High Court to protect life and liberty of every citizen and also grant monetary compensation to repair any damage in their rights by the State instrumentalities, In the case of *State of Andhra Pradesh v. Suramulla Famulu* 1990 Criminal Law Journal 2854, a Division Bench of the Andhra Pradesh High Court presided over by the Chief Justice after relying upon several decisions of the Apex Court has held the fundamental rights guaranteed under the Constitution including right to life under Article 21 of the

Constitution are also available both to the convict and/or under-trial prisoner. It has been further held that if the person is killed due to negligence of the State officials in discharge of their duty the State is held to be responsible and liable for the loss resulting from such negligence and ultimately relying upon various decisions has held in para 12 as follows :

In the light of the legal conspectus and the principles laid down as to the power of this Court under Article 226 of the Constitution to award monetary compensation for contravention of a fundamental right and respectfully following the ratio laid down therein, it has to be held that compensation be awarded instead of directing the claimant to resort to ordinary process of recovery of damage by recourse to an action in tort. We are therefore of the opinion that the State is liable to pay compensation on account of the death of Shankar which resulted due to failure of authorities to protect him.

5. After having heard the learned Counsel for the parties and going through the pleadings and also the principles laid down in the aforesaid decisions, I am constrained to hold that the petitioner, apart from the other remedy available to her, is entitled to monetary compensation on account of death of her husband at the hands of the police authorities, namely, respondent Nos. 7 to 10, as mentioned above. Neither from the statement made in the counter affidavit filed by the respondents nor the counsel appearing during the course of hearing has furnished any valid ground to disbelieve the case of the petitioner. On the contrary, the material available on record including the admitted facts amply goes to show that the husband of the petitioner died because of excessive torture meted out to him by the respondent Nos. 7 to 10. Now the question arises as to the quantum of compensation. The deceased died at the age of 27 years leaving behind four minor children and the widow petitioner. Accordingly, I direct the respondent State of Bihar to deposit a sum of Rs. 1,50,000/- with the Registrar General of this Court within two months. Out of the aforesaid amount Rs. 1,00,000 will be kept in a fixed deposit for three years in the name of the petitioner in any nationalised bank. The said fixed deposit will be subject to further renewal till the minor children attain their majority. The interest accruing thereon will be paid to the petitioner. The balance amount of Rs. 50,000/- shall be paid to the petitioner on proper

verification. I further direct the State to pay a sum of Rs. 5,000/- by way of cost to be deposited in the account of Patna High Court Legal Aid Council within the time aforesaid. It will, however, be open to the State to realise the aforesaid amounts from the concerned respondents. It is made clear that this order directing the State to pay compensation to the petitioner will not, in any way, affect the pending case and other liability of the respondents or any person responsible for the custodial death of the husband of the petitioner. The State will also consider the desirability of initiating a criminal prosecution against the respondent police officials involved in this brutal and inhuman act resulting in the death of precious human life.

6. In the result, this writ application is allowed to the extent indicated above at the admission stage itself.

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