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Court : Jharkhand

Decided On : Feb-04-2002

Reported in : 2002(50)BLJR665; 2002CriLJ2505

Judge : M.Y. Eqbal, J.

Acts : Indian Penal Code (IPC) - Sections 323, 357, 379 and 452

Appeal No. : CWJC No. 2404 of 2000(R)

Appellant : Bhadu Devi (Bouri)

Respondent : State of Bihar and ors.

Advocate for Def. : R.A.P. Gupta, JC to AAG

Advocate for Pet/Ap. : S.K. Mishra, Adv.

Disposition : Appeal allowed

Judgement :
ORDER

M.Y. Eqbal, J.

1. The petitioner who is the widow of late Arun Bburi has approachedthis court seeking an appropriate direction upon the respondents for payment of compensation on account of death of her husband who died in jail custody

because of the alleged criminal negligence and irresponsible attitude of the respondents.

2. Petitioner's case is that her husband who was a labourer died on 19.12.1999 in a very suspicious circumstances inside the jail leaving behind four minor sons and a daughter. The deceased was an accused tn Balipur P.S. Case No. 24/88 under Section 452, 323, 357 and 379 of the Indian Penal Code and criminal case was pending against him for trial. The deceased was arrested on 13.12.1999 and on his production in the criminal case he was forwarded to jail custody. It is stated by the petitioner that after his arrest she went to jail to meet her husband on 19.12.99 and requested the jail authorities to call her husband. The petitioner was told by the police that her husband has committed suicide by hanging himself. The petitioner alleged that the story of committing suicide by her husband is absolutely false just to seal the actual culprit as she reasonably believes that her husband has been killed by the inmates of the Jail who are in the habit of collecting Rangdari from the new entrainsts in the jail with the help and hand in glove of the jail authorities. It is further alleged that the deceased has been subjected to cruelty and death by strangulating and hanging.

3. Two counter affidavits have been filed in this case one by respondent No. 2, the Jail Superintendent, Dhanbad and another by respondent No. 4, the Superintendent of Police, Dhanbad. The stand taken by the Jail Superintendent is that the deceased was suffering from epilepsy and was not well on the date of arrest. On 16.12.1999, because of attack of epilepsy the deceased was shifted to the jail hospital. However, after giving medicine his condition improved and on the advice of the doctor he was kept in jail hospital. On 19.12.1999 the deceased had his lunch in between 10.30 a.m. to 11.00 a.m. and, thereafter, he went to bathroom. Suddenly the deceased had fallen down near the bathroom and Immediately thereafter he was shifted to jail hospital. It is contended that since the condition of the accused was serious, the doctors referred him to Patliputra Medical College and hospital, Dhanbad forbetter treatment and, as such, he was sent to the said hospital at 11.20 a.m. It is alleged that the deceased reached Patliputra Medical College hospital where he was examined and declared dead. The dead body of the deceased was handed over on 20.12.1999 after post

mortem. The said respondent has denied that the death was caused due to criminal negligence and irresponsible attitude of the jail authorities.

4. Respondent No. 4, the Superintendent of Police, Dhanbad has stated in the counter affidavit that on receipt of information regarding the death of Arjun Bouri a U.D. case No. 41/99 was registered and the dead body was sent for post mortem. It is stated that from the inquest report, post mortem report and the statements of the jail personnels and inmates, it appears that the death of the deceased was caused due to commission of suicide by hanging but the dead body, was found near the laterine. Therefore, U.D. case was closed.

5. Before deciding the issue, it would be worth to quote the contradictory stand taken by the two responsible officers of the Government. The Jail Superintendent, Dhanbad has taken the following stands in the counter affidavit :--

'7. That on 16.12.1999 at about 10.30 p.m. the deceased husband of the petitioner late Arjun Bouri had an attack of epilepsy and as such he was immediately shifted to the jail Hospital. The other prisoners also saw that Late Arjun Bouri was trembling and white spit was coming out from his mouth. However, he was given medicine and his condition improved and thereafter, on the advise of the doctor. Late Arjun Bouri was kept in the Jail Hospital itself and he was under continuous treatment of the doctors.

8. That on 19.12.1999 Late Arjun Bouri had his lunch between 10.30 a.m. and 11.00 a.m. and thereafter he went to the bathroom.

9. That suddenly the prisoners who were distributing food saw that late Arjun Bouri had fallen down near the bathroom and as such some of them ran towards the bathroom and rest of them gave the information to the Chief Warder, Sri Kesho Singh.

10. That prisoners picked up late Arjun Bouri from the bathroom situated near the Jail Hospital and took him to the Jail Hospital.

11. That since the condition of late Arjun Bouri was serious and as such the doctors gave him the necessary drugs and immediately referred him to Patliputra

Medical College Hospital, Dhanbad, for better treatment and as such he was sent to the Patliputra Medical College Hospital. Dhanbad at 11.20 by Jail Guard and other authorities.

12. That when late Arjun Bouri reached Patliputra Medical College Hospital. Dhanbad, he was examined by the Doctor who declared him dead.'

6. The respondent No. 4, Superintendent of Police, Dhanbad, in his counter affidavit in paragraphs Nos. 7 to 10, has taken the following stand :--

7. That on 19.12.1999 the Office-in-charge, Dhanbad, received an information regarding the death of Arjun Bouri, husband of the petitioner, which was recorded as U.D. Case No. 41/99 dated 19.12.1999 and the Magistrate was Informed accordingly in compliance of Section 174 of the Criminal Procedure Code.

Photo copy of information latter and report to the Magistrate is annexed herewith and marked as Annexure-'A' and 'A-1' to this counter-affidavit.

8. That on 19.12.1999 itself an inquest report was prepared and the dead body was sent for Post-Mortem which was conducted on 20.12.1999 and report was so received.

Photo copy of the Inquest Report and the Post-Mortem Report is annexed and marked as Annexure-'B' and 'B-1' to this Counter-Affidavit.

9. That thorough investigation was made and statements of Jail personnels and inmates were recorded according to which the body of the deceased was found near the laterine.

10. That in the Inquest Report, the post mortem report and the statements of Jail personnel and inmates when taken together have expressly and conclusively spelled that the death has been caused due to commission of suicide by hangingbut the body was found near the Latrine, therefore, the U.D. Case was closed on recommendation of the Officer-in Charge, Dhanbad, Police Station and after thorough consideration.Photocopy of the test note of the O/C is enclosed and marked as Annexure-'C' to this Counter Affidavit.'

7. From the conflicting versions of the two responsible officers of the respondents itself create serious doubt and suspicion as to the cause* of death of the deceased. The version of Jail Superintendent is also supported by a series of documents whereas the facts brought on record by the Superintendent of Police Dhanbad are also supported by medical report and enquiry report.

8. From perusal of inquest report prepared by the Executive Magistrate, it appears that he has stated in his report that death has been in highly suspicious circumstances and the cause of death seems to be hanging with some marks around the neck and swelling in right side of the neck were found. However, from perusal of other documents, it appears that the incidence of unnatural death of the deceased inside the prison was given much publicity and the matter was taken more seriously by the District Administration and petitioner was paid Rs. 10,000/- as instant help under the scheme of National Planning for Family Welfare.

9. As noticed above, the Superintendent of Police, Dhanbad and the Jail Superintendent, Dhanbad took a completely different stand in the counter affidavit with regard to cause of death of the prisoner. The report submitted by the Jail Doctor, the inquest report, the post mortem report, the first information report lodged by the Jail Superintendent and the investigation report have made out two series of cause of death of the prisoner. In my opinion, therefore, when the respondents are themselves taking two stands of the cause of death then both versions should not be relied upon. The fact remains that the prisoner died and the cause of death has not been sufficiently proved by the jail Authorities, an adverse inference must be drawn against the respondents particularly when the deceased left behind a widow and minor children.

10. This Court on 11.1.2002, after hearing the parties, passed the following order :--

'11.1.2002 Heard the parties.

Mr. S.K. Mishra, learned counsel for the petitioner in course of argument drawn my attention to the contradictory stand taken by the Superintendent of Police and the Jail Superintendent in their counter affidavit. Mr. R.A.P. Gupta, JC to AAG Mr. B.S.

Lal, very fairly submitted that conflicting and contradicting stand taken by the two officers itself amounts to serious violation of Human Rights and the petitioner therefore deserves payment of compensation.

Hearing concluded. Order is reserved.'11. On the facts and circumstances ofthe case stated hereinabove, this writ application is allowed and the respondents-authorities are directed to pay a sum of Rs. 50,000/-as compensation to the petitioner within amonth from the date of receipt/production ofa copy of this order.

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