

Smt. Anguri Vs. State

Smt. Anguri Vs. State

SooperKanoon Citation : sooperkanoon.com/694719

Court : Delhi

Decided On : May-25-2001

Reported in : 2001IVAD(Delhi)1076; 2001CriLJ3697; 92(2001)DLT606

Judge : Mr. Arijit Pasayat, C.J. and; Mr D.K. Jain, J.

Acts : [Constitution of India, 1950](#) - Articles 5, 21, 22(1) and 226; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Army Act, 1950](#); Army Rules, 1954; Army Service Regulations - Regulation 529

Appeal No. : Crl.W 247 of 1996

Appellant : Smt. Anguri

Respondent : State

Advocate for Def. : Mr. Altaf Ahmed ASG, ; Ms Rekha Palli and ; Ms Poonam Singh

Advocate for Pet/Ap. : Mr. V.K. Shali Adv

Judgement :

ORDER

Arijit Pasayat, C.J.

1. Alleging custodial death of her late husband - Havildar Ram Swaroop, this petition under Article 226 of the [Constitution of India, 1950](#) (in short, the

Constitution) has been filed with the following prayers:

1) To summon the service/medical record of late Havildar Ram Swaroop from respondent No.3 including the post mortem reports (numbering three) conducted on his dead body. Also, all connected record of the matter be summoned from respondents 1, 3, 4, 5, etc

2) to issue an appropriate writ, order or direction to the respondent No.1 to register an offence under Section 302 IPC etc and investigations be taken up bring to book the offenders in accordance with law. If considered fit and proper the entire matter be entrusted to the Central Bureau of Investigation, New Delhi, for investigation and report in the interest of justice and fair play.

3) To direct that a high powered medical board be constituted, consisting of impartial persons not connected with the Army medical corps to examine the post mortem reports etc and fix the cause of death of Havildar Ram Swaroop.

4) To pass an appropriate writ, order or direction commanding the respondents, including the respondents No.2, 3 and 4 to give a compensation of at least Rs. fifteen lakhs to the petitioner on account of the custodial death of her husband, Havildar Ram Swaroop in gross violation of human rights.

2. The background, according to petitioner, in which the petition has been filed is as follows:

Havildar Ram Swaroop was posted in 641 Field Security Section of the Indian Army at the Red Fort Delhi. In August, 1978, Havildar Ram Swaroop availed leave and was staying at his village Udaka, Tehsil Nuh, Gurgaon District. He was summoned to his unit on the plea that he was immediately required. Thereafter, nothing was heard from him. After about a month a police personnel from Police Station Sadar, Delhi Cantonment came to the petitioner at her village and asked her to come to Delhi to receive the dead body of Havildar Ram Swaroop. She learnt that several persons were implicated by the military authorities in some cases of military intelligence leakage. Interrogators had interrogated her husband at the Military Intelligence Interrogation Centre, Delhi Cantonment while he was

being detained in military custody. The interrogators were Major S.C. Jolly, Major P.S. Solanki, Captain Sudhir Talwar and Col RPS Madan. Petitioner's husband was subjected to severe beating and other tortures in the course of interrogation, thereby causing his death. Petitioner made several grievances before authorities but to no avail. Family pension was sanctioned to family members of Hav. Ram Swaroop, as his death was attributed to military services in peace areas. One R.K. Midha was the Officer commanding of Hav. Ram Swaroop and he filed an affidavit before the Apex Court wherein it was stated that Hav. Ram Swaroop was murdered by Major S.C. Jolly, and Captain Sudhir and for not supporting them they were implicating him for fabrication of evidence. The affidavit was filed in the Apex Court in Criminal Writ Petition No.1577 of 1985 filed by Ex Captain R.S. Rathore against Union of India. Placing reliance on the aforesaid affidavit, petitioner approached this Court for payment of compensation, as according to her Havildar Ram Swaroop died while in custody and it has been falsely made out as if he died in normal circumstances, and there was no unnatural death.

3. Respondents, per contra, have taken the stand that Hav Ram Swaroop and others were involved in espionage activities. Involvement of Ram Swaroop and other was clearly made out, as the fact of espionage activities emerged from interrogation/investigation of charges against Captain R.S. Rathore, Major R.K. Midha and others operating from Sambha (J&K;) and they were charged with passing vital military information to Pakistan Field Intelligence Unit. Action under the [Army Act, 1950](#) and Army Rules, 1954 (in short the Act and Rules respectively) was taken and regular court martial was conducted. Investigation was undertaken to find out whether there was any truth about the allegation of torture or custodial death. Affidavit filed by Shri R.K. Midha was an act of self protection as he himself was charged with espionage activities. In any event, General Officer Commanding-in-chief, Western Command, after due investigation came to hold on 24.9.1980 that no one can be blamed for the death of Hav. Ram Swaroop. This opinion was duly concurred by the Chief of Army Staff. Further the petition (1577/75) Ex. Cap R.S. Rathor vs UOI has been dismissed by the Apex Court. Even though an application was filed for review, the same was also dismissed. The following orders passed by the Apex Court are relevant:-

'We are not satisfied that this is a proper case for calling for the records or for re-opening the matter and hearing it. The writ petition is therefore, dismissed.'

4. According to the learned counsel for petitioner, once custody is admitted, burden lies upon the authority to show that there was no custodial death. In fact, the investigation, if any done cannot be substitute for a fair investigation. Officials were themselves involved in the matter and therefore, fraternity factor cannot be lost sight of.

5. Custodial death is perhaps one of the worst kinds of crime in civilized society governed by rule of law. The rights inherent in Articles 21 and 22 (1) of the Constitution require to be jealously and scrupulously protected. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself and thereby leading to anarchy. No civilized nation can permit that to happen. Question is what happens to the abuse of police power, as alleged. Transparency of action and accountability perhaps are two possible safeguards which can be insisted upon. In *D.K. Basu vs . State of West Bengal*, : 1997 CriLJ743 , these aspects were highlighted. 'torture' has not been defined in the Constitution or any other penal law. torture of a human being by another human being is essentially an instrument to impose the will of the strong over the weak by suffering. Custodial violence and abuse of power is not peculiar to this country but is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' It is to be noted that in the *State of Madhya Pradesh vs Sham Sunder Trivedi*, : (1995)4SCC262 , the Supreme Court observed that no direct evidence of police torture or custodial death would be available, as generally speaking it would be police officials alone who can only explain the circumstances in which the person in their custody had died. Bound as

they are by the tie of brotherhood, it is not uncommon that police prefer silence more often than not prevent the truth to safeguard their colleagues. In *Inder Singh vs State of Punjab* : 1995 CriLJ3235 Apex Court observed that it is primary duty of those in uniform to uphold law and order and protect the citizen. If members of police force resort to illegal abduction and assassination, if other members of police force do not record investigate complaints in this behalf for a long period of time, the case is not one of errant behavior by a few members of the police force, it betrays scant respect for life and liberty of innocent citizens and exposes the willingness of others in uniform to lend a helping hand to one who wreaks private vengeance on mere suspension.

6. In *Nilabati Behera v State of Orissa*, : 1993 CriLJ2899 the Apex Court pointed out that prisoners and detenus are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law which can be imposed on the enjoyment of the fundamental rights of the arrestees and detenus. It was observed in para 31:

'It is axiomatic that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The previous right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under-trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrong-doer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.

7. The response of the American Supreme Court to such an issue in *Miranda v. Arizona* 384 US 436: 16 L.Ed 2d 694 (1996) is instructive. The Court said:

'A recurrent argument, made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. (See. E.g. *Chambers v. Florida* 309 US 227: 84 L.Ed. 716 The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of Government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged.'

8. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the Courts. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. The maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus republican suprema lex* (safety of the State is the supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be right, just and fair. Using any form of torture for extracting any kind of information would neither be right nor just nor fair and therefore would be impermissible, being offensive to Article 21. Such a crime suspect must be interrogated - indeed subjected to sustained and scientific interrogation - determined in accordance with the provisions of law. He cannot however be tortured or subjected to their degree methods or eliminated with a view to elicit information, extract confession or drive knowledge about his accomplices weapons etc. His constitutional right cannot be abridged in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism. That would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure

that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable to punishment but it cannot justify the violation of his human rights except in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge.

9. Article 9(5) of the International covenant on Civil and Political Rights, 1996 (ICCPR) provides that anyone, who has been victim of unlawful arrest or detention shall have enforceable right to compensation. Of course, the Government of India at the time of its ratification of (ICCPR) in 1979 made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by the Court in a number of cases awarding compensation for the infringement of the fundamental right to life a citizen. (See Rudul Sah vs State of Bihar : 1983 CriLJ1644 , Sebastian M Hongray v. UOI : [1984]1SCR904 , Bhim Singh v. State of J&K; , 1984 Supp SCC 504. Saheli, A Women's Resources Centre v. Commr of Police : AIR 1990 SC513). There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life. Nonetheless, Courts have judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty of life. (See Nilabati Behera's case supra)

10. The informative and educative observations of O'Dalaigh CJ in State (at the Prosecution of Quinn) v. Ryan 1965 IR 70 (at p 122) deserve special notice. The learned Chief Justice said:

'It was not the intention of the Constitution in guaranteeing the fundamental rights of citizen that these rights should be set a naught or circumvented. The intention was that rights of substance wee being assured to the individual and that the Courts were the custodians of those rights. As necessary corollary, it follows that no one can with impunity set these rights at naught or circumvent them and that the court's power in this regard are as ample as the defense of the Constitution

requires.

11. In *Byrne v Ireland* 1972 IR 241 Walsh, J, opined at p.264:

'In several parts in the Constitution duties to make certain provisions for the benefit of the citizens are imposed on the State in terms which bestow rights upon the citizens and unless some contrary provision appears in the Constitution, the Constitution must be deemed to have created a remedy for the enforcement of these rights. It follows that, where the right is one guaranteed by the State, it is against the State that the remedy must be sought if there has been a failure to discharge the constitutional obligation imposed.'

12. In *Maharaja v. Attorney General of Trinidad and Tobago (No.2)* (1978) 2 All ER 670: the Privy Council while interpreting Section 6 of the Constitution of Trinidad and Tobago held that though not expressly provided therein, it permitted an order for monetary compensation, by way of 'redress' for contravention of the basic human rights and fundamental freedoms.

13. There can be no quarrel with the general principles highlighted by us above. The first question is, has the petitioner made out a case for interference by us. Whether Ram Swaroop took part in espionage activities is not for us to decide. It has to be noted that the foundation of the petitioner's case is the affidavit filed by Major R.K. Midha. He was one of the persons, who were claimed to be involved in espionage activities. Copies of the petition filed before the Apex Court have been filed before us. One of the materials on which reliance was placed seeking reopening of the case after calling the record from the concerned authority was the aforesaid affidavit. As noted above, the Apex Court was not satisfied that the case was one where it was necessary to call for the record or reopen the matter for hearing. therefore, only on the basis of the affidavit referred to above, it would not be proper to infer that there was custodial death. Additionally, certificates obtained for the purpose of family pension does not in any way further the case of the petitioner. The requirement of the format to be filled in was whether the death was attributable to the military service or was attributable to military service in peace area. Cause of death indicated was 'found dead'. There is nothing in the certificate to show that cause of death was unnatural or was on account of any injury or

otherwise. It has to be noted that documents filed before the Apex Court refer to Ram Swaroop and it was indicated that Ram Swaroop had been murdered and Major Midha was framed in espionage case because he refused to be a party to the fabrication of evidence to show that Ram Swaroop died because of drug addiction and not because of torture having 39 injuries on his body and his body was brought to hospital by Cap Sudhir, one of the interrogators.

14. Learned counsel for the petitioner stated that in term of Regulation 529 of Army Service Regulations, there has to be inquest in the case of unnatural death. This was done and therefore, the clear position is that death was custodial. We do not find any material to substantiate the plea of the petitioner. It has to be noted that the matter was investigated under the Army Act and finding has been recorded that nobody is responsible for the death of Ram Swaroop. It would not be desirable to doubt the authenticity of the report submitted and ask any other agency to undertake the investigation/inquiry. No material or basis could be placed for adoption of such a course. In the facts and circumstances of the case, therefore, there is no scope for accepting the prayer in the petition. The petition is devoid of any merit and is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com