

**Tarulata Devi Vs. State of Assam and ors.**

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**Court :** Guwahati

**Decided On :** Apr-26-2001

**Reported in :** 2002ACJ735

**Judge :** Ranjan Gogoi, J.

**Appeal No. :** Civil Rule No. 1333 of 1995

**Appellant :** Tarulata Devi

**Respondent :** State of Assam and ors.

**Advocate for Def. :** Mr. J.M. Choudhury and ;Mr. K.K. Das, Advs.

**Advocate for Pet/Ap. :** Mr. G. Uzir, Adv.

**Judgement :**

1. The writ petitioner, who is the mother of an alleged victim of custodial death, had filed the instant petition placing before this Court her version of the case and praying for various reliefs specifically enumerated in the body of the writ petition. This Court while entertaining the writ application by order dated 31.3.95 directed that an enquiry to be made by the District Judge, Darrang, Mangaldoi with regard to the manner and cause of death of Pankaj Sarma, the deceased, and requested the learned District Judge to submit a report to this Court within a period of 4 (four) months. Notwithstanding the desire and anxiety of this Court to have a report as regards the manner and cause of death of the son of the writ petitioner as

expeditiously as possible, the same could be furnished by the learned District Judge only on 14.3.2000 and taken on record by order dated 3.4.2000 of this Court.

2. The writ petitioner has pleaded that her son Pankaj Sarma, who was a graduate, went to a nearby village called Khuhiarbari on 3.12.94 to meet some of his friends and spent the night in the said village. In the early hours of 4.12.94 at about 12.30 A.M. a police party headed by the Officer-in-Charge of Khairabari Police Station raided the said village and arrested the writ petitioner's son along with others. The writ petitioner's son and his friends were shown arrested in connection with Khairabari Police Station Case No. 48/94 under Section 307 of the Indian Penal Code read with Section 3/4/5 of the TADA (P) Act (G.R. Case No. 829/94). The writ petitioner has further stated that on 4.12.94, in the course of the day, her son along with others were transferred to Mangaldoi Police Station and at about 10 P.M. in the evening of the same day, namely, 4.12.94 Pankaj Sarma was shifted to Mangaldoi Civil Hospital and soon thereafter her son was declared dead by the doctors at the hospital. The postmortem examination was carried out and the report which has been annexed to the writ petition shows that the following injuries were found on the body of the deceased.

'(i) Multiple injuries of various sizes and shapes on back side of neck, back, left side of chest, both arms and forearms both thighs and legs.

(ii) Fracture of 4th left rib near the costochondral junction and lung along with antemortem clotted blood in left thoracic cavity.'

3. The writ petitioner has categorically averred that her son was otherwise a healthy boy and that there were no injuries on him at the time of his arrest. Therefore, the injuries found on his body which in the opinion of the doctor, has caused death must have been the result of police torture while he was in police custody.

4. The respondents, perhaps, in view of the reference of this matter by this Court to the learned District Judge, Darrang, did not file any affidavit before this court but has filed a written statement supported by an affidavit before the learned District Judge. Paras-15 and 25 of the said affidavit is material for the purpose of the

present case. According to the respondents, the deceased was a terrorist belonging to the U.L.F.A. and on the relevant date was in custody in connection with several distinct criminal offences. The deceased who was in handcuffs at the relevant hour on 4.12.94 tried to flee from police custody and such attempts having been resisted by the police, the deceased fell down and injured himself and eventually succumbed to his injuries. The correctness of either, version and the consequential orders to be passed by this Court in the event the deceased is found to have died due to police torture and in police custody is the core issue to be decided in the present proceeding.

5. As many as 12 (twelve) witnesses were examined by the petitioner before the learned District Judge. The respondents have examined two witnesses and as many as 18 (eighteen) documents were exhibited by both sides. The learned District Judge on consideration of the materials on record has come to the conclusion that death of Pankaj Sarma had occurred due to torture inflicted while in police custody. The learned District Judge while disbelieving the police version of the case, however, has not come to any categorical finding as to which particular police officer or officers were responsible for the death of Pankaj Sarma.

6. Mr. Gautam Uzir, learned counsel appearing for the writ petitioner has submitted that the fact that death had occurred in police custody due to police torture is amply demonstrated by the materials on record proved in the course of the enquiry conducted by the learned District Judge. Therefore, on the ratio of law laid down by the Apex Court in the following judgments in - (1) Nilabati Behra v. State of Orissa and others, reported in (1993) 2 SCC 746, (2) O.K. Basu v. State of West Bengal, reported in (1997) 1 SCC 416 and (3) People's Union for Civil Liberties v. Union of India and others, reported in (1997) 3 SCC 433, this Court should direct the award of compensation to the mother of the deceased. Mr. Uzir has further urged that this Court should also pass appropriate orders for identification of the guilty and for proceeding against such persons in accordance with the provisions of the Panel Law. All other consequences flowing from such penal action, Mr. Uzir contends, should also directed by this Court.

7. Mr. B.K. Ghosh, learned senior counsel appearing on behalf of the Respondents No. 4, 5 and 6 has with great force argued that the report submitted by the learned District Judge not being based on a proper consideration of the evidence and materials on record should not be accepted. Mr. Ghosh contended that no evidence or materials have been brought on record to warrant the conclusion reached by the learned District Judge and the report being cryptic and shorn of any discussions of the evidence and materials on record should not form the basis of any further order of this Court.

8. To reach the just and correct answer to the issues arising for determination in the instant proceeding, I have perused the evidence of the witnesses examined by the learned District Judge and the report of enquiry dated 14.3.2000. Mr. Ghosh's contention as narrated above proceed on the assumption that the learned District Judge was holding a criminal trial which admittedly he was not. The degree of proof and satisfaction which he was required to arrive at before recording the impugned finding cannot be measured by the yardstick as applicable in criminal trials. Nevertheless a consideration of the materials on record would make it clear that the police version as narrated in Paras-15 and 25 of the written statement is not even a remotely probable version a fact which is duly supported by the contents of the postmortem report. The statements of P.Ws. 6,7,11 and 12 who were present with the deceased while in police custody establishes the fact that the deceased was assaulted and tortured by police while in their custody. While P.W6 and 7 have only mentioned about the collective assault by the police personnel without naming any particular officer, P.W. 11 and 12 have in their depositions referred to specific police officers both by name and designation as having committed the assault on the deceased.

9. The availability of the precious right guaranteed under Article 21 of the Constitution to undertrials, detenues and persons in custody is beyond any doubt. Custodial death being an infringement of such rights has been universally condemned as one of the worst crimes in a civilised society governed by the Rule of Law. The law having been laid down succinctly in Nilabati Behera v. State of Orissa, reported in (1993) 2 SC 746 and O.K. Basu v. State of West Bengal, reported in (1997) 1 SCC 416 it is not necessary to lengthier this judgment with a

reiteration of the settled law. Death being always irreparable and irreplaceable, the Court can only apply balms to the wounds by directing monetary compensation on account of infringement of the rights under Article 21 of the Constitution leaving claims of further monetary compensation depending on actual loss to be adjudicated by the Civil Court, if so approached. The quantum of compensation to be fixed has to be largely subjective and in the instant case has to be vicariously against the State as the wrong doers are yet to be finally identified. Considering the totality of the facts and circumstances of the case, this Court assesses a sum of Rs. 2,00,000 (Rupees two lakhs) as compensation payable by the State to the writ petitioner for the wrongs on the part of the State and its failure to discharge its solemn duty to protect the Fundamental Rights of the citizens. The amount of Rupees Two Lakhs shall be deposited with the Registrar General of this Court within a period of 2(two) months from today and on proper identification of the writ petitioner, the amount shall be released to her forthwith.

10. The next aspect to be considered is should the instant proceeding be allowed to rest with the grant of monetary compensation alone. I have not been able to pursue myself to answer the question in the affirmative. Rather, I am inclined to take the view that as the facts and circumstances of the case and the findings arrived at disclose the commission of a cognizable offence, the matter has to be pursued to its logical end. As the officers of the said Police Force and involved, I consider it fit and appropriate to direct the Central Bureau of Investigation to ensure that an F.I.R. is registered on the basis of facts and findings recorded in the present order and investigate the same in accordance with the provisions of the Code of Criminal Procedure, 1973 with utmost expedition. A copy of this judgment and order along with a copy of the report of the learned District Judge, Darrang dated 14.3.2000 and translated copies of evidence of the witnesses examined before the learned District Judge, Darrang be furnished to the Standing Counsel, C.B.I. in this Court Shri D.K. Das, Senior Advocate within a period of 10 (ten) days from today who will forward the same to such authority in the CBI is empowered to initiate necessary action in the light of the present judgment and order.

11. The writ petition stands disposed of in terms of the aforesaid order.

