

IN THE HIGH COURT OF MANIPUR AT IMPHAL

WRIT PETITION (C) NO. 943 OF 2014

Mr. Guangbi Dangmei, aged about 58 years, S/O late Kakhuphun, a resident of Longmai/Noney Bazar, Nungba Sub-Divn BPO & PS Noney, Tamenglong District, Manipur.

....Petitioner

-Versus-

1. The Union of India through the Defence Secretary, Ministry of Defence, Govt. Of India, Central Secretariat, South Block, New Delhi-110011
2. The Commanding Officer, 10 Assam Rifles, C/O 99 APO
3. The State of Manipur through the Principal Secretary (Home), Govt. of Manipur, Manipur Secretariat, South Block, PO & PS Imphal, Imphal West District, Manipur.
4. The Director General of Police, Manipur, Police HQs, PO & PS Imphal, West District, Manipur.
5. The Superintendent of Police, Tamenglong District, Manipur PO & PS Tamenglong District, Manipur.

...Respondent

Before

HON'BLE THE CHIEF JUSTICE R.R. PRASAD
HON'BLE MR. JUSTICE N. KOTISWAR SINGH

For the Petitioner	::	Mr. M. Rakesh, Advocate
For the Respondents	::	Mr. RS Reisang, Sr. G.A. Mr. S. Rupachandra, ASG
Date of hearing	::	23.02.2017
Date of Judgment/order	::	27.02.2017

JUDGMENT & ORDER

This application has been filed by the petitioner seeking compensation of a sum of Rs. 20 lakhs on account of the death of his son, Guangsingam Dangmei caused by the personnel of 10th Assam Rifles in a fake/fictitious encounter.

[2] It is the case of the petitioner that the petitioner's son(victim), Guangsingam Dangmei, was studying in class-VIII in Tentmarks's Academy, Longmai-III (Noney), Tamenglong District. While studying he was also helping his parents as a quarry labour and thereby petitioner's son was earning at least Rs. 600/-per day.

On 30.12.2012 said Guangsingam Dangmei having come out of his house and came to Noney Bazar with his friend W. Nanao Singh at 9.30 pm cold, they thought it proper to return. In course of their return to their houses when they reached near St. Joseph School, a vehicle of 10th Assam Rifles came there from which personnel got down who asked as to from where who is was Guangsingam Dangmei. When the victim disclosed his identity as Guangsingam Dangmei, both the Assam Rifles personnel pushed the victim and also his friend inside the vehicle. They blind folded them and then proceeded ahead. After some time, when the vehicle got stopped at one place, one of the personnel made Nanao Singh to get down from the vehicle and brought to some distance. When the blind fold was removed, said Nanao Singh could realised that he is at 10th Assam Rifles Camp, Noney. Nanao Singh did not find the victim present is the member of underground outfit. After giving good beating, the Assam Rifles personnel let him off to come to his home. On the next day, i.e. on 31.12.2012 at about 7 AM Nanao Singh informed about the incident to the petitioner, the father of said Guangsingam Dangmei.

On getting said information, the petitioner went to the Camp of 10th Assam Rifles along with his daughter and also Chamrei Kamei, Secretary, Bazar Board to inquire about his son's whereabouts. There, the Assam Rifles personnel informed them that they have not arrested any of the persons. Thereafter, they returned back home but the petitioner again at 12 O'clock came to the Camp of 10th Assam Rifles along with local people. There, it was informed that dead body would be brought at 2 PM. When the dead body was brought petitioner identified it as the dead body of his son. They did find several bullet injuries on the person of the deceased. Thereupon, the petitioner lodged written report before the O.C. Noney P.S. which was forwarded to Nungba PS for its registration and accordingly it was registered as FIR Case No. 1(1)13 NBA PS u/s 364/302/34 of the IPC and 27 of the Arms Act. Upon the case being taken for investigation, the

I.O. of the case got the autopsy done by an Assistant Professor, JNIMS (PW-6) who found number of gun-shot injuries on the person of the deceased.

Further case is that thereupon the petitioner himself made inquiry from number of the local people and came to know that in the late night of 30th dead at the border of village Lamdangmei and Shanggi. When the people came to know all about it, they became quite agitated. On 2.1.2013 the members of Zelianrong Students Union, Manipur (ZSUM) submitted a Memorandum to Chief Minister for holding judicial enquiry into the matter relating to the fake encounter/extra judicial killing. Thereupon, a Memorandum of Understanding was signed whereby it was agreed that the Government would ensure a Magisterial enquiry headed by a Deputy Commissioner to ascertain the facts and circumstances leading to the death of the petitioner's son at the hands of 10th Assam Rifles personnel.

[3] The District Magistrate took up the matter for holding enquiry and in fact examined number of persons but till date enquiry report has never seen the light of the day though in terms of the MOU it was supposed to be submitted within a month. However, when the enquiry report was not submitted, petitioner filed this case for the relief as stated above.

[4] The respondents. Union of India, through the Defence Secretary and the Commanding Officer, 10th Assam Rifles by putting appearance, filed affidavit in opposition wherein they denied the allegation of killing of petitioner's son in fake/fictitious encounter by stating that the occurrence never took place in the manner which has been given by the petitioner; rather it happened so that on 30.12.2012 at around 4 P.M. they got a secret information that 2/3 members of banned organisation would be attacking National Hydro Power Corporation(NHPO. On getting this information, the Assam Rifles arranged an ambush to be laid on the road in between Lamdangmei & Shanggi village. It consisted of 19 police personnel including personnel who had been examined during enquiry as RW-1 and RW-2. At wee hour when they found some movement and thereby they challenged them by shouting "stop" / "Halt". They responded but by resorting to firing. Thereupon, they also resorted to cross firing. Thereupon, they did not find any firing being made from their side. They waited for the day to break. At 7.30 AM on 31.12.2012 when they started searching the area, they found a dead body and from there a pistol with magazine, empty cartridges as well as live cartridges were recovered. It is also the case that thereafter the dead body was brought to Camp. Further case is that the petitioner's son was an active member holding self styled post of Corporal in the UG organization known as JUF which got established from

recovery of Diary from the possession of the deceased showing him member of said organisation. Thus, as per the case made out by the respondent, it never happened to be a case of fake/fictitious encounter.

[5] On filing counter affidavit, when the court did find two vertical stands thought it proper to have an inquiry made in the matter. Accordingly the District & Sessions Judge, Imphal West was directed to hold an enquiry and to submit report.

[6] Thereupon the District & Sessions Judge, Imphal West proceeded with the enquiry and during course of enquiry 6(six) witnesses were examined on behalf of the petitioner. Of them, PW1 is the Nanao Singh who, as per the case of the petitioner. Of them, PW1 is the Nanao Singh who, as per the case of the petitioner, was taken to the Camp of 10th Assam Rifles along with the deceased. He deposed categorically that in the night of 30.12. 2012 he was strolling around Noney Bazar along with the deceased. While they were returning home, a vehicle of the Assam Rifles came from which two personnel got down and asked as to who is Guangsingam Dangmei. Upon it when Guangsingam Dangmei disclosed his identify both of them were pushed inside the vehicle and then they were blind folded. They proceeded ahead from there. On reaching a place when the vehicle was stopped, he was made to get down from the vehicle and when the blind fold was removed, he found himself in the Camp of the Assam Rifles but he did not see the victim whose dead body was given by the Assam Rifles on the next day, when the father of the deceased and local people had come to the Camp, PW-2 the father of the victim in his evidence supported the fact which he has made in the petition relating to his coming to the Camp of Assam Rifles on getting information from PW-1 and the dead body being handed over to them RW-3 and RW-4, Secretary and Chairman of the Noney Bazar Board respectively has also supported the version of PW-1. Same is the case with PW-5. PW-6 is the Assistant Professor who held autopsy on the dead body of the deceased and did find following injuries on the person of the deceased which are as follows:

“1. Multiple abrasions on right side forehead over an area of 8cmX8cm, sized ranging from 0.3cm x 0.3cm to 0.3cm x 1cm, red in colour;

2. entrance wound, 0.6cm x 0.5cm left side root of neck, 14cm medial to left tip of shoulder, 145 cm above heel with red abraded collar. Exit wound, 6cm x 4cm front right side chest, 3cvm right to midline, 6cm below nipple level, 116cm above heel with red irregular margins. The track passed forward, downwards and

medially to right involving left lung, aorta, right lung, sternum and 5th right rib anteriority, skin and muscles.

3. Bruise, lower lip, read in colour.

4. Entrance wound 0.8cm x 0.7cm, front abdomen, 6cm left to midline, at left costal margin, 111cm, above heel, red abraded collar. Exit wound, 2cm x 1.5cm, left side abdomen, at mid axillary line, 109 cm above heel. The track passed backwards, downwards and laterally to left involving skin and muscles only.

5. Entrance wound, 1cm x 1cm, front abdomen in midline, 3cm above umbilicus, 106 cm above heel, red abraded collar, exit wound, 3cm x 2cm, left side abdomen at posterior auxiliary line at LI level, 102 cm above heel, with loops of intestine coming out, red irregular margins. The track passed backwards, downwards and laterally to left involving skin, muscles, intestines and mesenteries.

6. Entrance wound 0.6cm x 0.5cm, in perineal area, 1cm behind scrotum, 76 cm above heel. Exit wound, 6cm x 3cm front of abdomen 7cm left to midline, just below umbilicus level, 96 cm above heel, with red irregular margins. The track passed forwards, upwards and laterally to the left involving skin, muscles, intestines and mesenteries. (The witness had corrected a word in the line number 6 of the examination report "right" as "left" which was corrected after furnishing to the concerned I.O. of the case. Now the witness has corrected the said word before the Court and put signature nearby the said word.)

7. Entrance wound, 0.6cm x 0.5cm, front right knee, 44cm above heel, red abraded collar. Exit wound 5cm x 4cm anteromedial aspect right lower thigh, 51 cm above heel, with red irregular margins. The track passed upwards, backwards and medially to the left involving skin, muscles and right patella.

8. Entrance wound 0.6cm x 0.5cm back of right lower thigh, 55 cm above heel with red abraded collar. Exit wound 3cm x 2cm, medial aspect right lower thigh, 53 cm above heel with red irregular margins. The track passed backwards, downwards and medially to the left involving skin and muscles only.

9. Entrance wound, 0.6cm x 0.5cm, medial aspect right hand, 3cm distal to wrist joint. Exit wound 2cm x 1.5cm, on dorsum of right hand, 4cm distal to wrist joint. The track passed through skin, muscles, second and third metacarpal bones.

Internal Injuries:

On examination, there was fracture of sternum and 5th right rib at stern costal junction, pleura and cavities were lacerated with 1500cc blood in both cavities. Both right and left lungs were lacerated. Ascending aorta lacerated. Abdomen was lacerated with 1000cc blood in cavities. Stomach was intact and empty. Multiple lacerations present in small and large intestines at multiple sites. There was fracture right patella, second and third right metacarpal bones.

Opinion:

From the above examination, I am of the opinion that the death was due to shock and haemorrhage resulting from multiple firearm injuries to the body, Homicidal in nature. Time since death was 3 to 4 days. The injuries were ante mortem in nature and fresh at the time of death.

Accordingly I prepared the PM examination report in respect of the abovementioned case and same is forwarded to HOD namely Dr. G. Angam of our department for doing needful. I can identify the signature of the said Dr. G. Angam as I am working with him in the same department."

[7] On the other hand, from the side of the respondents, 4 witnesses have also been examined. RW-1 and RW-2 are the members of the party who had laid an ambush. They, in their evidences, have supported the case as has been made out by the respondents in their counter-affidavits. RW-3 is the Sub Inspector of Police who had investigated the case lodged at the instance of Assam Rifles as FIR Case No.40(12)12 NBA PS u/s 307/400 IPC and 25 (I-C) of the Arms Act. According to him after registration of the case, investigation was handed over to him. He came to Assam Rifles Camp located at Noney at about 2.30 PM and found the dead body there. There, he was also handed over the arms and ammunitions said to have been seized by the personnel of Assam Rifles on the spot. RW-4 is the Sub Inspector of police who had been entrusted with the investigation of the case lodged by the petitioner. Both of them have stated that

during inspection of the place of occurrence, they did find the blood being spilled over the grass and stone. According to him when in course of investigation came to Camp of Assam Rifles, no one did come forward to give any statement.

[8] Learned District & Sessions Judge, on the basis of the evidence, did not find the story made out by the Assam Rifles as unnatural whereas from the circumstance appearing in the case he did find that the son of the petitioner was killed in the fake encounter. Accordingly he submitted his report.

[9] Heard Mr. M. Rakesh, learned counsel for the petitioner and Mr. S. Rupachandra, learned ASG appearing for the respondents. They, in their submissions, put forward the same case as has been made out in their respective affidavits.

Having heard learned counsel appearing for the parties and on perusal of the record, we do find that the learned District & Sessions Judge has rightly come to the conclusion that the son of the petitioner was killed in a fake encounter. At the cost of repetition, it be stated that as per the evidence of PW-1, he as well as the victim were picked up by the Assam Rifles personnel while they were strolling around the Noney bazar as they took the victim as the member of a banned organization. According to PW-1 they were made to sit on the vehicle and then they were blind folded. When the vehicle got stopped at a place he was brought down and when blind fold was removed he did find himself in a Camp of Assam Rifles. There he did not find his friend, the deceased. He was assaulted and then was let off, perhaps for the reason that he did disclose that he disclosed to the father of the deceased who, in turn, disclosed to other witnesses- PWs-3,4 and 5 and when they went to the Camp, Assam Rifle personnel handed over the dead body. But the personnel of Assam Rifles had taken altogether a different stand whereby they came with the case that on getting information that certain 2/3 armed persons would be attacking NHPC, a party was constituted to lay ambush over the road approaching NHPC in the night. In course of laying ambush when they found some movement, they challenged them to stop but the miscreants on being challenged resorted to firing and thereupon personnel of Assam Rifles also resorted to cross firing. When the day broke out, they found the dead body lying there and arms and ammunitions lying there were recovered. If the thing would have happened in that fashion, the natural conduct on the part of the Assam Rifles would have been there to inform the police immediately so that upon registration of the case the police would have come to the place of occurrence and would have held inquest on the dead body of the deceased and would have made seizure of the

incriminating articles. Instead of it, the case which was made out in the counter affidavit is that they had brought the dead body to the camp but none of the witnesses on behalf of the Assam Rifles has stated about this fact or about the circumstances under which dead body was brought to Camp of the Assam Rifles. In the absence of it one would be bound to accept the fact narrated by PW-1 relating to both of them being brought to Camp as his evidence not only appears to be unimpeachable but it finds corroboration from the fact that dead body was handed over at the Camp.

[10] The case of the petitioner, further, gets strengthened from the medical evidence whereby the Doctor has found, apart from the gun-shot injuries, multiple abrasions on right side of forehead over an area of 8cm X 8cm over this injury one can take a plea that after receiving gun shot injuries when the deceased would have fallen on the ground and would have received the injuries. But, in that case it is not expected that the person would be receiving multiple abrasions.

(11) Further, we do find that, as per the version of the witnesses examined on behalf of the respondents they had received a secret information about 2/3 armed persons would be attacking at NHPC but they themselves have admitted that adequate security forces were there at NHPC. In such situation, natural conduct would have been to inform the security personnel posted at NHPC but this never happens to be the case of respondents. Assuming that Assam Rifles on receiving secret information acted as per their wisdom and the question in the fact of the case which has been admitted by the witnesses of the respondents that two approach roads are there to come to NHPC does arise as to the reason why only over one road ambush was laid.

[12] The other circumstance which creates a grave suspicion over the case of respondent is that R.W- 4 upon taking up the investigation of the case lodged by the petitioner came to Camp to take statement of Assam Rifles personnel particularly of these two persons who allegedly lifted the deceased on PW 1, they were never produced on one pretext or other though as per R.W 4 he made attempts thrice.

[13] Thus, the aforesaid circumstances, prima facie, go to establish the fact of deceased being killed in a fake/ fictitious encounter and thereby the case happens to be a case of unconstitutional deprivation of fundamental right to live and liberty and thereby petitioner would be entitled to compensation in view of the decision rendered in case of D.K. Basu –vs- State of W.B. : (1997) 1 SCC 416 laying down proposition as under:

"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages of tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation or the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the court and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim civil action for damage is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim. Who may have been the bread winner of the family.

54. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the

citizen is based on the principle of strict liability to which the defence of sovereign immunity is nor available and the citizen must revive the amount of compensation from the State, which shall have the right to be indemnified by the wrong door. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do, That award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under he public law jurisdiction is, in addition to the traditional remedies and not it derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress. The wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

[12] Considering the facts and circumstances, the age and also the earning of the deceased as deposed by all the witnesses, we are of the view that a sum of Rs. 5 Lakh will meet the end of justice. Accordingly, the respondents-1 and 3 are hereby directed to pay a sum of Rs. 5 lacs as compensation to the petitioner, the father of the deceased, within a period of three months from the date of receipt of the copy of this order.

Thus, this application stands allowed.

Sd/- N. KOTISWAR SINGH
PRASAD

JUDGE

Sd/- RAKESH RANJAN

CHIEF JUSTICE

