

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.12/2023 in
WA No.29/2023 with
MC (WA) No.32/2023
WA No.13/2023

Date of order: 30.08.2023

Mingran T. Sangma Vs. Abal M. Sangma & ors

State of Meghalaya Vs. Abal M. Sangma

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance in MC (WA) No.12 of 2023 in

WA No.29 of 2023 with MC (WA) No.32 of 2023:

For the Applicant/Appellant : Mr. P.T. Sangma, Adv
Ms. J.T. Sangma, Adv

For the Respondents : Mr. M.F. Qureshi, Adv with
Mr. L. Koch, Adv for R/1
Mr. N. Syngkon, GA with
Ms. A. Thungwa, GA

Appearance in WA No.13 of 2023

For the Appellant : Mr. N. Syngkon, GA with
Ms. A. Thungwa, GA

For the Respondent : Mr. M.F. Qureshi, Adv with
Mr. L. Koch, Adv for R/1

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

In MC (WA) No.12 of 2023, the applicant seeks leave to appeal against a judgment and order of May 2, 2023 passed in WP (C) No.83 of 2015 to which the applicant herein was not a party.

2. The applicant claims to be seriously prejudiced by the relevant order to the extent that such order has directed a fresh investigation to be conducted into an incident of 2015 at the behest of the father of a person who was killed in what, according to the State and the applicant, was an encounter between the State police and Garo National Liberation Army insurgents.

3. WA No.13 of 2023 is the State's appeal against the same order.

4. Since there is already an appeal that has to be looked into, notwithstanding the fact that the order directing an investigation may not be seriously prejudicial to the applicant in MC (WA) No.12 of 2023, leave is given to such applicant to prefer the appeal as a person aggrieved.

5. The appeals are taken up for immediate consideration.

6. According to both the appellants, particularly the State, pursuant to information received by the police personnel in Tura, they took steps to deal with a situation where suspected militants with new recruits were apparently in hiding in Romba Adinggre. The police personnel

took appropriate steps to gather adequate men and fire-power to reach the spot and at about 5 am on March 4, 2015, they identified a country-style hut to be where the militants had gathered.

7. The State submits that after the hut was surrounded, warnings were issued to the occupants to come out without arms but such warnings fell on deaf ears. According to the State, three persons suddenly broke open the bamboo door of the hut and rushed out firing at the police personnel. It was in such circumstances that the State claims that the police had no option but to open fire and one of the militants who was in the most advanced position sustained bullet injuries as a result of the police firing and died immediately. The State's version also speaks of two others who had rushed out together with the deceased, but there does not appear to be any trace of such persons.

8. Apart from the criminal cases instituted by the police authorities pertaining to the incident, the father of the deceased lodged a complaint to the effect that it was a fake encounter in which his son had been gunned down mercilessly by the police. Pursuant to the investigation of such case, nothing untoward was discovered and a final report was submitted under Section 173 of the Code of Criminal Procedure, 1973. Aggrieved by the investigation into the allegations levelled by him, the

father of the deceased then instituted WP (C) No.83 of 2015 in this Court. An interim order was passed on June 28, 2017 on such petition, the operative part whereof is found at paragraph 4 of such order:

“4. In such circumstances, I am of the considered view that there is only one way out and that is further enquiry by a Judicial Officer from the judicial side. Accordingly, learned District Judge, Tura is entrusted with the job to conduct a thorough enquiry and to submit the report before this Court within 5(five) months.”

9. It appears that the District and Sessions Judge, Tura conducted an inquiry and filed a report running into some 25 pages and appended photographs of the place of occurrence along with markings thereon.

10. The conclusion drawn by the relevant District and Sessions Judge appears from the following passage towards the end of the final paragraph of the report:

“36. ...It can be seen that the source information about GNLA militants taking shelter was most probably a correct information as the deceased was found trying to escaped by running away and shooting with his gun at the same time and the subsequent recovery of the Demand Note in his pocket and also the recovery of 2 (two) Blank Demand Notes as well as the detonator from his Bachelor's Dormitory. However the presence of two other persons with the deceased who are said to have escaped could not be established.”

11. Such report of the relevant District and Sessions Judge was considered in great detail by the writ court in course of the final hearing of the petition. It is evident that the State opposed the prayer for an

inquiry by the Central Bureau of Investigation on the ground that the Criminal Investigation Department of the State had investigated into the matter and even a further independent inquiry by the District and Sessions Judge, Tura revealed that it was a genuine encounter based on accurate information.

12. However, what weighed with the writ court appears from paragraphs 46 to 48 of the impugned judgment and order dated May 2, 2023:

“46. This Magistrate, being EW27, Labenn Ch. Marak, who is also the Block Development Officer (BDO), Rongram reached the PO at about 10:00 to 11:00 am on the same day and along with I/C Bamon and other police personnel entered the house, the door which is made of bamboo was not broken and inside the room, some bottles of foreign liquor was found as well as some papers and part of a detonator were also found. This witness has also noted that at the spot where the deceased son of the petitioner was found lying face down, there was a slope below the house of the deceased and indications of a person who might have tumbled or skidded through the slope, such skid mark or slip mark showing signs of only a single person running towards the place where the deceased was lying. When he checked the body, he found many entry wounds as well as gracing bullet wound on the body of the deceased, the maximum target and wounds on the body being at the back and buttock area. This witness also saw one old pistol which appears to be a country-made pistol with a jammed magazine just about a few meters from the body of the deceased. I/C Bamon picked up the pistol from the shallow water of a nearby stream and checked it in front of him. He tried to take out the magazine, but could not do it, as it was very hard to take it out and he has to use stone to remove the magazine. There were two bullets in the magazine and the pistol seems rusted.

“47. While appreciating the evidence of the witnesses and also the Forensic Science Laboratory Report, the learned District and Sessions Judge has relied on the said FSL Report that the country made pistol is found serviceable and the gun powder residue which was detected in the liquid in a plastic container is the handwash of the deceased and also gun powder residue detected in two cotton swabs found at the residence of the deceased to come to the conclusion that the deceased had fired from the said gun which was seized. The fact that the deceased had also failed to surrender but had ran out shooting in the direction of the police in a bid to escape, upon which the police has retaliated by firing upon him has also confirmed the conclusion of the learned Enquiry Officer that a genuine encounter had taken place. There is however, an observation that police should have exercised restraint once they have seen the suspect have fallen, which only goes to show that it was accepted that excessive use of force by the police had taken place.

“48. On an analysis of the observations made above, what is clear is that there are two versions of the sequence of events which occurred on the said date, that is, on 04.03.2015, one, on the part of the witnesses who are the residents of the village and another from the police personnel who were also part of the operation. Evidently, what is noticed is that proper investigation to find out the actual truth have not been adequately dealt with by the Investigating Officer, inasmuch as in the investigation conducted by the CID into the two respective FIRs, one filed by the Circle Inspector B.N. Marak and the other filed by the petitioner herein, the Investigating Officer therein have filed his final report indicating that there is no credible evidence to proceed with the investigation, the findings thereto being contrary to the *prima facie* evidence, even at this stage, when there are present two viewpoints proffered by two sets of witnesses as to what exactly happened at the place of occurrence on the said day, the IO ought to have put in more diligent effort, failure to do so would only invite an adverse inference and rectification of such failure is therefore well within the scope of the powers of this Court under Article 226.”

13. Upon appreciating the evidence including the account of an Executive Magistrate who arrived at the place of occurrence within hours of the deceased being killed, the writ court was satisfied that there were two versions of the same incident. Further, the Executive Magistrate's description of the defunct country-made pistol that was discovered near the body of the deceased, who still lay on the ground head down, and the completely contrary report of the Forensic Science Laboratory in such regard, quite naturally raised a degree of suspicion, to allay which an independent investigation appears to have been called for.

14. Indeed, the writ court observed that notwithstanding the evidence of the Executive Magistrate who was present at the place of occurrence shortly after the shooting took place, the District and Sessions Judge's reliance on the FSL report without discrediting the ocular evidence of the Executive Magistrate was somewhat irregular. Indeed, even if such aspect has not been harped on in the order impugned, the same is implicit from the discussion in the paragraphs quoted above.

15. There was further material for the writ court to be prompted to call for an independent investigation notwithstanding receipt of the

report from the District and Sessions Judge, Tura. For a start, the Executive Magistrate present at the spot immediately after the incident reported that the bamboo door of the hut was not broken. Such an observation goes against the fundamental premise of the State police that the militants broke open the door and rushed at the police personnel. Secondly, several of the bullet injuries found on the person of the deceased were on his back and his buttocks. Even if it is accepted that such injuries were suffered once he had fallen on the ground and may have been as a result of the overenthusiasm of the police personnel to ensure that the suspected militant was dead; there was enough material for the writ court to conclude that it was an overkill or excessive action. Most importantly, the police's version hinges on three persons rushing out and shooting at the police personnel. If the rest of the police story is to be believed that they had surrounded the entire area and issued warnings, there was little possibility of the two others to escape.

16. The observations herein will not prejudice the further investigation that has been directed but the only object of the present exercise is to emphasise on the anomalies that weighed with the writ court to observe that there were different versions of the same incident.

17. At any rate, even if it is accepted for argument's sake that it was a genuine encounter and the State police acted reasonably and rationally, there remains a slur on the conduct of the State police since, at the end of the day, it may be said that the State police itself investigated into an allegation of a fake encounter brought against it and gave itself a clean chit. It would be so much better for the State police if the investigation, as has been directed by the order impugned, is conducted by an independent external agency and the State police is given a clean chit by such agency.

18. As far as the individual who has been granted leave to prefer an appeal is concerned, the order impugned does not prejudice such person any more than it affects the State. If such person was a part of the police team on the relevant date, the independent investigation by the Central Bureau of Investigation will bring things to light and if no wrongdoing was committed by such person, there is no need for any apprehension on his part.

19. Considering the nature of the incident, the material that was available before the writ court and the grounds that have been clearly indicated for requiring a fresh investigation into the incident to be

conducted by an independent agency, the judgment and order impugned do no call for any interference.

20. A final ground is urged on behalf of the State to the effect that the parameters laid down by the Supreme Court for a CBI investigation despite the State opposing the same have not been met in the present case.

21. The fact that the police's version is that the action taken on the relevant date was against extremists, the fact that the father of the victim and the local villagers have a different account of the incident than depicted by the police and the fact that serious anomalies were noticed by the writ court from the account of an Executive Magistrate which does not tally with the official version rendered by the police, were good grounds for the writ court to require another agency to investigate into matter. There is no need for the State to harbour any misgiving since, if the police action was justified, the fresh investigation, whether by CBI or by any other agency, would reveal the same.

22. Accordingly, both the appeals, WA No.29 of 2023 and WA No.13 of 2023, are dismissed. It is made abundantly clear that none of the observations in the judgment impugned or in this order will prejudice the State or persuade the investigating agency in any manner

whatsoever. The investigating agency is left free to conduct its own investigation and the State and its allied agencies should cooperate in the matter so that the investigation can be concluded as early as possible and, preferably, within six months from date.

23. A copy of this order will immediately be forwarded to the office of learned DSGI attached to this Court for the same to be forwarded to the appropriate CBI personnel for necessary action.

24. MC (WA) No.12 of 2023 and MC (WA) No.32 of 2023 are disposed of.

25. There will be no order as to costs.

(H. S. Thangkhiew)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
30.08.2023
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