

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

PIL No. 9 of 2017

Date of order: 28.08.2023

In Re suo motu custodial violence
and other matters relating to Vs. State of Meghalaya & ors
prison conditions

Coram:

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

Appearance:

For the Petitioner : Dr. N. Mozika, Amicus Curiae with
Ms. S. Rumthao, Adv.

For the Respondents: Mr. K. Khan, AAG
Mr. A.H. Kharwanlang, Addl.Sr.GA
Ms. S. Ain, GA
Ms. S. Laloo, GA
Mr. J.N. Rynjah, GA
Mr. S. Dey, Adv
Mr. K. Baruah, Adv
Ms. P. Agarwal, Adv (VC)
Mr. S.A. Sheikh, Adv.
Mr. A.H. Hazarika, Adv.
Mr. J. Shylla, Adv.
Mr. D. Dkhar, Adv.

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)

This suo motu public interest litigation was initiated pursuant to a direction issued by the Supreme Court in the judgment reported at (2017) 10 SCC 658 (*Re-Inhuman conditions in 1382 prisons*).

2. Two aspects must be pointed out from the relevant judgment. The first is that a distinction was sought to be made by the National Crime Records Bureau between natural and unnatural deaths in custody. At paragraph 6 of the judgment, the Supreme Court found the distinction to be unclear. Secondly, on the issue of defining natural and unnatural deaths, the Supreme Court went on to observe as follows at paragraph 9 of the report:

“9. On the issue of defining natural and unnatural deaths, the learned Amicus Curiae drew our attention to the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC). According to ICRC, “death” is the irreversible cessation of all vital functions, including brain activity. Death is “natural” when it is caused solely by disease and/or the aging process. It is “unnatural” when its causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (death by accident). We have perused the guidelines provided by ICRC and are of the view that these guidelines deserve consideration and circulation by the Central Government and all the State Governments.”

3. After considering several reports, recommendations and suggestions made from several quarters, certain directions were issued by the Supreme Court in the relevant judgment at paragraph 58 and the various sub-

paragraphs thereunder. For the purpose of the present proceedings, paragraph 58.1 of the report is relevant, as has been rightly pointed out on behalf of the State:

“58.1. The Secretary General of this Court will transmit a copy of this decision to the Registrar General of every High Court within one week with a request to the Registrar General to place it before the Chief Justice of the High Court. We request the Chief Justice of the High Court to register a suo motu public interest petition with a view to identifying the next of kin of the prisoners who have admittedly died an unnatural death as revealed by NCRB during the period between 2012 and 2015 and even thereafter, and award suitable compensation, unless adequate compensation has already been awarded.”

4. In course of the present proceedings it has come to light that there have been 53 custodial deaths in the State since 2012. Detailed reports have been filed by the State indicating the likely causes of deaths in each case, appending copies of the post-mortem and inquest reports, sometimes relying on reports furnished by the forensic science laboratory or even the histopathological reports and, finally, the findings of the magisterial inquiry, albeit such inquiries being conducted by an Executive Magistrate in each case. Notices pertaining to this matter have been issued on several occasions and the next of kin of those who died in custody have been informed, except in cases where the relevant inmate may have been from Bangladesh. It is

also the State's submission that no person other than the 53 mentioned herein died in custody in the State since 2012.

5. The 53 cases of natural and unnatural deaths are as per the following table:

Sl. No.	Name	Age	Cause of death	Remarks
1.	Bulbin Marbaniang	47 years	The UTP allegedly collapsed and was declared brought dead at the Civil Hospital.	Since the State has not been able to conclusively establish the cause of death, despite the burden being on the State, this is regarded as the case of unnatural death.
2.	Roy Sympli	20 years	Death by hanging	Unnatural .
3.	Topo A. Marak	19 years	Long term drug abuse, no external injuries.	Natural.
4.	Alsin D. Sangma	30 years	Death by hanging.	Unnatural
5.	Rajendra Ravi Das	60 years	Suffered from several ailments.	Natural.
6.	Balsan S. Marak	20 years	Torture.	Unnatural. Dealt with in High Court judgment of February 28, 2018 and paid Rs 15 lakh as compensation.
7.	Witson M. Sangma	35 years	Injuries revealing torture.	Unnatural
8.	Senuman S. Marak	19 years	Death by hanging.	Unnatural.
9.	Rajiv Marak	25 years	Allegedly found dead in his sleep. No FSL or histopathological examination report.	Unnatural since the State has failed to demonstrate to the contrary.
10.	Norbert Malngiang	33 years	Death by hanging.	Unnatural.
11.	Sovraj Sonar	32 years	Death due to	Unnatural since the State

			shock and brain haemorrhage.	has not been able to indicate the cause of death.
12.	Kleophas Nongkhlaw	29-32 years	Death by hanging.	Unnatural.
13.	Satar Khan	54 years	Intracranial haemorrhage.	Natural.
14.	Tanbor Dkhar	29 years	Though no external injuries detected. No cause of death furnished by the State.	Unnatural. Unsubstantiated finding of Executive Magistrate disregarded.
15.	Lolin Sangma	67 years	Myocardial infraction.	Natural.
16.	Shamol Ali	24 years	Though no external injuries. FSL report not produced. No proper cause of death shown by the State.	Unnatural. Unsubstantiated finding of the Executive Magistrate disregarded.
17.	Everlin Shadap	40 years	Chest and abdominal pain was in Civil Hospital for considerable time before he died.	Natural.
18.	Bablu T. Sangma	30 years	Pulmonary and hepatic lesions.	Natural.
19.	Sudhir Magar Thapa	47 years	Paralysed from the waist onwards.	Was under long treatment. Died of the ailments. Natural.
20.	Skhembor Kyndait	34 years	Long term drug abuse.	Natural.
21.	Dringli Roy Rngaid	82 years	Old age problems.	Natural.
22.	Tangkam N. Marak	34 years	Chronic alcoholism. Death due to chronic liver failure.	Natural.
23.	Toyanath Dahal	60 years	Cancer.	Natural.
24.	Sujen Marak	66 years	Long history of hypertension and blood sugar.	Natural.

25.	Ajay Das	42 years	Death by hanging.	Unnatural.
26.	Toyom Sheikh	37 years	Though several external injuries evident, it appears to have been old. Diagnosed with cardiac abnormality.	Natural.
27.	Rilang Suting	34 years	Long term drug abuse.	Natural.
28.	Haplin D. Sangma	43 years	Died due to heart condition.	Natural
29.	Dilwar Hussain	20 years	Death by hanging.	Unnatural.
30.	Meng Khongsngi	74 years	Age related ailments.	Natural.
31.	Lakhvinder Singh	35 years	Liver Cancer.	Natural.
32.	Saman M. Sangma	32 years	Death by hanging.	Unnatural.
33.	Janet Jakai	55 years	Poor heart condition.	Natural.
34.	Raju Koch	23 years	Cardio-vascular insufficiency.	Natural.
35.	Deumon Doley	30 years	Cancer.	Natural.
36.	Kloilan Marbaniang	37 years	Respiratory distress and Covid. Cancer of tongue.	Natural.
37.	Madaini Moila	41 years	Death by hanging.	Unnatural.
38.	Salviang N. Sangma	22 years	Death by hanging.	Unnatural.
39.	John Challam	Not indicated	Not indicated	Unnatural. State accepts that this death was unnatural.
40.	Noresh Koch	44 years	Several external injuries. Death by hanging.	Unnatural.
41.	Nalchand Ali	40 years	Death by hanging.	Unnatural.
42.	Silbaline M. Sangma	18 years	Death by hanging.	Unnatural.
43.	Bernard T. Sangma	34 years	Coronary artery block.	Natural.
44.	Borit D. Sangma	30 years	Heart attack.	Natural.
45.	Wanlangki Dkhar	17 years	Cardiomyopathy	Natural.

			with pulmonary oedema.	
46.	Banteilang Jyrwa	27 years	Death by hanging.	Unnatural.
47.	Nirupam Dhar	21 years	Death by hanging.	Unnatural.
48.	Hardik Kharshiing	56 years	Death by hanging.	Unnatural.
49.	Rabi Sunar	32 years	Death by hanging.	Unnatural.
50.	Rakesh Singh Rajput	45 years	Heart attack.	Natural.
51.	Tebester Thabah	40 years	Several external injuries.	Unnatural. Post mortem indicated death might have been by physical assault.
52.	Kitbor Kassar	24 years	Death by hanging.	Unnatural.
53.	Daphahsalonmi Rupon	26 years	Death by hanging.	Unnatural.

6. Thus, out of the 53 instances of custodial deaths in the State of Meghalaya since the year 2012, a total of 25 cases are found to be due to natural causes and the remaining 28 are found to be cases of unnatural deaths.

7. It must be recorded that the State has contested the cases of Bulbin Marbaniang, Rajiv Marak, Tanbor Dkhar and Shamol Ali on the ground that there is no material to suggest that any of the deaths in such cases was unnatural, whether from any external injury or from the post-mortem report. In addition, the State submits that the finding of the magisterial inquiry would go to show that there was no foul play in any of the cases and the persons may have died of natural causes.

8. The basis for the assessment in the present case must be laid bare. While the State has every right to arrest a person during an investigation, subject to following the procedure established by law, or depriving a convict of his liberty by reason of the sentence that he has suffered, when a citizen or any other person is in the custody of the State, the State is responsible for his well-being. If such person dies while in the State's custody, unless the State is able to affirmatively establish that the cause of death was natural, it will be inferred that the person died an unnatural death.

9. In each of the cases that the State has contested, the age of the relevant under-trial or convict or the physical condition of the person did not indicate that the death was due to natural causes. At the same time, no external injury may have been discovered or anything apparent to suggest that the person had been tortured or died as a consequence of any action by the police or jail authorities. However, as indicated, if the State cannot establish the cause of death while in custody, it would be inferred that it was a case of unnatural death, particularly when the deceased is found to have been healthy and too young to suffer such fate.

10. In the Supreme Court judgment pursuant to which the present matter has been taken up and considerable time expended to determine the number

of cases and cause of death in each case, the direction to the High Courts is to award suitable compensation. The suitability of the compensation would have two aspects: the compensation awarded as a measure of damages upon a life being snatched long before death may have been due; and, the quantum of compensation should be such that it would act as a deterrent since in a civilised society there ought to be no unnatural death while in custody. The compensation has to be both compensatory and punitive so as to act as a deterrent.

11. It appears that in June, 2021, the Haryana government notified rates of compensation by making a classification on the basis of the cause of death while in custody. The quantum of compensation was dependent on whether the person died on account of a quarrel among inmates or due to torture by officials or due to negligence or by suicide and the like. The relevant notification also provided that if death occurred due to natural causes or while trying to escape from the correctional home or from custody, no compensation would be payable.

12. By an order dated February 9, 2022, the National Human Rights Commission merely noticed the Haryana notification of June 29, 2021, set out the entirety thereof in its order of such date and requested the State

governments and Union Territories “to bring such a policy as framed by the State of Haryana... by quantifying compensation on account of death of prisoners...”

13. There does not appear to be any independent application of the mind of the Commission, despite the order dated February 9, 2022 bearing the signature of all five members of such Commission. In any event, apart from the fact that the order of such Commission may not be binding on this Court, there is an independent mandate by virtue of the Supreme Court judgment of 2017 for the High Courts to fix suitable compensation. The “suitability” factor has already been seen to consist of a component of sufficiency and another which would act as punitive, for the combined lump-sum to prove to be a deterrent.

14. In tune with the Haryana notification and the rather perfunctory order of the NHRC, the State has come up with a notification on similar lines. The State also relies on a near-identical notification issued by the State of Tamil Nadu on February 23, 2023.

15. According to the State, it was following the report of the 273rd Law Commission which required the States to legislate against death on account of torture that the entire matter came to the limelight. The State submits that

since it is essentially a human rights issue and the national body has applied its mind to endorse the notification and the quantum in each case as fixed by the State of Haryana, the Court should let the matter rest as the State has followed the same classification and quantification.

16. It is the further contention of the State that, ordinarily, when the next of kin of a person who has died in custody accuses the State of any foul play, a civil action for damages would have to be brought; though, in certain extraordinary situations, even the writ court has entertained such a plea and has awarded compensation. According to the State, since the relatives of the persons who had died in custody do not have to undertake the trouble of making a claim and proving the same in Court, the quantum of compensation as declared by the State should be found to be adequate enough. The State also submits that considering that public money is involved, the Court should not allow for greater compensation as the State's resources in such regard are limited.

17. For a start, the classification introduced by the Haryana notification, which has been endorsed without any comment by the NHRC, does not appeal. Such classification begs a question as to why a certain amount should be paid for death suffered due to a fight breaking out among the

inmates in a correctional home and death suffered by hanging to which an under-trial prisoner is pushed by how he is tortured or treated while in custody.

18. More importantly, it is the quantification in the Haryana model which appears to be unconscionable to this Court. In the judgment of the year 2018 delivered by this Court in WP (C) No.213 of 2014 (*Smti. Meena S. Marak v. State of Meghalaya*), upon finding that the death of the 18-year-old in that case was due to the brutality indulged in by the State police, an amount of Rs.15 lakh was awarded as compensation. The State has accepted such amount and it is the undeniable position that the total amount has been paid.

19. Thus, once such standard has already been set in the State, of the award of compensation of Rs.15 lakh for an 18-year-old dying as a result of police brutality while in custody, five years down the line there is no good reason for reducing the quantum. In any event, the State accepts that it has made the payment without questioning the quantum. In the State coming up with the notification providing for a lesser amount based on the Haryana model, it appears that the amount of Rs.7.5 lakh as maximum as suggested by the State may not hurt the State as much as paying the compensation of Rs.15 lakh may have. Thus, the maximum quantum proposed by the State by

its notification of Rs.7.5 lakh would be an amount that the State would be agreeable to pay without any questions asked.

20. The State says that to the extent that the amount of compensation has been paid to the next of kin of the relevant victims and the families have not complained, the Court should not enhance the quantum. It is also the State's refrain that there has been no express plea by the relatives of the victims or even by Amicus Curiae appointed in the matter for enhancement of the compensation over and above what has been indicated by the State in its notification.

21. As to the suitability and sufficiency of the compensation, the initial discussion will hold good for the State's objection, irrespective of whether any person has indicated any grievance against the amounts specified in the State's notification. Compensation has both to be adequate for the families of the victims and to act as a deterrent so that the State and its officials remain in check. The quantum indicated by the State in its notification reveals the amount that the State is comfortable paying. If the State is comfortable paying an amount it almost amounts to endorsing its wrongdoing and perpetuating the same rather than paving the way for there being no unnatural death while in custody.

22. For the above cases, the State should ensure all payments are made to the next of kin upon due identification and verification within the next six months. That period is set as an outside limit. If the next of kin are available and make any demand immediately, the State should ensure that the amounts due are paid within the next three months. As to the amounts that are not collected, whether on account of the next of kin not being interested or not being aware, the State will, after waiting for a reasonable period when no claimant is identified, invest the money in the Cancer Department of Civil Hospital at Shillong as indicated hereafter. At all times, the Secretary in the Department of Health will remain liable to furnish appropriate accounts in respect of the compensation awarded or the compensation made over to the Cancer Department of the Shillong Civil Hospital.

23. It is made clear that the compensation due in terms of this order in respect of the past cases and future cases will be in addition to any insurance or other entitlement and not in derogation thereof.

24. A death in custody is a slur on a civilised State and completely unacceptable. Ideally, there should be no death, except due to natural causes, while in custody. Of course, the natural causes are beyond the control of the State and convicts serving long sentences may also have age-related

problems which may lead to their death. But it is particularly distressing to note the number of deaths of under-trial prisoners as the investigating agency uses third-degree methods to get information from the arrested person rather than go out in the field and investigate the matter. Oftentimes, the excesses indulged in by the State through its police personnel result in admissions, which may be inaccurate, but which are made to stave off or delay the further torture. If police brutalities and inhuman treatment of persons in custody have to be arrested, the compensation for custodial death has to be pegged at a level where the State will bleed to make the payment; not what the State is happy to pay off.

25. At any rate, there is no room to apply the strict liability theory when it comes to a death of a person in the custody of the State. The State's liability in such regard is absolute and unless it demonstrates to the satisfaction of the Court that the death was due to natural causes, the Court may reasonably infer otherwise and hold the State liable. The State ought also to be liable for the actions of its officers and employees. It is possible that in several cases exuberant officials would go beyond the call of duty or the SOP in place. In such cases, the State will remain liable for the acts and conduct of its officials, but the State will also be free to proceed against such officials and

even extract the compensation that it has to pay from such officials in accordance with law. Though the classification indicated in the Haryana notification and as has been mindlessly adopted by the State appears to be abhorrent and obnoxious, there should be some other form of classification based on a precedent therefor in our jurisprudence. In respect of motor accident claims, there is a classification of the quantum of compensation payable based on the age of the victim. Accordingly, it is deemed fit and proper to classify the victims who have died in custody into three categories, namely, below 30; between 30 and 45; and, above 45.

26. Since the judgment of this Court in *Smti. Meena S. Marak* has already established the quantum, the sum of Rs.15 lakh may be taken as the compensation payable for death in custody to the next of kin of a person age below 30. For victims in the age-group of 30 to 45, the quantum of compensation should be Rs.12 lakh and for those above 45 years, it should be Rs.10 lakh. There is an element of subjectivity in arriving at such ballpark figures; however, when it comes to assessment of damages or quantification of compensation, there is an element of guesstimation that is always indulged in.

27. Accordingly, the compensation agreed to be paid by the State in the notification dated December 15, 2022 is found to be inadequate and the relevant notification is set aside. For the period till date in case of any unnatural death while in custody, the next and kin of the victim will be entitled to a sum of Rs.15 lakh if the victim was below 30 years of age as on the date of death; a sum of Rs.12 lakh if the victim was below the age of 45 years but above the age of 30 years as on the date of death and, a sum of Rs.10 lakh if the victim was above 45 years of age as on the date of death.

28. It is recorded that the quantum of compensation found suitable in the present case is based on the compensation usually declared upon a major accident or natural calamity taking place. A comparable amount was also directed to be paid to families of covid victims by the Supreme Court.

29. All the next of kin of the aforesaid persons indicated in the chart who suffered unnatural deaths would be entitled to compensation at the rates indicated hereinabove. It is more than likely that in several cases, because of the heinous offences committed or alleged to have been committed by the relevant persons, their next of kin may not be interested in contesting the proceedings or even collecting the compensation upon the death of the relevant person. In such cases, the State will be obliged to put in the money

into the Cancer Department of the Civil Hospital in Shillong for the purpose of augmentation of equipment at such fledgling facility. The Secretary in the Department of Health will be responsible to ensure that the money is disbursed by the State and, upon the next of kin of the deceased victim not being available or willing to accept the payment, the money is immediately made over to the Cancer Department of the Civil Hospital in Shillong.

30. The amounts of Rs.15 lakh, Rs.12 lakh and Rs.10 lakh in the three categories as indicated herein will hold good till the end of the year 2024, whereupon they will stand increased by Rs.1.5 lakh at the highest level and by Rs.1 lakh each at the two other levels for the next period of three years. The quantum of compensation should be enhanced every three years so that it is sufficient damages for the next of kin and the deterrent factor is also maintained to the same degree.

31. It is made clear that the compensation will be payable only in cases of unnatural death, irrespective of the cause of death. In cases of natural death in custody, no compensation would be payable at all. As to cases where the State suggests that the injuries suffered which caused death were in course of the person in custody trying to escape, the determination of the cause would be by an appropriate court in accordance with law.

32. Since all the matters pertaining to the deaths in custody in the State from 2012 till date have been covered, the present proceedings are closed. It will be open to individuals or even to the Court, on its own, to institute further proceedings on similar lines to ensure that compensation is paid and the payment acts as a deterrent on the State.

33. The Court expresses its gratitude to Dr. N. Mozika, who was appointed as Amicus Curiae in the matter. It may also be recorded that Counsel for the State, despite the interest of the State, has been fair in ensuring that an appropriate order is made to provide for sufficient compensation to persons who died of unnatural causes while in custody.

34. PIL No.9 of 2017 is closed.

35. There will be no order as to costs.

(H. S. Thangkhiew)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
28.08.2023
"Lam DR-PS"