

SMT. KEWAL PATI  
v.  
STATE OF U.P. AND ORS.

APRIL 6, 1995

[R.M. SAHAI AND S.B. MAJMUDAR, JJ.]

*Constitution of India, 1950 : Article 21.*

*Right to life—Deprivation contrary to law—Compensation for—Convict undergoing sentence killed by co-accused—Held it is duty of authorities to ensure safety of convict undergoing sentence—Wife and children of deceased convict held entitled to compensation.*

The petitioner's husband, a convict serving sentence under Section 302 of the Indian Penal Code, was killed by a co-accused in the jail. The wife and children of the deceased convict filed a writ petition seeking compensation.

Allowing the petition, this Court

**HELD :** A prisoner does not cease to have his Constitutional right except to the extent he has been deprived of it in accordance with law. Even though the petitioner's husband was a convict and was serving his sentence yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. Since killing took place when he was in jail, it resulted in deprivation of the life contrary to law. He is survived by his wife and three children. His untimely death has deprived the petitioner and her children of his company and affection. They are entitled to compensation. The respondent- State is directed to deposit a sum of Rs. 1,00,000 within three months from the date of this order. [208-F, E, G]

*Francis coralie Mullin v. The Administrator, Union Territory of Delhi and Ors., AIR (1981) SC 746 and A.K. Roy v. Union of India, AIR (1982) S.C. 710, relied on.*

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 1119 of 1991.

(Under Article 32 of the Constitution of India.)

A K.V. Viswanathan for the Petitioner.

A.S. Pundir for the Respondent.

The following Order of the Court was delivered :

- B The petition was entertained on a letter sent by the wife of the deceased Ramjit Upadhaya who was killed by a co-accused while serving out his sentence under Section 302 I.P.C. in Central Jail, Varanasi. The Petitioner and her children have claimed compensation both in law and on compassionate grounds. Reports were obtained from the Inspector General of Prisons, U.P. and the Superintendent, Central Jail, Varanasi.
- C They confirm that Ramjit Upadhaya was killed by co-accused. A counter affidavit was also filed by Deputy Jailor, Central Jail, Varanasi, admitting that Ramjit Upadhaya was killed by co-accused, Happu, against whom case under Section 303 has been registered. Affidavit was filed on behalf of the Government as well stating that there was no provision in the U.P. Jail
- D Manual for grant of compensation to the family of the deceased convict.

- Ramjit Upadhaya was a convict and was working as a Nambardar in the jail. He was strict in maintaining discipline amongst the co-accused. It was due to his strictness in his behaviour as Nambardar that he was attacked and killed by Happu - a co-accused. Even though Ramjit Upadhaya was a convict and was serving his sentence yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law (See *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors.*, AIR 1981 SC 746 and *A.K. Roy v. Union of India*, AIR (1982) SC 710. Therefore, he was entitled to protection. Since killing took place when he was in jail, it resulted in deprivation of his life contrary to law. He is survived by his wife and three children. His untimely death has deprived the petitioner and her children of his company and affection. Since it has taken place while he was serving his sentence due to failure of the authorities to protect him, we are of opinion that they are entitled to be compensated.
- E
- F
- G

- H In the result this petition is allowed by directing that the State of U.P. shall deposit a sum of Rs. 1,00,000 within three months from today, with the Registrar of this Court. A sum of Rs. 50,000 out of this amount shall be deposited in fixed deposit in any nationalised bank and the interest

of it shall be paid to the wife and the children. The remaining amount shall be paid to the wife by the Registrar after being satisfied about the identification of the petitioner. The amount in deposit shall be paid to the wife on her option after all the children become major. In case of petitioner's death prior to the children becoming major, the amount shall be divided equally between the surviving children.

A

B

T.N.A.

Petition allowed.