

NATIONAL HUMAN RIGHTS COMMISSION
(LAW DIVISION)
MANAV ADHIKAR BHAWAN, BLOCK-C, G.P.O. COMPLEX,
INA, NEW DELHI- 110023

Dated 29/09/2015

Case No. 129/3/11/2011-AF

- 6 OCT 2015

✓ SHRI TEJANG CHAKMA, COMPLAINT'S
COORDINATOR
NATIONAL CAMPAIGN FOR PREVENTION OF
TORTURE, C-3/441-C, JANAKPURI,
WEST DELHI, DELHI.

Sir/Madam,

With reference to your complaint dated 14/06/2011, I am directed to say that the matter was considered by the Commission on 28/09/2015. The Commission has made the following directions.

LINKED WITH CASE NO. 129/3/11/2011

The Commission vide proceedings dated 8.1.2014 recommended to the Govt. of to pay a sum of Rs. Five lakhs to the next of kin of the deceased Maheshwar Roy and submit compliance report alongwith proof of payment .

Pursuant to the directions of the Commission, Deputy Secretary, to the Govt. of Assam, Political (A) Department vide communication dated 15.6.2015 has forwarded a copy of the receipt regarding payment of Rs. Five lakhs to the father of the deceased Maheshwar Roy.

Since recommendation of the Commission has been complied with, the case is closed.

This is for your information.

Yours faithfully,


DEPUTY REGISTRAR(LAW)

National Human Rights Commission

New Delhi, India

Case Details of File Number: 200/3/11/2010-AFE

Diary Number	112297
Name of the Complainant	RABILACHAN RAY
Address	C/O LATE. MANINDRA RAY, VILL- TITAGURI MAZPARA, PO- TITAGURI, PS- KOKRAJHAR, KOKRAJHAR , ASSAM
Name of the Victim	MAHESWAR RAY S/O RABILACHAN RAY
Address	AS ABOVE KOKRAJHAR , ASSAM
Place of Incident	CHANDRAPARA (BIJULIBARI) KOKRAJHAR , ASSAM
Date of Incident	9/4/2010

In response to the Commission's proceedings of the 21st March 2013, the SP Kokrajhar has forwarded a report of an examination of the arms and ammunition allegedly recovered after the encounter. The Commission finds to its surprise that these tests were not conducted, as they should have been, in a forensic laboratory, but by a Havildar of the 8th AP Battalion, who has simply certified that these were serviceable and factory-made. This information is not helpful to the case that the police present. It was essential for the police to have established through tests in a forensic laboratory that the pistol was in working order, had been fired, and the spent cartridges recovered had been fired from it. In the absence of these tests, there is no proof that the weapon had been fired, or that the spent cartridges had been fired from it. In addition, the SP Kokrajhar has reported that the other two standard forensic tests, the matching of fingerprints from the pistol with those of the man who allegedly fired it, and tests on his fingers for gunshot residue, were not carried out. In the absence of these two tests, there is no evidence that the late Maheshwar Roy had either handled or fired the pistol allegedly recovered from the site of the encounter. Since the police case is based on the claim that they came under fire from six armed men, and were forced to return fire in self-defense, in the absence of this forensic evidence, it has to be held that, even if such an exchange of fire did take place, Maheshwar Roy had not taken part in it. It is also extremely doubtful that there was indeed an armed confrontation with six armed men. According to the reports received, a substantial party of policemen and soldiers waited in ambush for six hours; they therefore had ample time to make thorough preparations. Around 1.20 AM, they spotted 5/6 persons. The meteorological record shows that the moon rose over Kokrajhar at 0118 on the 5th September 2010, and it was only 15.8% illuminated. This means that, when the police spotted these men, it would have been completely dark. It follows that the men would have been very close before they were spotted. If so, five men could not have escaped after walking into an ambush that had been carefully laid. Nor indeed did the police recover the volume and variety of cartridges that would have been expected if a group of six men had opened fire at them. It is difficult, therefore, to accept the claim that the police came under fire from a group of six men, of whom five escaped. The evidence of the postmortem also undermines the account given by the police. It shows that Maheshwar Roy was shot four times. The entry wounds were on the front of his right arm, left hand, left upper thigh and on the posterior axillary line. This means that the three injuries that would have disabled him, to both his arms and on his left leg, were fired from the front. The shot that was fatal, puncturing his lungs and pleurae, was fired from the back. It is unlikely that this pattern would have been seen in wounds inflicted in the course of an encounter. They are instead consistent with a scenario in which a man was first disabled and then killed. The Commission notes that a witness named as Lakeswar Barman appeared before the magisterial enquiry to claim that a stranger, who had come to his house on the evening of the 4th September 2010, and asked for food, was taken away by armed and uniformed men while he was eating. Two days later, after seeing photographs of a dead man on the television, he realized that this was the person to whom he had given shelter. He had therefore gone to the family to let them know that Maheshwar Roy had been picked up from his house. The brother of the deceased has confirmed that this gentleman had come to their house with this information. The Magistrate, while recording this testimony, has chosen to reject it, on the grounds that

Direction issued by the Commission

Lakeswar Barman had not identified the dead body at the police station, and there was no clear evidence to prove that the person who came to his house was the one who was killed in the encounter. The Commission must disagree. There is nothing to show that Lakeswar Barman had any interest in this matter, nor has the Magistrate questioned his antecedents or intentions. It is clear that he was so convinced that his unexpected guest was the man who was killed that he not only went to the family but thereafter testified at the magisterial enquiry. This is testimony that cannot be brushed aside. Taking all these considerations into account, the Commission is unable to accept the claim of the police that they had come under fire from a group of six militants and that Maheshwar Roy, who was among them, was killed in the right of self-defense. The Commission's examination of the reports sent to it shows that there was a far greater likelihood that he was taken alive and later executed. This was a most grievous violation of human rights, and the Commission therefore asks the Government of Assam to show cause why it should not recommend relief for the next of kin of the late Maheshwar Roy. A response is expected by the 5th September, 2013. Put up on the 12th September, 2013.

Action Taken**Status on 7/4/2013**

Note: For further details kindly contact National Human Rights Commission, Copernicus Marg, New Delhi, PIN 110001 Tef.No. 23385368 Fax No. 23384863 E-Mail: covdnhrc@hub.nic.in

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