

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4451 OF 2022

Jitendra Ramnarayan Rathod .. Petitioner

Versus

Central Bureau of Investigation & Ors. .. Respondents

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Mr.Rizwan Merchant i/b Mr.Sagar L. Shete for the Petitioner.

Mr.H.S.Venegavkar for the Respondent No.1/CBI.

Ms.Maharukh Adenwalla with Mr.Anush Shetty for the Respondent No.3/Complainant.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 29th MARCH, 2023

PRONOUNCED ON : 20th APRIL, 2023

JUDGMENT:-

1. The present petition is filed by the petitioner, working as a Senior Inspector of Police, praying for calling the record and proceedings from the Special Court, POCSO, Gr.Mumbai in POCSO Special Case No.85 of 2017 and after examining the legality and propriety of the order dated 17/09/2022 passed by the Special Judge below Exh.19, it is prayed that the same be quashed and set aside.

By the said impugned order, the learned Judge has partly allowed the protest petition and has directed the accused persons to remain present before her for framing of charge under Sections 302, 295(A) of IPC, in addition to the

charges levelled against the accused in the charge-sheets filed by the CBI.

2. Heard learned counsel Mr.Rizwan Merchant alongwith Mr.Sagar Shete for the petitioner and Ms.Maharukh Adenwalla alongwith Mr.Anush Shetty for respondent No.3/complainant at whose instance the investigating machinery was set rolling. I have also heard Mr.Hiten Venegavkar for the Central Bureau of Investigation (CBI), which carried out the investigation and filed the charge-sheets. The State of Maharashtra is a formal party and is represented by the learned A.P.P.

3. The background in which the above relief is sought by the petitioner necessitate a brief narration, in a sequential manner.

On 11/04/2014, C.R.No.49 of 2014 came to be registered with Wadala Railway Police Station against four unknown persons, on the complaint of one Shrinivas Kihan Veeramallu. In connection with said C.R., son of respondent No.3, Agnello Valdaris (Agnello) was taken into custody in the intervening night between 15/04/2014 and 16/04/2014 and as per learned counsel Mr.Merchant, he was picked up by the police for the purposes of interrogation, whereas as per learned counsel Ms.Adenwalla, he was shown to be arrested alongwith three other accused persons, on the allegation that they were the perpetrators of C.R.No.49 of 2014, registered for commission of robbery.

On 18/04/2014, C.R.No.52 of 2014 was registered with Wadala Railway Police Station, invoking Section 224 of IPC and it was alleged that while Agnello was being taken for medical treatment, he escaped from the clasp of the escorting team at about 11.20 a.m. and threw himself on platform No.1 of Wadala Railway Station on the harbour line of Central Railways and was crushed under the wheels of a train, running towards CST. The motorman, Mr.Vijay Mahadik, who was driving the train, saw him running in the middle of the railway-track, followed by two other persons, who were chasing him, shouting and running behind him, in an attempt to stop him, but he was not deterred and kept running ahead and came under the wheels of the running local train. Constable Suresh Mane reported the incident to the Wadala Railway Police Station, which resulted in registration of the subject C.R..

Agnello succumbed to the accident and on registration of an ADR, the investigation was transferred to Crime Branch on 19/04/2014.

Mr.Leonard Valdaris, father of Agnello (respondent No.3 herein), instituted a writ petition before this Court on 06/06/2014, alleging that his son has met a custodial death due to the custodial abuse and torture and he prayed for stringent action against the delinquent police officers responsible for his death.

The petition was numbered as Cri.Writ Petition No.2110 of 2014 and on 17/06/2014, Division Bench of this Court found substance in the case of the petitioners before it, when it was submitted that the excuse put forth that his son died while

escaping from the custody of the police is ill-planned and designed to avoid criminal consequences arising out of the action of the accused.

The case of the petitioner Leonard, as projected before the Division Bench was, his son died while in custody of the police personnel of Wadala Railway Police Station and a reliance was placed upon the testimony of the co-accused in C.R.No.49 of 2014, all of who were accused of committing robbery and who were taken into custody alongwith his son, revealing the gory details about what transpired in the night in the lock-up of Wadala Railway Police Station. It was argued that the incident transpired was a blot on the claim that we are living in a civilized society.

This Court, therefore, appreciated the material collected by the State CID during the course of investigation, but for the reasons recorded, expressed a serious doubt about the transparency and fairness of the investigation carried out by it or by the local police and issued the following directions :-

“13. We direct the C.B.I. to start a fresh investigation by recording statements of complainant and injured witnesses and by recording a fresh F.I.R. All efforts should be made to ensure that the CCTV footage of the Wadala Railway police station and Ray Road police station is procured by using modern methods and with the help of experts in the field. We do not propose to monitor the said investigation. We feel it proper that the matter is kept after some time in order to find out the progress made by C.B.I. in the investigation of this case.”

4. Pursuant to this order, the investigation came to be transferred to CBI on 17/06/20124 and on it's completion, the first charge-sheet was filed on 31/12/2015, which invoked

Sections 218, 223, 323, 342, 120-B of IPC read with Section 29 of Bombay Police Act. In all eight police personnel came to be arraigned as accused and this included the present petitioner, a Senior Inspector of Police of Wadala Railway Police Station.

5. On 19/12/2019, the writ petition filed by respondent No.3 along with three other petitioners was extensively heard and it was pointed out to the Court that the CBI had filed the charge-sheets and the investigation for commission of the offences under POCSO Act was in progress. The Court was informed that charge-sheet was filed under Sections 118, 119, 166, 166A, 193, 195A, 199, 200, 201, 202, 203, 217, 220, 295(A) and 324 of IPC and the petitioners sought direction to file charge-sheet under Section 302 read with Section 34 of IPC.

After referring to the factual matrix in form of the events that had transpired in the midnight of 15th and 16th April, 2014 and, further on 17/04/2014 and 18/04/2014, it was urged that the entire episode of death of his son by jumping before a running train was a claim in disguise to camouflage the act of murder. It was also submitted that the CCTV footage of Wadala Railway Police Station is not available.

A reference was made to the scene of offence recorded in the panchnama and several circumstances were placed before the Court, which according to the petitioner, created a cloud of suspicion, the prime factor being why Agnello was kept in Kurla Police Station and another important circumstance, pressed into service, was about no entry being recorded in the

station diary of Wadala Railway Police Station, to reflect that he was withdrawn from the police station for taking to the hospital or court.

The above circumstances placed before the Division Bench, resulted in it being persuaded to record a prima facie conclusion that death of Agnello is custodial death and, therefore, it directed the trial court to frame charge under Sections 302 and 201, apart from a charge being framed under Section 295A of IPC.

6. The above direction was carried in an Appeal before the Hon'ble Supreme Court by the present petitioner and the following order came to be passed.

“Having heard learned for the parties, we are inclined to pass the following order and directions, modifying the impugned order dated 19.12.2019 passed in Criminal Writ Petition No.2110/2014; Leonard Xavier Valdaris & Ors. V/s Officer in-charge, Wadala Railway Police Station, Mumbai and others:

i) The trial Court while deciding the question of framing of charge(s) would examine all aspects, including the Sections of the Penal Code under which the charges should be framed.

ii) Observations in the impugned order will not be treated as binding findings or directions on the question of framing of charge and the Section(s) under which the charge would be framed. The trial Court would independently apply its mind, without being influenced by the observations of the High Court.

iii) The informant/victim-Leonard Xavier Valdaris will be at liberty to file protest petition before the trial Court, which if filed, would be dealt with in accordance with law. Similarly, Sufiyan Mohammad Khan, Mohammad Irfan Hajam and Arbaz Shamim Khan also will be at liberty to file protest petition before the trial Court, which if filed, would be dealt with in accordance with law.

The appeal is disposed of in the aforesaid terms, clarifying that we have not commented or observed on merits of the

section/provisions of law, under which charge(s) should be framed.”

The Special Leave Petition came to be disposed off.

7. Pursuant to the above order, a protest petition came to be filed before the Special Judge, CBI against non-inclusion of Section 302 of IPC in the charge-sheets filed by the CBI on 31/12/2015, 03/12/2016 and 19/09/2018 against the accused persons.

The protest petition complained about the conduct of the CBI in repeatedly resisting invocation of Sections 377, 302 and 201 of IPC. It was specifically pleaded that the first charge-sheet, being filed on 31/12/2015, did not invoke the relevant provisions of law and it was only after the observations of the High Court, the first supplementary charge-sheet was filed on 03/12/2016 under Sections 6 and 12 of POCSO Act and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2002 (for short, “**the JJ Act**”). A second supplementary charge-sheet was filed on 19/12/2016, once again only on the direction of the Hon’ble High Court, which now invoked Section 377 read with Section 108, 330 and 348 of IPC.

A specific accusation was levelled in the protest petition against the CBI to the following effect :-

“That in such a gruesome case of custodial violence and death, it would be travesty of justice if deliberate lapses on account of the prosecution enabled the accused police officers to escape facing trial for one of the highest offence.”

8. The CBI filed it’s reply to the protest petition and it justified it’s stand about not invoking Section 302 of IPC, by

relying upon the statement of the following witnesses:-

1. Mr.Vijay R. Mahadik (PW 35), a motorman who manned the train;
2. Mr.Kishan Kailash Prajapati (PW 39), a labourer, who was present on Wadala Railway Station; and
3. Mr.Mohan Vishnu Bhawar (PW 40), a private person.

Apart from this, CBI placed reliance upon the Post Mortem Report dated 18/04/2014, where certain injuries were found to have been caused between 24 to 96 hrs. and it also relied upon the opinion of the Doctor, who conducted postmortem of deceased Agnello, who had opined that the said ante-mortem injuries were not fatal injuries (i.e. not on the vital organs of the body) so as to cause the death of Agnello. The injuries on right upper limb, left upper limb, Trunk Posterior-back portion of body and right lower limb were referred to as falling within the said category. Apart from this, several injuries, which according to the Post Mortem Report were said to be caused between 00 to 12 hrs., were also specifically mentioned in the reply and based on the analysis of the Post Mortem Report, the CBI specifically dealt with the prayer in the protest petition and recorded that the four witnesses have categorically stated that deceased Agnello was running through the middle track towards the approaching train, followed by two other persons (Suresh Mane and Ravindra Mane), who were running at an approximate distance of 2-3 meters and he was hit by the speeding train and came under it's screeching wheels. It is the case of CBI that the statements of the witnesses are corroborated by the

medical evidence and in any case, there is no allegation of assaulting the deceased on head by the police personnel and, therefore, the said injuries could not have caused his death. The CBI specifically concluded its finding in the following manner :-

“22. The further ground mentioned in the Protest Petition is regarding the threat to kill the deceased. It is contended that in view of the threat, the explanation given by the accused police officials that the "deceased died in a train accident is palpably false. These circumstances prima facie disclose the commission of an offence u/s. 302 IPC.” For invoking section 302, there should be prime facie material. Charge sheet cannot be filed u/s 302 of IPC merely on the basis of presumptions or assumptions. There are statements of eyewitnesses namely i) Shri. Vijay R. Mahadik, the Motorman who had manned the local train. ii) Shri Mukund Rohidas Kokane, the PC of Wadala Railway Police Station. iii) Shri. Kishan Kailash Prajapati, Labourer. iv) Shri Mohan Vishnu Bhawar, private person on record. There is no material to show that either the deceased was pushed towards the running train or dumped his body on the railway track. The incident was happened at 11.15 hrs. and in close proximity of railway platform. At the time of framing of the charge, probity of the statement of witnesses cannot be looked into. The court has to consider only the material submitted by the prosecution along with the charge sheet.

23. Investigation thus revealed through the statements of the above independent eye witnesses, corroborated by the statement of Postmortem Doctors that the reason behind the death of Agenlo Valdaris was only due to the injuries received during the train accident. Further, as per the material collected during the investigation, the deceased Agnelo Valdaris was running through the middle of the railway track towards the approaching train and the accused Police Officials neither pushed nor compelled/forced him to meet with the train accident.”

Apart from this, detailed notes of arguments and compilation came to be submitted before the learned Judge for appreciation, to establish the case that an offence under Section 302 is not attracted. This also included a rough sketch

of scene of crime, prepared by CBI, SCB, Mumbai as well as the spot panchnama.

9. With this material placed before the Special Judge, on 17/09/2022, the protest petition filed by the father of Agnello came to be partly allowed, directing the respondents to remain present for framing of charge under Sections 302, 295(A) of IPC.

The learned Judge dealt with the counter submissions on the aspect, whether Section 302 deserve to be invoked and analysed the material placed before her and specifically recorded the conclusion in the following words :-

“21. The seen (scene) of the offence panchnama shows that shirt was blood stained, there were blood stains on the face and hair and deceased had fallen. It also shows that the victim had sustained electric shock, however it does not reveal that wires were hanging below. The statements of Mukund Kokane and Vijay Mahadik are also inconsistent. The statement of medical officer Dr.Ejaz Husin recorded on 02.08.2014 shows that on 17.04.2014 at 07.10 p.m., when deceased was brought by the police officers for his medical examination, they had pressurized him to prepare false medical report by writing on Casualty Register that the injuries found on the deceased were self inflicted and were not caused by police.....

22. Considering the statements relied by prosecution, petitioner and the accused coupled with postmortem report, I am of the opinion that from the record, the custody of the deceased was handed over by Kurla railway police station at 07.30 a.m. to Wadala railway police station, but there is no station diary entry in Wadala railway police station which would show that deceased was taken to Wadala railway police station or the time when he was taken out from the said police station to take him in the hospital or in the Court. Thus, the said documents reveals that the police officers suppressed the entries of bringing out deceased again from the lockup. Further, the statements of co-accused reveals that they had witnessed torture of deceased by police officers and they

further stated that they were also sexually harassed and assaulted by the police officers by referring their caste and religious belief. The postmortem examination report of the deceased reveals that death occurred due to hemorrhage and shock due to multiple injuries. There is one more aspect which is required to be considered that C.C.T.V. Footage of Wadala railway police station was not preserved in spite of directions issued by the Hon'ble High Court vide its order dated 16.06.2014. Therefore, it also leads to negative inference against police officers/accused. So, considering the entire material on record in the form of statements of witnesses, postmortem examination report of deceased, copies of station diaries and seen of offence panchnama, reveals that prima facie it is the case where charge under Section 302, 295 A of I.P.C. can be framed.....”

10. It is this order, which is challenged in the present writ petition and the submission advanced is, it is in the teeth of the order passed by the Hon'ble Supreme Court, directing the learned Judge to have an independent examination of the material, before he deem it fit to frame the charge under Section 302 of IPC.

11. I have perused the writ petition alongwith it's annexures and the compilation placed on record by Ms.Adenwalla, which comprise of the statements of the co-accused in C.R. No.49 of 2014, recorded under Section 161 of Cr.P.C. as well as the distinct orders passed by the High Court in Cri.Writ Petition No.2110 of 2014 as well as the order passed by the Apex Court. Alongwith the petition, the reply of the CBI, filed in the court of Additional Sessions Judge, responding to the protest petition is also annexed.

An order passed by this Court (Coram : Amit Borkar, J.) on 16/12/2022 in Cri.Writ Petition No.4104 of 2022 is also

placed before me. The above order came to be passed in a petition instituted by the co-accused-Archana Maruti Pujari & Ors. in the same C.R. in which the petitioner is facing accusation, being aggrieved by the order dated 17/09/2022 passed by the Special Judge under the POCSO Act, on an Application below Exh.19 for framing of charge against the petitioners under Section 302 of IPC and directing the investigating agency to file the supplementary charge-sheet.

12. The sequence of events that have emerged on record through the material placed before me, would reveal as under :-

(a) In the night of 15/04/2014 and in the morning of 16/04/2014, a team of GRP police, comprising of Mr.Suryavanshi, Mr.Ravi Mane, Mr.Kamble and Mr.Satish @ Tondse visited the house of Leonard (Respondent No.3), alongwith one boy whose name subsequently was revealed as Arbaaz and the purpose of visit was indicated as recovery of muddemal from his son Agnello @ Richie, as he was considered to be a suspect in an offence of robbery. A search was taken in the house and a footage was shown to Leonard by one of the officers, in some device, where a person whose face was covered with cloth, was walking with some other boys and he was asked to identify the said person. He was unable to do so, but was told by the GRP police that it was his son, Agnello.

At the relevant time, his son was not present in the home, as he had gone to his grandparent's house and, therefore, Leonard was asked to accompany the team for his

search and he was accompanied by his younger son Reagan. The two other boys, namely, Sufiyan and Irfan, were also brought by the investigating team and all of them proceeded to Poonawala Chawl, where Agnello was present and the GRP police personnel caught hold of Agnello and asked him to give the gold chain, but he denied having any knowledge about the chain. It is the version of his father, Leonard, that Ravi Mane slapped Agnello and the entire house was searched. According to him, Agnello kept on pleading his innocence, but the policemen took him with them.

(b) In the morning of 16/04/2014, it was informed to Leonard that police are not going to produce the arrested persons in court and, therefore, he contacted an Advocate and at around 16.00 hrs., faxed a letter to the Commissioner of Police informing that GRP has arrested his son early morning at around 2.00 a.m. on 16/04/2014, but they have not produced him in the Court. He was called to the detection room of Wadala Railway Police Station by Mr.Suryavanshi, the GRP Police Officer at around 10.00 p.m., but despite he being pressurised to attend, he did not report to the police station.

(c) Between 10.00 to 11.00 hrs. on 17/04/2014, Leonard received a phone call from Wadala Railway Police Station and he was asked to reach there, but he refused on the ground that he was on duty. The phone call was again repeated after few minutes and assuming that the calls were to pressurise him in connection with bribe, and since he apprehended that the officers wanted some money from him, he removed his SIM card from the mobile and inserted another SIM, but forwarded a message that he is unable to report to the police station.

(d) On 17/04/2014, at around 4.00 p.m., Leonard was informed that his son Agnello is not yet produced in the court and, therefore, at around 4.45 p.m., he went to CST Railway Court, where he met Sufiyan and Irfan, the alleged accomplices of his son in C.R.No.49 of 2014 registered with Wadala Railway Police Station and he was told by them that his son was beaten mercilessly and was in a bad state of health. Irfan and Sufiyan also showed injuries inflicted on their body.

(e) Thereupon, at 5.00 p.m., a complaint was lodged by Leonard to the Magistrate, 35th Court, CST Railway Court for non-production of his son, which was accompanied by the fax letter, addressed to the Police Commissioner.

(f) On the said complaint, following order was passed by the Magistrate :-

“Present at 5 pm. On inquiry court constable says that accused arrested at 4 pm today. However, document recites that accused detained since night, hence he be immediately produced before night court”

(g) Leonard proceeded to Wadala Railway Police Station and met the petitioner, Mr.Rathod, a senior Inspector, who informed that his son was at Sion Hospital for dressing purpose and he shall be produced tomorrow in Bhoiwada Court. He was taken to Sion hospital in the police vehicle. On reaching there at about 8 p.m., he saw a bandage on the wrist of his son and also noticed that he was unable to walk due to injuries and on noticing his presence, his son urged to save him and specifically expressed him that police will kill him, as they are beating him continuously and not taking him to the court. Leonard assured him, not to worry as he would be soon taken to the Court.

(h) On 18/04/2014, at around 10.30 a.m., Agnello phoned his brother Reagen and told him that he was beaten severely during night and had become dehydrated. He told Reagen to bring Glucon-D and some clothes for him.

(i) After some time, when Leonard made a phone call to Suresh Mane, he was asked to reach Sion Hospital, where he was taken to mortuary and his son's dead body was shown to him. He was informed that his son on escaping from their custody, jumped before a running train and got killed. The body was thereafter taken to postmortem examination to JJ Hospital and he was issued a certificate of death at Rajawadi mortuary and body was handed over to him for performance of his last rites.

13. The above sequence of events gave rise to a suspicion in the mind of Leonard, that since his son was being tortured, he was killed by the police personnel of Wadala Railway Police Station, as when he had met him in Sion Hospital, he was not in a position to walk and, therefore, the version that he has escaped from their custody, was hard to believe. Leonard, therefore, seriously suspected that his son was killed by the police personnel and the story of being run under the train was being projected only to cover their misdeeds. He, thereafter, started making inquiries and by addressing a letter to the Commissioner of Police as well as Railway Authority, asked to seize the CCTV footage from the railway stations and also sought seizure of the station diaries, log books, lock up registers to prevent tampering of evidence.

14. As noted above, he approached this Court by filing Cri.Writ Petition No.2110 of 2014 and pursuant to the direction of this Court, C.R. came to be registered and the investigation came to be transferred to Crime Branch and, subsequently to the CBI by order and judgment dated 19/12/2019, as the Court specifically took note of the investigation not proceeding in right direction, as grave suspicion expressed by the petitioner therein, who was joined by other three co-accused, ultimately resulted in some success to the strenuous efforts taken by Leonard to book those police personnel, who were responsible for the death of his son.

Despite the investigation being handed over to the CBI and three supplementary charge-sheets being filed, the petitioner (Leonard) was not satisfied as he continued to harp under an impression that charge ought to have been framed against the delinquent police officers under Section 302 of IPC. In support of his contention that his son met a homicidal death while in custody, he derived advantage from the order of the Division Bench dated 19/12/2019, when in the background of the circumstances placed before the Court, the Division Bench recorded that the circumstances were sufficient to arrive at a prima facie conclusion that it is a case of custodial death and, therefore, directed the trial Court to frame charge under Sections 302 and 201 of IPC.

In an Appeal filed before the Hon'ble Apex Court, it was directed that the trial Court while deciding the question of framing of charge(s) would examine all aspects, including the Sections of the Penal Code under which the charges should be framed and the observations made by the High Court in the

impugned order, shall not be treated as binding findings or directions on the question of framing of charge(s).

Liberty was conferred to file a protest petition, before the trial Court, which was directed to be dealt with in accordance with law.

This is the background in which the impugned order is passed by the Special Judge under the POCSO Act, recording that charge under Sections 302 and 295(A) of IPC deserve to be framed against the accused, who were directed to remain present before the Court for framing of the additional charge.

15. The question raised in the petition, by Mr.Merchant representing the petitioner, one of the police officer, who is an accused is, the justiciability of the impugned order in the wake of the direction issued by the Hon'ble Supreme Court, directing the trial Court to independently apply it's mind to the facts of the case and not to be influenced by the observations made by the Division Bench, while framing of the charge.

Mr. Merchant would vehemently submit that the learned Judge has towed the line of the High Court and ignored the relevant material, which would demonstrate that the death is not homicidal, but Agnello ran towards the railway track and was crushed under the wheels of a running train and died on account of multiple injuries. Mr.Merchant would submit that the order passed by this Court (Coram : Amit Borkar, J.) in the case of co-accused Archana Maruti Pujari (supra) did not at all consider the investigation by the CBI and it's conclusion derived on the basis of the statements of the independent

witnesses, which belie the theory of homicide.

Per contra, Ms. Adenwalla would reiterate the stand, which was advanced on behalf of the petitioner (Leonard) that Agnello while in custody of police met with death and she would heavily rely upon the statements of the co-accused, who had revealed the custodial torture meted out to them as well as to Agnello and relying upon the said statements, her submission is, when the deceased was found by his father, in a position, where he was unable to walk, where is the question of he running on the track. According to Ms. Adenwalla, the culprits in the offence should be dealt with stern hands, as the custodial violence suffered by the deceased and three others, alleged to be the co-accused, has come on record through the charge-sheet. She would submit that the earlier order passed in case of co-accused has failed to grant any relief, as it was clearly recorded that it is a case of homicide and the conduct of the police officials, including an attempt to woof up the medical report of the deceased at the hands of the petitioner (Leonard), by compelling him to state that the injuries sustained by his son are self inflicted and also non availability of the CCTV footage itself smack of the malafide approach and depict unfairness on part of the police authorities for the simple reason that his son was killed while in custody. She would ultimately submit that whether the accused are guilty of committing the offence under Section 302 of IPC or not, is a matter of trial, but at present, the charge of homicide deserve to be framed and the accused should be made to face the trial.

16. While approaching the core point of the matter, whether a charge of homicidal death deserve to be framed against the accused persons, which include the petitioner, in a case registered by the CBI, I have arrived at a conclusion that the impugned order, which is assailed in the present petition is a result of a flawed and faulty approach of the learned Special Judge and amounts to infraction of the directions issued by the Apex Court.

The circumstances, which make me arrive at the said conclusion, are enlisted by me as under, each circumstances to be read independent of the other :-

A] **ERRONEOUS PRESUMPTION BASED ON THE SCENE OF OFFENCE, ON WHICH AN INFERENCE IS DRAWN THAT THE VICTIM HAD SUSTAINED ELECTRIC SHOCK**

17. The Division Bench in it's order dated 19/12/2019, made a reference to the inconsistency in the scene of offence panchnama and it is captured in the following words :-

"24. ...The scene of offence panchanama speaks for itself. Shirt was blood-stained. There were blood-stains on the place where he had fallen. The scene of offence panchanama also shows that at the outset the victim had first sustained electric shock. However, it does not show that the wires were hanging below and in the eventuality they were hanging there was no reason to cross the tracks, especially by the police."

When tried to ascertain, on what basis the observations are made, I have turned by attention to the scene of offence panchnama (spot panchnama).

The description of the spot is contained in the panchnama prepared in the presence of Dy.S.P., CID and the pictorial presentation of the spot is annexed at page 192 of the

petition. The observations of the Division Bench about Agnello sustaining an electric shock come from this panchnama, which factually record as under :-

“The spot is an open space in front of IOW office to down railway track No.1-railway pole No.08/28A to 08/30A. Careful scrutiny of the spot reveal that arrested accused Agnello was being taken to Sion Hospital by Police Head Constable 2388/Mane and Police Constable 2129/Ravindra Mane and while they were to climb the bridge to reach platform No.1 and while they halted in front of IOW office, he forcibly relieved himself and by giving a push, he ran in direction to CST down track No.1. While he was in an attempt to cross the track to escape, he hit himself against overhead electric wire pole No.8/30A on the right side and got himself caught on track No.1 and was crushed under the wheels of the train and the railway track and was grievously hurt. The spot panchnama record that since he was dragged, the blood stains are found on the sleeper and the adjoining track.”

Mr.Venegavkar fairly concede that the above portion was incorrectly put before the Division Bench, resulting in it's recording in paragraph 24, quoted above. In fact, there was no electric shock and the Division Bench has rightly noted that there were no wires hanging, as shown in the spot panchnama. But this erroneous recording of the spot panchnama has once again surfaced in the impugned order passed by the learned trial Judge, where it is recorded as under :-

“It also shows that the victim had sustained electric shock, however it does not reveal that wires were hanging below”.

The genesis of electric shock theory, which has erroneously creped in the order of the Division Bench and that of the trial Judge, therefore, deserve to be over looked.

B] PHYSICAL CONDITION OF THE DECEASED BEFORE HIS DEATH

18. An attempt of respondent No.3(Leonard) through the statements of co-accused Sufiyan Khan, Mohd.Irfan and Arbaz Khan recorded during the investigation is, to demonstrate the precarious and extremely critical condition of Agnello, being subjected to tremendous physical torture at the hands of the officials of the concerned police station. From the statements of the co-accused, it is sought to be projected that deceased Agnello was brutally assaulted in the lock up and the version is that on 16/04/2014, at 10.00 a.m., Agnello @ Richie was brought to the lock-up and one person was asked to identify them, who refused to recognise them. The version is, Mr.Rathod (the petitioner) then asked Ravi Mane and Suresh Mane to tie up Richie and, accordingly, by means of an iron rod, his hands and legs were tied and then it was directed that by the same rod, he should be hanged upside down, but when they were unable to do so, he was made to lie on the floor and half of his body was kept hanging in air. As per the statement of Irfan, Suresh Mane and Satyajit Kamble forcefully assaulted him by means of rod and belt and he was constantly beaten from 11.30 to 1.30 and Richie was crying in pain. As per this witness, even thereafter he was assaulted. Thereafter, one lady police officer, Poojari madam is also alleged to have

interrogated him about the proceeds of crime and when she could not procure a confession, Irfan and Richie were once again assaulted by Suresh Mane and Satyajit Kamble.

19. As per Irfan, Richie was in extreme pain and begging for medicine. Froth started coming from Richie's mouth and Irfan and his associates pleaded to assist Richie. At that time, Tushar Khairnar, one of the accused, poured water on his face and made him to smell an onion and footwear, as a result of which, more froth came out of his mouth. At that time, Suryavanshi is alleged to have stated that he was faking and, thereafter, Richie became unconscious.

The said version is reiterated by Sufiyan.

20. As regards the events of 17/04/2014, when Irfan was being taken out from CST lock-up to Wadala Railway Police Station, he noticed that Richie was held by one police person because he was unable to walk and he was in a very bad condition. Thereafter, he was taken in a lock-up and Richie disclosed him the atrocities committed on him. Thereafter, Irfan and Sufiyan were taken out from CST lock-up and produced before the Court and they were threatened by Suresh Mane that nothing should be disclosed before the Magistrate and upon the request of the police, two days' police custody was granted and they were again put up in CST lock-up. At around 5.00 p.m., Richie's father came to see them in CST lock-up, as he was not produced before the Court. At that time, they showed him the injuries on their body and also disclosed to his father that Richie was also beaten mercilessly and he should take some steps to save him, otherwise he would

be dead. Upon which, his father assured that he would visit the Magistrate.

On 18/04/2014, Imran and his associates came to know about the train accident of Richie and, therefore, statement is given by them that a news came as surprise, as Richie was not even able to walk and, therefore, it cannot be believed that he ran on the track. They expressed a doubt, that Richie had died because of police torture and a fake case of accident is being projected.

The statements of Arbaz and Sufiyan are also on similar lines, who also refer to the torture and sexual harassment bestowed upon all of them, which ultimately resulted in invocation of provisions of POCSO Act and I refrain myself from touching the said aspect in the present proceedings, as it is not of consequence.

21. As informed about the torture of his son Agnello @ Richie, through Irfan, Leonard approached the Metropolitan Magistrate, Central Railway Court and made a grievance about non-production of his son and upon such complaint being made, the learned Magistrate inquired at around 5.00 p.m. and was informed that Agnello was arrested at 4.00 p.m. on the same day, but he was detained since night and, therefore, the Magistrate ordered his immediate production before the night court.

22. The charge-sheet comprise of the statement of Dr.Aejaz Husain, Assistant Medical Officer at Sion Hospital, recorded on 02/08/2014, who has stated that while he was performing his duty in the Casualty Department, Agnello was brought to him by

a Police Constable of Wadala Railway Police Station for medical examination. He was accompanied by 3 to 4 police officials and Agnello complained about history of assault by police persons at Wadala Railway Police Station by sharp object over both wrists. He examined the patient and found following injuries on his person :-

- (1) Incised clean wound approximately 2X0.5 cm on the left wrist (on the ventral surface);
- (2) Incised clean wound approximately 7X0.5 cm on the right wrist (on the ventral surface)

On further examination of Agnello, Doctor opined as under :-

“On further examining him, it was found that there was no complaint of breathlessness, ENT bleeding. The general condition of patient was fair, conscious and his pulse was 78/minute (normal).

As the patient Agnello Leonard Valdaris had also complained about the blunt trauma caused to his chest, I had advised to take an X-ray of the chest of the patient Agnello. However, the police personnel who had brought him for medical examination, did not get the X-ray done. Since the patient was injured, I prescribed the medicines like Capsule Mox 500mg, Paracetamol Tablet 500mg, Tablet Rantac 150mg as a course of treatment.”

The aforesaid statement lead to an inference that on 17/04/2014, when Agnello was examined by the Doctor in the evening hours, he had two injuries on his both wrists, but his condition was fair, conscious and normal.

23. If the version of Imran, Arbaz and Sufiyan that Agnello was beaten mercilessly on 16/04/2014 and 17/04/2014 and he was in a hopeless condition and was even unable to walk is to be believed, then the above statement of the Doctor gets

falsified. As per Irfan, Richie had almost become unconscious on being beaten by rod and belt, which definitely would have left some marks on his body, but on 17/04/2014 in the evening hours, when Agnello was examined by Dr.Aejaz Husain, he did not notice any injuries on his body, except the two on his both wrists. The brutality which has been described by the three accomplices of Agnello must ought to have left some mark on some portion of his body, but the doctor, who examined him, failed to notice any of them. There is no reason for the Doctor to not disclose the same, if he would have found them.

It is also a version given by a Doctor examining Agnello, who has stated that his father scribed that the injury inflicted on the wrist was by Agnello himself, but instead he is blaming the police personnel. The veracity of the aforesaid statement and the circumstances in which it is alleged to have been scribed, at this stage do not deserve any consideration. Suffice it to note that Agnello was healthy and hearty in the evening hours of 17/04/2014, except the injuries on his wrists.

C] BELATED COMPLAINTS BY THE ASSOCIATES OF AGNELLO

24. Agnello was undisputedly picked up by the police personnel in the intervening night of 15th and 16th April, 2014, though he is shown to be arrested at 4.00 p.m. on 17/04/2014, and since, the period of 24 hours from the time of his arrest was not over, he was not produced before the Magistrate. The period of alleged torture was thus spread over from 16/04/2014 to 18/04/2014, when Agnello was run over by a train.

For the first time, a complaint is lodged by his father on 30/04/2014 alleging murder of his son and requesting for seizure of CCTV footage from the cameras around and inside the distinct locations, including that of Wadala Railway Station platform Nos.1 and 4. He also sought seizure of Station Diaries, lock-up Registers etc. so as to establish the role played by the police officers in the death of his son. Thus, the first complaint from Leonard comes after a period of 12 days.

In his complaint dated 30/04/2014, there is reference of abuse and pertinent to note that Sufiyan, Irfan and Arbaz lodged a complaint for the first time with distinct police authorities, complaining about murder, sexual abuse, custodial torture and their illegal detention. In the complaint, a reference is specifically made to Kamble and Mane and the complaints, more or less, contained a similar narration about their abuse as well as about the alleged torture to Richie @ Agnello. The complaint also specify instances of sexual abuse and what is harped upon in unison, is Richie was unable to run from custody, since he was severely beaten and the police are trying to cover up the beating by making a false case of train accident.

Pertinent to note that the three co-accused were released on bail on 22/04/2014, but for the first time, they made a grievance through their complaints on 12/05/2014. Now based upon the version of the associates of Richie, his father (Leonard), addressed a detailed complaint to the Superintendent of Police, CBI, SCB, Mumbai on 24/06/2014, in furtherance of the order dated 17/06/2014 passed in Cri.Writ Petition No.2110 of 2014. Leonard's complaint is based on the

version contained in the three complaints of Arbaz, Imran and Sufiyan dated 12/05/2014, where they alleged commission of murder and custodial torture of his son. There is evidence that even these three persons were subjected to torture and the medical examination reveal some old injuries and, therefore, it cannot be disputed that all the accused persons, who were detained/ taken in custody between the night of 15th and 16th April, 2014, were subjected to custodial torture, but the question still remains as to whether the death of Agnello is a result of this torture and whether a charge for murder deserve to be framed.

D] INCIDENT DATED 18/04/2014, WHEN AGNELLO DIED

25. On the aforesaid date, Agnello was being taken to Sion Hospital for treatment and the Station Diary entry reflects so. What transpired on Wadala Railway Station has surfaced in the charge-sheet through four witnesses, each one being an independent witness.

26. One Mukund Rohidas Kokane, who was on deputation at the office of Assistant Commissioner of Police (Railway), Harbour lines, was reporting to Wadala Railway Police Station for performing commando duties from 11.00 hrs. to 23.00 hrs. in the Ladies Compartment of Mumbai Local Train.

On 18/04/2014, at 10.30 hrs., he went to Wadala Railway Police Station in order to collect his official weapon and to proceed for commando duty in Mumbai Local. At that time, he observed that one person between the age group of 25-30

years, whose name was subsequently revealed to him as Agnello, was sitting on the cement bench outside Wadala Railway Police Station. After changing himself into the police uniform and collecting the weapon, he proceeded at around 11.10 hrs. for catching the local train from platform No.1. He described that he crossed PWI office and was taking water from the tap situated outside the office, he noticed Suresh Mane and Ravi Mane taking Agnello to platform No.1. Suresh Mane was holding the hand of Agnello, while Ravi Mane was walking close to them. The trio passed besides him and were about to cross railway track in between platform Nos.1 and 2, but they halted near the track changer box, as the train was arriving from CST side. While he was drinking water, he heard loud shouts of “palala, palala, pakda (पळाला, पळाला, पकडा)”. When he turned his head, he saw Agnello running towards the approaching train through the middle of the track, followed by Suresh Mane and Ravindra Mane, chasing him. Suresh Mane was seen running through the track, whereas Ravi Mane was running on the left side of the track. Even, this witness ran behind for help at distance, however, according to him, it was late because within spur of second, Agnello was hit by the speedy train, while Suresh Mane jumped to the right of the track and Ravi Mane remained on the left side of the track. His statement specifically record as under :-

“The impact of the hit was such that the body of Agnello was made to spin and fall, making him come under the wheel of the train and he was dragged forward for a few feets (with his head facing the Wadala Railway Police Station direction and the remaining portion of his body lying in between the tracks).

Thereafter a crowd gathered at the accident spot. Shri

Jitendra Rathod, Sr.P.I., Shri Tondse, PSI and other police officials of Wadala Railway Police Station too reached the accident spot and removed the body of the accused. Then the Station Manager with the assistance of the Hamaals placed the body of the deceased on a stretcher and the same was taken to Sion Hospital in Ambulance.”

The very same witness, in his supplementary statement recorded by CBI on 09/01/2017, has categorically stated as under :-

“The impact of the hit was such that the body of Agnelo was made to spin and fall, making him come under the screeching wheel of the train through the cattle guard and he was dragged forward for a few feets (with his head facing the Wadala Railway Police Station direction and the remaining portion of his body lying in between the tracks). I further state that I had seen that the accused Agnelo himself had accidentally come under the train and he was never pushed before the train nor compelled/forced to meet with the train accident by either Suresh Babu Mane or Ravindra Sukhdev Mane.”

27. One Vijay Mahadik, Assistant Loco Pilot, was working as Motorman and on 18/04/2014, he was on duty manning the local train No.BR-25 from CSTM to Belapur. In his statement dated 01/07/2014, he has specifically state as under :-

“When the train No.BR-25 was about to reach Wadala Railway Station (moving at an approximate speed of 40-45 kms/hour), I suddenly saw a person running towards the train through the middle of the railway track, followed by two other persons, who were running behind the first person. Immediately, I followed the Railway procedure of whistling the train continuously to warn the persons. However as I felt that the situation would go out of hand, I released the dead man’s handle to stop the train. However, it was too late as the person who was running in the front came under the train while the other two persons who were running behind him, moved away from the approaching train on either sides of the railway track. After stopping the train, I informed about the accident/incident to Shri Surjit Meena, the Train Guard over intercom. By that time, the officials from Govt. Railway Police

came to the spot and asked me to move back the train for facilitating the removal of the person from the Railway tracks.”

In his further statement recorded on 21/01/2016, he supplemented his earlier statement by stating as under :-

“However as I felt that the situation would go out of hand, I released the dead man’s handle to stop the train. By that time it was too late, as the person who was running in the front, was hit by the speeding train and came under it, while the other persons who were running behind the first person moved away from the approaching train by jumping to the other sides of the railway track.”

His further statement given to the CBI record as under :-

“I suddenly saw one person (later whom I came to know as the deceased Agnelo) running through the middle of the tracks towards the approaching train followed by two other persons, who were running at an approximate distance of 2-3 meters behind the first person. Immediately, I started whistling the train continuously to warn the persons running towards the train to move away from the railway tracks.”

28. Another witness to the incident is one Kishan Kailash, who was present near the platform, as he was engaged in welding work relating to laying of pipeline near platform No.1 of Wadala Railway Station and he saw one person suddenly running through the middle of the railway track towards the approaching train, which was coming from CST side to Kurla side. The said person was followed by two other persons, who were shouting loudly and running behind the first person. The witness states that the person running in front, was hit by local train and he came under the train. He also saw the person being removed from the railway track, put in a stretcher and taken away.

On similar line is the statement of one Mohan Vishnu Bhawar, who by chance, was present on the spot at 11.00 hrs. on 18/04/2014 and while he was waiting to cross the railway track between platform Nos.1 and 2 of Wadala Railway Station, he heard commotion and saw one person running on the middle of the track. His statement is similar to that of Kishan Kailash, since both of them had witnessed the incident.

29. The above four statements were referred to by the CBI and relying upon the said statements, the CBI did not deem it fit to invoke Section 302 of IPC, since from the statements of the said witnesses, who are completely neutral and by chance, happened to be present there, the deceased ran towards the local train, who was chased by Suresh Mane and Ravi Mane, who were escorting him. Therefore, the CBI in it's reply to the protest petition, has specifically made reference to those statements and by referring to the statement, it concluded as under :-

"15. From the evidence of eye witnesses and from the Post Mortem report, it is clear that accused sustained injuries while trying to escape from the custody of the Police and by hitting the approaching train. The injuries which are shown in red colour in Post Mortem report are caused due to the hitting with the running train. These injuries caused the death of the deceased. The Post Mortem report also shows blackish greasy material over injury mentioned in Sl no. 2, 5, 6, 7, 8 & 9 on Trunk Anterior and injuries mentioned in Sl no 1 & 2 of Trunk Posterior.

16. Another ground mentioned in the Protest Petition is that, accused persons had threatened the deceased to kill him and throw him on the Railway Tracks. As per the statement of Arbaaz Shamim Khan recorded on 28.08.2014 it is mentioned that, Suryavanshi threaten Irfan that, "if you die, I will throw you on railway tracks". But, there is no mention of this fact in

the statement of Mohd. Irfan or in the statement of Mohd. Sufiyaan. The charges will be framed on the basis of the material submitted by the prosecution in the form of statement of witnesses and documents. It cannot be framed on the basis of presumptions or inferences. The statements of eye witnesses clearly show that, the deceased was hit by the train while he was trying to escape from the custody of the Police.”

In conclusion, CBI recorded as under :-

“21. The short question at this stage is whether there is any material against the accused for the offences punishable u/s 302/304 of IPC or not. The material collected during the investigation clearly shows that, there is no material for invoking sec. 302/304 of IPC against the accused persons. The statements of eye witnesses clearly show that the deceased was hit by train and died due to the injuries sustained with impact of the hitting with the train. The statements of eye witnesses are corroborated by medical evidence and photographs of the accident. So there is no merit in the protest complaint.

E] INFERENCES OF MURDER CANNOT BE DRAWN ON THE BASIS OF LACUNAE IN INVESTIGATION :-

30. Respondent No.3 want to derive an inference that his son Agnello has been murdered because of the alleged serious loopholes in conducting the investigation

Immediately after the incident, a request was made by respondent No.3 (Leonard) on 05/05/2014 to collect the CCTV footage from Wadala Railway Station. The above request was reiterated in the writ petition filed by him before this Court and on 17/06/2014, when the CBI was directed to start fresh investigation, by recording the statement of the complainant and the injured witnesses. A direction was also issued to take necessary steps to ensure that CCTV footage of Wadala Railway Station and Reay Road Station is procured by using

modern methods and with the help of experts in the field.

In compliance of the said direction, the hard disk installed at the premises of Railway Protection Force, Wadala Railway Station for recording of CCTV footage, was removed on 05/07/2014 at 10.50 hours with technical support of Sonal Enterprises Pvt. Ltd., New Delhi. It was forwarded to CFSL, New Delhi on 10/07/2014 and the documents to that effect are compiled in the charge-sheet of forwarding three hard disks, two from Wadala Railway Station and one from Reay Road Railway Station. The forwarding note made a request for the early report and it was requested to conduct imaging/cloning of the hard disks. On 18/07/2014, the CFSL carried out examination of the hard disks and forwarded the same to the Sr. Superintendent of Police, CBI, Mumbai, after cloning the copy of Exh.1, Exh.2 and Exh.3 in a blank hard disk. Another hard disk, which recorded the CCTV footage of Kurla Railway Station was also forwarded to CFSL, New Delhi on 24/07/2014 alongwith the forwarding letter. Once again, on 05/08/2014, the CFSL forwarded a report after cloning of the hard disk and marked the cloned hard disk as Exh.1 and cloned copy as Exh.1. The examination report was finally received from the Scientific Officer, Forensic Science Laboratory, Home Department, reporting that no CCTV footage is found in Hard Disk Nos.2 and 3 and as far as Hard Disk No.1 is concerned, the data could not be retrieved and Hard Disk in form of Exh.4 could not be detected by NVR machine provided.

As a result, no data was found to be recorded in the Hard Disks, which recorded the CCTV footage from Wadala Railway Station. In any case, it cannot be said that the investigating

agency did not take appropriate steps to obtain the footage from Wadala Railway Station. Unfortunately, the final analysis reveal that no footage was recorded in the Hard Disk, which was supposed to store the entire footage from Wadala Railway Station. However, this do not ultimately lead to a presumption that the evidence has been destroyed or manipulated by the police personnel of Wadala Railway Police Station. It would be too far a consequence to be imagined because the CCTV footage, in fact has not recorded the happening of the events. But, after the order was passed, the seizure of Hard Disk was immediate i.e. on 05/07/2014.

Absence of some discrepancies whatsoever grave, it may be, would not however lead to a conclusion that the police officers/accused in the subject crime shall face charge of murder. In any case, for dereliction of duties or failure to follow the directions of superior, would warrant appropriate action against all the police officials.

F] THE INQUEST PANCHNAMA AND POST MORTEM REPORT:-

31. The inquest performed on the body of the deceased on 18/04/2014 in presence of two panchnamas, describe the built of the deceased as strong. It refer to an injury from the left side of chest upto thigh and the injury is described as the one caused by a wheel of the vehicle having been run over. An injury was also noticed on left side and abrasions are seen on chest and stomach. Patches of grease are noticed on the body during inquest.

The inquest panchnama do not indicate any injuries

attributed to the alleged custodial torture, but clearly express on external examination that the injuries are sustained by the wheels of the train being run over the body.

32. The Post Mortem Report and the statement of the Medical Expert conducting the postmortem also assume importance. The cause of Death Certificate opined the provisional cause of death as under :

“Evidence of haemorrhage and shock due to multiple injuries.”

The Post Mortem Report refer to several injuries on various part of the body, including head, chest and abdomen. The head injury is described as, under scalp contusion over fronto parietal region of 6 x 8 cm and over high parietal region of dark reddish colour-scalp deep. Skull is found to be intact. Meninges is congested. A patchy diffuse subarachnoid haemorrhage is found over left frontal lobe over area of 2 x 1 cm. Ribs are found to be fractured on left and right side at multiple sites. The external injuries are notice on face in form of abrasions. Injuries are also found on left upper limb, trunk anterior and if one look at the Post Mortem Report, multiple injuries are recorded with a clear finding recorded as under:-

“All injuries described above were ante-mortem in nature.”

The injuries having red colour are fresh and injuries having bluish reddish colour are caused between 24 to 96 hours.

The opinion expressed is as under :-

“Collectively, injuries were sufficient to cause death in ordinary course of nature.”

The Post Mortem Report dated 18/04/2014 enlisted all the injuries present on the body. Dr.B.G.Chikhalkar is a Professor in Forensic Medicine Department, Grant Government Medical College and he gave his statement to the CBI that the injuries, which might have been caused to Agnello by hard and blunt object between 24 to 96 hours, were not sufficient to cause his death and the injuries, which he considered to be fatal sufficient enough to cause death, were the one described by him in paragraphs 7 and 8, which are stated to have caused on account of train accident. These corresponding internal injuries are described as under :-

“7. Corresponding Internal Injuries:

(A) Fracture & dislocation:-

(1) Fracture of ribs on right side, 2nd to 8th rib at midaxillary line laterally with infiltration of blood within fracture end of ribs & Intercostal muscles.

(2) fracture of right ribs 2nd to 8th ribs fractured posteriorly near posterior end of ribs, just lateral to spinal cord with infiltration of blood within fracture end of ribs & Intercostal muscles. All these ribs are dislocated from continuity of vertebra at postero lateral column.

(3) Fracture & dislocation of left ribs at anterior end at left costochondral ribs, 2nd to 7th ribs dislocating these ribs from left-costochondral junction & separating these ribs from sternum with infiltration of blood.

(B) Visceral Damage :-

(1) Crush injury of soft tissues of thorax & abdomen at places.

(2) Multiple laceration of left & right lung with hemorrhagic contusion of lung parenchyma at places

(3) Laceration of trachea from 6 to 8 th rings with infiltration of blood with lumer.

(4) Laceration of right lobe of liver.

(5) Laceration of Spleen.”

33. Apart from these, the injuries mentioned by him in column No.8 in form of internal injuries on head, are as under :-

“1. Under scalp contusion over fronto parietal region of size 6X8 Cm, dark red in colour, scalp deep.

2. Under scalp contusion over high parietal region of size 7X4 Cm, dark red in colour, scalp deep.

3. Brain was edematous with patchy diffuse subarachnoid hemorrhage over left frontal lobe, over area of 2X1 Cm, reddish colour on cut section, petechial hemorrhage in white matter noted.”

These are the injuries, which were opined to have caused in the train accident, were found to be fatal enough to cause death.

34. The statement of Dr.Pramod Dode, attached to Grant Medical College, who was present while conducting the postmortem is also recorded. The postmortem was conducted from 6.55 p.m. to 8.05 p.m. on 18/04/2014 by a team of three Doctors and it was also videographed. Dr.Dode, a Resident Doctor, also formed part of the team, who gave the provisional cause of death as haemorrhage and shock due to multiple injuries. The statement of Dr.Dode was also recorded by the CBI, pursuant to the order passed by the High Court. In the wake of the clear statements coming from the Medical Experts, where a distinction is drawn between the two patches

of injuries noticed while conducting the examination. One bluish red in colour, which could have been caused between 24 to 96 hour, are reported to have been received by the victim before the accident, but these external injuries were described as not sufficient to cause death.

In the wake of the medical evidence on record, there is no scope to derive a conclusion that because of the injuries caused to Agnello while he was in custody, his death had occurred. On the other hand, the Medical Experts have clearly opined that multiple injuries sustained in train accident is the cause of his death.

35. In light of the entire discussion, I am unable to subscribe to the view expressed by my Brother Judge, Justice Amit Borkar in his order dated 16/12/2022 in the case of co-accused-Archana Maruti Pujari (supra), where he refused to interfere with the order passed by the Special Judge, directing the charge to be framed under Section 302 of IPC, as the relevant three statements of the eye witnesses, who were present at Wadala Railway Station platform and that of the motorman, who was actually driving the local train under which Agnello got crushed, as he run towards the train, were not brought to his notice.

On appreciating the material place before me, an inference can be drawn that there are flaws in the manner in which the officials of the concerned Wadala Railway Police Station proceeded to investigate C.R.No.49 of 2014, in which they suspected Agnello as his accomplices and picked up them

for the purpose of interrogation. The co-accomplices of Agnello in C.R.No.49 of 2014 were medically examined after their release on bail and some injuries are noticed on their person, but when they were produced for remand before the Magistrate, there was no complaint of any injury nor it was noticed. The possibility cannot be denied that they were subjected to some brutality and there is also a possibility that Agnello @ Richie was also subjected to some torture in order to extract some information from them, while investigating the C.R. in which they were accused of committing robbery. But the question which arises for determination before me is, whether there is material to frame charge against the accused persons, the officials of Wadala Railway Police Station, including the present petitioner for murder of Agnello.

In the wake of the discussion above, my answer is clearly in the negative.

The Hon'ble Apex Court had clearly directed the trial Court to look into the material with impartiality and being uninfluenced by the observations made by the High Court, but the impugned order failed to abide by the said directive and the learned Judge also arrived at a conclusion that charge under Section 302 deserve to be framed.

It is only on appreciation of the evidence collected in the charge-sheet, which was placed before the learned Judge, I arrived at a conclusion distinct from the one recorded in the impugned order, for the reasons, which I have recorded above.

36. As a result, the impugned order passed by the Special Judge in POCSO Special Case No.85 of 2017 on 17/09/2022, deserve to be quashed and set aside, by clearly recording my expressed opinion that accused in Case No.85 of 2017 cannot be charged under Section 302 of IPC, as there is no sufficient material to frame the charge against them.

The writ petition is allowed in terms of prayer clause (a).

No order as to costs.

(SMT. BHARATI DANGRE, J.)