

Neutral Citation No. - 2023:AHC:218168-DB

Judgment reserved on 25.7.2023

Judgment delivered on 17.11.2023

In Chamber

Case :- CRIMINAL REVISION No. - 480 of 2023

Revisionist :- Poonam

Opposite Party :- State Of U.P. And 4 Others

**Counsel for Revisionist :- Ranjeet Singh, Akhilesh Kumar
Vishwakarma, Anil Kumar Singh**

Counsel for Opposite Party :- G.A., Divyansh Sharma, Sonu Malik

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant Criminal Revision has been preferred against the judgment and order dated 01.12.2022 passed by learned Additional Sessions Judge/ Special Judge (POCSO Act), Etawah in Final Report Case No.1048 of 2022, arising out of Case Crime No.110 of 2022, under Sections 120B, 302, 376, 504 I.P.C. and Section 3/4 of POCSO) Act, Police Station Bharthana, District Etawah. By the impugned order, learned court below has accepted final report filed by the Investigating Officer after carrying out investigation into the aforesaid case and dismissed the Protest Petition filed by the informant/Revisionist.

2. I have already heard the learned counsel for the revisionist as well as learned counsel for the respondent No.2 to 5, and learned A.G.A. for the State and perused the material available on record.

3. The factual matrix of the case in brief are that in the instant case dead body of Ankit and Sulekha (daughter of the informant/revisionist) was found at the outskirts of the village in the well, the deceased Ankit was son of Pradeep Kumar Shakya. The informant Pradeep Kumar Shakya lodged First Information Report which was registered vide Crime No.258 of 2020, under Sections 302, 201, 120B of I.P.C., just

after recovery of dead body of two adolescent deceased couple. As per first FIR lodged in respect of murder of said Ankit and Sulekha, the informant who is father of Ankit, stated that his son Ankit Kumar who is aged about 17 years had developed lover affair with Sulekha daughter of named accused Ram Prasad; their relationship was going on for last one year to the knowledge of the father of girl, and for that reason family of Ram Prasad had extended threat to Ankit, the deceased that he would be seen and was threatened to be killed. On 30.03.2020 at around 7:30 pm deceased Ankit was caught by Saurabh and other named accused at his shop where he remained present for a long time with Raju @ Razi and thereafter the named accused person who included Saurabh, Rajiv, father and brother of deceased girl had gone away with the deceased towards the field. The informant's brother Sanjeev, Ambika Prasad and his son Sachin had seen the deceased being taken away by the accused persons towards the field. On 02.04.2020 the dead body of Ankit and Sulekha were found in the well of Ahibaran, therefore the informant believed that accused persons had caused the death of informant's son and Sulekha with whom he had developed relationship by something and had thrown their dead body into the well with a view to conceal the evidence. The inquest and postmortem of the dead body of the deceased was carried out. On 02.04.2020 in inquest report the panch witnesses who included family members of both the deceased, had expressed opinion that deceased boy and girl had committed suicide by jumping in the well. However in postmortem report of both the deceased, cause of death was found to be smothering. In the internal examination of the deceased girl hymen was found torn old and heal, her age is mentioned as 17 years (approximate). The approximate time of death was two days ago the postmortem. Vaginal swab was taken for pathological examination. Both the deceased were found to have sustained two injuries on their

person which consists of multiple contusion and abrasion on lip and face.

4. It appears that prior to lodging of FIR by Pradeep Kumar Shakya, the father of deceased Ankit, Smt. Nandlesh (mother of deceased Ankit) lodge a missing report with Station House Officer, Kotwali on 01.04.2020 stating that on 30.03.2020 at about 7:30 pm her son Ankit had gone on being called by Saurabh son of Rajiv to his shop and thereafter he did not come back till 90:00 pm. He was searched in the vicinity, but nothing can be known to him, thereafter another application was given to police on 02.04.2020, but the same facts were repeated, and apprehension was raised that they might have been abducted and thereafter killed. During the search of Ankit this fact emerged that Sulekha also went missing and thereafter the dead body were recovered. The first FIR was lodged at the instance of Pradeep Kumar Shakya on 03.04.2020 at about 17:40 hours against named accused persons. The police investigated the case and submitted the chargesheet against the named accused person in said FIR against Saurabh, Raju @ Razi, Ram Prasad and Shani Kumar, the husband of present revisionist who is sister-in-law of deceased girl.

5. Learned counsel for the revisionist submitted that another FIR was lodged on the orders of court, passed on application under Section 156(3) Cr.P.C. at the instance of Smt. Poonam wife of Shani Kumar, who is sister-in-law (Bhabi) of deceased girl. On 03.04.2020 vide Crime No.110 of 2022, under Section 120B, 302, 376, 504 I.P.C. and Section 3/4 of POCSO Act, District Bharthana, District Etah against Ambika Prasad Shakya, Sanjeev, Sachin Shakya, Arati daughter of Ambika Prasad, deceased Ankit and Ramanand on the basis of version of the revisionist taken in her application under Section 156(3) Cr.P.C.. According to revisionist's version in subsequent FIR the deceased

Ankit was studying in Class 11th at Lala Inter College, Chapaner, where Arati , the accused in second FIR was also studying. On 30.03.2020 Arati came to the house of revisionist at around 7:30 pm to 08:00 pm and asked for sending the deceased Sulekha with her for joint studies and took Sulekha along her after obtaining permission of her family members. After sometime, the father of the deceased Sulekha came to the place of Arati , where he found Arati and Sulekha were engaged in studying and Ankit assured that she would sent Sulekha back to her home after completing the studies and in case delay caused she would come back to home in the morning. On next date 31.03.2020, father of the deceased girl again went to the home Ambika Prasad, who told him that Sulekha, Arati and Ankit are studying in the house of Pradeep Kumar Shakya (father of Ankit). When father of the deceased Sulekha inquired about her daughter from the family members of Ankit, they told that Ankit and Sulekha had gone to the place of teacher and they would come back within one to two hours, but the decease girl never come back, the revisionist and her family believed that family of Ankit had got their daughter untraceable, when revisionist and her family members tried to prevail on accused persons to disclose the whereabouts of the missing girl, they adduced and threatened them with life. The delay in filing application under Section 156(3) Cr.P.C. was due to outbreak of lockdown and due to Pandemic and revisionist being a pardanaseen daughter-in-law of village. It is also stated that the Panchayat was convened by the father-in-law and husband of the revisionist on 31.03.2020 to get their daughter back in presence of local police and after much pressure the accused persons assured to give back their daughter in few days, but ultimately she was done away by accused persons by hatching conspiracy.

6. It is further submitted that during the course of investigation police recorded the statements of informant Poonam, her husband

Shani Kumar, her father-in-law Ram Prasad, the father of the deceased girl as well Ram Prasad alias Ranu of village Pradhan concerned, Smt. Sita Devi mother of deceased girl, witness Arvind Kumar, suspect Ambika Prasad Shakya, Sanjeev Kumar, Arati Kumari, Sachin, brother of deceased Ankit and Ramanand. This fact also emerged that during the course of investigation and witness Kripal Singh, Vikas, Ashok Kumar, Sarnam Singh, Santosh Kumar, Jagdish Singh and Gaya Prasad. He further submitted that this fact emerged during the course of investigation that deceased (Sulekha) was admitted in the Hospital on 26.03.2020 and discharged on 27.03.2020 at about 05 hours for some medical problem, and after three days patient Sulekha went missing since 30.03.2020 and blood clot was found in uterus of the deceased as recorded in her postmortem report.

7. It is further submitted that the allegations of commission of rape by accused persons in present FIR was on the basis of statement of doctor Sushmita Singh, SMO (DWH) Mahila Hospital, Etawah who conducted postmortem of deceased. According to statement of Dr. V.K. Sahu the deceased was admitted on 26.03.2020 for treatment on complaint of vomiting, motion and stomach ache, but family members got her discharged on next day on their own risk.

8. The Investigating Officer after concluded on the basis of statement of independent witnesses, the allegations in the FIR were not substantiated against accused persons. The present FIR has been lodged as counter blast of FIR lodged by Pradeep Kumar Shakya, the father of deceased Ankit against family members of the informant Poonam vide Crime No.298 of 2020. The Investigating Officer submitted final report in the matter and closed the case against named accused persons in present FIR. Feeling aggrieved by the final report the revisionist /informant has filed protest petition before court concerned, which has

been dismissed by court below and final report submitted by Investigating Officer has been accepted by impugned order dated 01.12.2022.

9. Learned counsel for the revisionist submitted that after passing of order by the court below on objection under Section 156(3) Cr.P.C. moved by the revisionist for lodging an FIR. The proposed accused persons Ambika Prasad and two others filed a Criminal Revision before this Court which has been dismissed by this court with observation that the impugned order is based upon relevant considerations and supported by cogent reasons, the same does not suffer from any irregularity, infirmity or illegality requiring any interference by this Court.

10. Learned counsel for the revisionist next submitted that Investigating Officer has recorded statements of the revisionist and her family members by his own without recording their statement in reality. The entire investigation is conducted in pArati san manner with a view to extend advantage to proposed named accused persons and learned court below has accepted the final report in mechanical manner without considering the grounds taken in protest petition filed by the revisionist.

11. Learned court below has rejected the protest petition filed by the revisionist vide impugned order and accepted final report filed by the Investigating Officer on placing reliance on the courts side and outcome of the investigation carried out by the investigating officer in the matter.

12. The learned court below has observed that this fact is stated in case diary that there was love affair between the sister-in-law of the informant namely Sulekha (deceased) and Ankit (deceased) son of

accused Pradeep Kumar, for which the family members of deceased girl had made complaint to the family of the deceased boy.

13. From perusal of the the statements of independent witness as accorded in the case diary reveals that they had not given any evidence in support of the incident as narrated by the informant in her FIR. This fact has also been brought into the picture that on 26.03.2020 the deceased got indisposed and she was taken to hospital by her family members and thereafter deceased boy and girl went missing since 30.03.2020. On 02.04.2020 the dead body of was found and recovered from the well at the outskirts of the village, but family members of the deceased had not come there and family members of deceased boy had taken initiative to sent dead bodies for postmortem examination. The FIR version in present case thus, is not supported by statement of any independent witness examined by the Investigating Officer. This fact is also material that prior to lodging of present FIR, an FIR was lodged at the instance of father of deceased boy, in which family members of the revisionist are named as accused for committing murder of deceased girl and boy and chargesheet has been filed in that case against them.

14. Consequent upon lodging of present FIR, investigation was carried out by the Investigating Officer, who submitted final report after investigation closing the case, closing the case against accused persons who are respondent Nos.2 to 5.

15. From perusal of the written record, it appears to be a case of honour killing in which adolescent boy and girl who were engaged in romantic relationship and love were killed and their dead body was thrown in the well at the outskirts of village to gave this shape of suicide, in inquest report also the panch witnesses and local police opined that this was a case of suicide. However, the case was subsequently registered at the instance of father of the deceased boy,

after disclosure of postmortem examination report in which it is found that it is a case of homicide. The deceased boy and girl got missing since 30.03.2020 and FIR was lodged in the matter on 03.04.2020, inquest was conducted on dead body of the deceased on the basis of report lodged by one Ram Pratap son of Yogesh Kumar, a villager dated 02.04.2020, which was entered into GD of Police Station at around 15 to 20 hours and on the same day postmortem examination of the deceased boy and girl was conducted. In said death information report Ram Pratap has stated that Ankit and Sulekha who are aged about 17 years has committed suicide by falling in well. The present FIR which has been lodged on the basis of order of court's passed on application under Section 156(3) Cr.P.C. moved by the revisionist, against the relatives and family members of the deceased boy on 11.05.2020 which was registered before the court concerned on 27.05.2020.

16. Thus the application under Section 156(3) Cr.P.C. has been filed by the revisionist after a lapse of around two months of the incident and if date is believed which is 11.05.2020, even then the moving of application is highly belated, whereas missing report was lodged by mother of the deceased boy at the earliest. The C.D.R. of Mobile Phone of the deceased boy and girl reveals that their last call took place at around 07:45 pm and faithful days 30.03.2020. The Investigating Officer collected mobile phones of deceased persons on 19.05.2020, during investigation of Case Crime No.258 of 2020, the Investigating Officer has concluded that present FIR has been lodged belatedly by the revisionist with a view to exert pressure on previous FIR lodged in Crime No.258 of 2020 against her family members by father of the deceased boy and learned court below has placed reliance on investigation concluded in the present case.

17. In totality of the facts and circumstances of the case, the sequence of events, statement of witnesses recorded during investigation, the gap in lodging of FIR between the incident and filing of application under Section 156(3) Cr.P.C. by the revisionist without expressing any opinion on merits of the case no irregularity, illegality and perversity in the impugned order passed by the learned court below, by which the final closure report filed by the police has been accepted and protest petition filed by the revisionist has been rejected. The revision is devoid of merit and deserves to be dismissed.

18. However, the Revisionist is still at liberty to file a criminal complaint before court below in the matter, invoking powers of Court under Chapter XV of the Code.

19. The revision, stands **dismissed** with above observation.

Order Date :- 17.11.2023

Ashish/-