

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3597 OF 2015
WITH
CRIMINAL APPLICATION NO.182 OF 2016

Vasant D. Solanki

Petitioner

versus

The State of Maharashtra and others

Respondents

Mr.C.K.Pendse i/by Ms/Jyoti Chavan and Kunal Phoole for
Petitioner.

Mr.Ayaz Khan for Applicant in APPW.182.2016.

Mr.K.U.Saste, APP, for State.

CORAM : NARESH H. PATIL AND
P.D.NAIK, JJ.

DATE : 10th June 2016

PC :

1. The Petitioner's daughter namely Nikita was married to Arvind Solanki on 25 June 2013. They were residing at Bhabha Atomic Research Colony, Deonar, Mumbai. It is alleged that after marriage, for some time, the deceased Nikita did not conceive a child. On that count, it is alleged that she faced harassment at the hands of her husband and in-laws. On 5 June 2015, as the deceased did not reply to a phone call made by her husband, the husband of the deceased along with other relatives reached the residence. The door of the house after getting the

key was opened. After entering the house, they found that the deceased was hanging to a fan with the help of Dupatta. The husband of the deceased and other relatives immediately removed the body of the deceased and they took the deceased to Rajawadi Hospital. Further it is submitted that after examination, the doctors declared the deceased dead. Post mortem was conducted on 5 June 2015. The cause of death was mentioned as "*ligature mark over neck*", however, the opinion was reserved for CA/HP. This opinion was given by medical officer of Rajawadi Post Mortem Centre, Ghatkopar, Mumbai on 5 June 2015. The final cause of death was given by two Medical Officers of Rajawadi Post Mortem Centre, Ghatkopar on 5 October 2015 as "*death due to hanging*".

2. The Petitioner filed a complaint on 5 June 2015 itself to the concerned Police Station making allegations against the husband and in-laws of the deceased. The complaint was registered as a first information report and the Police started investigation. Charge sheet came to be filed on 13 October 2015. The charge sheet, apart from statements of persons recorded by the Investigating Officer which are placed on record, also contains two opinions of the medical officers of Post Mortem Department. The forensic report in respect of viscera, blood and nail clippings is placed on record. Certain photographs of the deceased are also placed on record. CDR report of cell phone used by the deceased, husband, in-laws of

the deceased and brother-in-law of the deceased are other materials collected by the Investigating Officer amongst other details.

3. The Petitioner who is father of the deceased has approached this Court with a grievance that the investigation is not done properly and fairly, which has caused prejudice to the Petitioner and his family members. It is the case of the Petitioner that his daughter must have been killed/murdered by the husband and in-laws of the deceased.

4. Learned counsel appearing for the Petitioner has narrated the lapses committed by the Investigating Officer in conducting the investigation. According to the learned counsel, the CDR of phone of Arvind Solanki (husband of the deceased) has not been properly scrutinized. The approximate time of death of the deceased was not examined. There were marks on the person of the deceased which were not investigated properly. The cell phone of the deceased which was seized by the Police, was not sent to the forensic analysis. The dupatta which was allegedly used by the deceased to hang herself, was not sent for forensic analysis.

5. The Petitioner raised suspicion about the version of Mahesh Solanki. In the statement which Mahesh Solanki has given, it is stated that he had reached the hospital at Ghatkopar

where his aunt was admitted at 9 pm, whereas, his CDR indicates that he reached the hospital by 9.51 pm. Pertinently, it is stated that, between 20.44 p.m. to 21.51 p.m. Mahesh Solanki was at his residence as per CDR record and the death occurred, according to the prosecution, in between 8 p.m. and 9.30 p.m..

6. It is stated by the learned counsel for the Petitioner that CDR reports of the cell phone of husband of the deceased are not looked into by the Investigating Officer. It is further submitted that CCTV footage of Sarvodaya Hospital and CCTV footage at the main gate of the residential house of the deceased were not collected by the Police. There is no investigation done to verify as to when the husband and/or in-laws and/or brother-in-law of the deceased reached/left the hospital and/or their house.

7. Learned APP has replied to each and every issue raised by the Petitioner with the help of instructing officer present in the Court. Learned APP has referred to relevant material of the charge sheet. In the course of hearing we found that the medical officer had given opinion on the use of Dupatta by the deceased, which document admittedly is not a part of the charge sheet. We noticed that the dupatta was not sent to forensic analysis. CCTV footages of the residential premises where the deceased was staying and of the Sarvodaya Hospital,

were not collected. It is pertinent to note that CCTV footages normally have fixed memory period and it is difficult to get CCTV footages after expiry of such period. On a communication to Sarvodaya Hospital, the said hospital informed that the memory of CCTV is of three weeks and they are unable to provide any footage to the Investigating Officer. The Investigating Officer has not checked the inward register of Sarvodaya Hospital. The letter issued to Sarvodaya Hospital asking for CCTV footage and reply received from the hospital, is also not part of the charge sheet. In the photographs which are on record, we have seen certain injury marks around the neck of the deceased. Learned APP states that the Inquest Panchanama is signed by the sister of deceased Ms.Bhavana.

8. Another crucial document is the suicide note, which the prosecution has allegedly recovered from the place of incident, which bears the date of 4 June 2013. It is written in English and Gujrathi language. This note was sent to handwriting expert along with a sample of handwriting of the deceased. It is submitted by learned APP that the suicide note was written by the deceased herself. A question is raised as to whether the Investigating Officer investigated and verified the genuineness of the sample writing, which was sent along with the suicide note.

9. We have looked into the issues raised by the Petitioner and replies given by learned APP thereto, not with an angle that the husband or the in-laws of the deceased must have committed murder of the deceased. The question is whether the investigation is carried out in proper, transparent and professional manner. We find that the investigation is lacking in satisfying these parameters. A proper and professional investigation can instill confidence to the affected persons. It is the hallmark of effective criminal administrative system. We are not satisfied with the manner in which investigation in the present case is carried out by the Investigating Officer. It does appear that the Investigating Officer has adopted age-old system of investigation of recording statements and left out important area of investigation e.g. collecting CCTV footages, to cross check the statements given by the accused with available material, assistance on scientific lines and help of modern technology.

10. We find it appropriate in this case to direct the Investigating Officer to further investigate on the issues including issues which we have highlighted in this order. The Petitioners are entitled to file appropriate representation to the Investigating Officer and/or Senior Inspector of Police of Trombey Police Station stating specifically the points for further investigation, as were raised before this Court in an hand-

written note submitted by the learned counsel for the Petitioner. The note tendered by the learned counsel for the Petitioner is taken on record and marked "X" for identification. Such an application be filed by the Petitioner within two weeks from today. If such an application is filed, we direct the Senior Police Inspector of Trombey Police Station to look into the application and issues referred in this order and carry out further investigation.

11. Without prejudice to either of the parties, the Senior Inspector of Police, Trombey Police Station shall conduct further investigation under the supervision of Deputy Commissioner of Police, Zone-VI, Chembur, Police (Respondent no.3 herein) and file additional report in the Trial Court on its own merits. At the cost of repetition we direct the Investigating Officer to forward the Dupatta, photographs along with post mortem report, report of the medical officer for getting opinion of forensic expert. The documents, reports, materials etc. which are yet to be filed by the prosecution before the Trial Court, be filed along with further report to the Trial Court.

12. The Forensic Department, Kalina, Mumbai and other experts who would be receiving the articles and documents for opinion purpose, shall expeditiously deal with them and submit their opinion to the Investigating Officer. The Senior Police Inspector, Trombey Police Station, shall file appropriate report

under Section 173(8) of the Code of Criminal Procedure, 1973 at the earliest.

13. We clarify that this order is passed without prejudice to the rights and contentions of both the sides. All issues on merits are kept open. The petition stands disposed of with above directions.

14. The Registrar (Judicial-I) shall forward copy of this order to Respondent no.3 herein, who shall, in turn, monitor the investigation.

(PD.NAIK, J.)

(NARESH H.PATIL, J.)

MST