

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 250 of 2015

Order Reserved on 14.07.2017

Order Delivered on 27.07.2017

Madhav Singh Chandrakar S/o Shatrughan Singh Aged About 41 Years R/o Village Kande, Ps Doundi, District Durg Now District Balod Chhattisgarh.

---- Petitioner

Versus

1. Sewa Singh Oberai Aged About 60 Years R/o House No. M.I.G. (C) 325, Padmanabhpur, Behind Police Chowki, Ps Mohannagar, District Durg Chhattisgarh, Contractor - Under Pradhanmantri National Rural Road Scheme.
2. Maan Singh Aged About 45 Years R/o Village Gujra, Police Station Dallirajhara, District Durg Now District Balod Chhattisgarh, Supervisor - Under Contractor, Sewa Singh Oberai, Pradhanmantri National Rural Road Scheme.
3. Punit Sen Aged About 45 Years R/o Village Durithema, Police Station Doundi, District Durg Now District Balod Chhattisgarh.
4. Anil S/o Bastamal Sindhi Aged About 41 Years R/o Gupta Chowk, Dallirajhara, District Durg Now District Balod Chhattisgarh.
5. K.P. Markam, The Then Inspector, Police Station Doundi, District Durg Now Distt. Balod Chhattisgarh Presently Posted At Police Station Madanwada, Tah. Dongargarh, District Rajnandgaon Chhattisgarh.
6. Ravirai, Additional Superintendent Of Police, Crime Branch Sector 6, Bhilai Nagar, District Durg Chhattisgarh R/o N.P.A. 5-A, Sector No. 9, Thana Sector No. 6, Bhilai Nagar, District Durg Chhattisgarh.
7. M.R. Nayak, Thana Incharge, Rajhara, District Durg Now District Balod Chhattisgarh.
8. Dr. N.K. Thakur, Medical Officer, Primary Health Centre, Doundi, District Durg Now District Balod Chhattisgarh.
9. Bhagwati Prasad S/o Tukaram Kotwar R/o Village Nagar Tola, Police Station Doundi, District Durg Now District Balod Chhattisgarh.
10. State of Chhattisgarh through the Station House Officer, Police Station Doundi, District Balod, Chhattisgarh.

---- Respondents

For the Petitioner	:	Shri Chhagan Lal Sagar and Shri Manish Poose, Advocates.
For Respondents No.1 to 9	:	Shri R.S. Marhas, Advocate.
For Respondent No.10/State	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

1. This petition under Section 482 of the Code of Criminal Procedure has been brought with a prayer to exercise inherent jurisdiction for setting aside the impugned order passed by the Sessions Judge, Balod in Criminal Revision No. 53 of 2014 vide order dated 4.2.2015 confirming the order of dismissal of the complaint by the trial court and also to direct registration of offence against the private respondents in this case.

2. Learned counsel for the petitioner submits that deceased – Virendra Kumar Chandrakar was a student and also a farmer. Respondent No.1 – Sewa Singh Oberai is a contractor, who had the work order for construction of road of village Kande to village Kuankoti under the Prime Minister Road Scheme and respondents No.2 to 4 – Maan Singh, Punit Sen and Anil are his associates. Deceased – Virendra Kumar Chandrakar observed that the road construction being done by respondent No.1 was substandard and the material used in that construction was of low quality. Deceased- Virendra Kumar Chandrakar informed respondents No.1 to 4 about the substandard construction of road and declared his intention to make a complaint to the Collector of the District on 8.3.2009. In the night of the same day, deceased departed from Dalli Rajhara and thereafter dead-body of the deceased was found in the morning of 9.3.2009 at 7:00 am. On the spot of the incident, P.S. Doundi, District Durg registered an offence under Section 304-A of the Indian Penal Code against unknown driver of a vehicle considering the death of the deceased as a hit and run accident. It is also submitted that the petitioner, who is the elder brother of the deceased, not being satisfied with

the action of the police with respect to the incident of death of the deceased and alleging that the police has lodged a false First Information Report, filed a private complaint before the Court of Judicial Magistrate First Class, Dalli Rajhara. After conducting a preliminary enquiry, JMFC, Dalli Rajhara passed an order dated 18.8.2010 dismissing the complaint under Section 203 of the Cr.P.C. This order was challenged in Criminal Revision No. 33 of 2011 before the Second Additional Sessions Judge, Balod which was decided by order dated 2.2.2013 by which the petition was allowed and the trial court was directed to conduct an additional enquiry and pass suitable orders. JMFC, Dalli Rajhara conducted further enquiry in the complaint and passed an order dated 26.3.2014, dismissing the complaint again under Section 203 of the Cr.P.C. Pursuant to this order, Cr.M.P. No. 351 of 2014 was preferred before this court which was decided by order dated 16.9.2014 observing that the petitioner has an alternative statutory remedy of preferring a revision before the Sessions Court below and the petition was dismissed. Pursuant to which Revision Petition No. 53 of 2014 was filed which has been decided by the Sessions Judge, Balod by the impugned order dated 4.2.2015 in which again the order of the trial court has been upheld and the revision petition has been dismissed.

3. It is submitted in the arguments on behalf of the petitioner that the postmortem report does not mention that the death of deceased has resulted due to road accident. There were witnesses of the spot who have stated before the trial Court that they saw respondents No.1 to 4 throwing away the body of the deceased from a car, hence, clearly this had been a case of conspiracy and murder of deceased Virendra Kumar Chandrakar and the trial court and the Revisional Court should have taken notice of these facts

while passing the impugned order. Reliance has been placed on the judgment of the Apex Court in the case of **Surender Kaushik and Ors. vs. State of Uttar Pradesh and Ors.** reported in **AIR 2013 SC 3614**.

4. Learned counsel for private respondents submits that the unfortunate death of the deceased was a result of road accident caused by some unknown vehicle; the case has been thoroughly investigated by the police and no evidence was found that the death could have been an offence of murder. The witnesses have improved their statements compared to which they had given to the police in the investigation of the offence registered. Apart from that, the postmortem report though not mentions the mode of death but the nature of injuries described in it are suggestive of accidental death. Hence, no case is made out against the private respondents.

5. Learned counsel for the respondents opposed the petition and the arguments submitted in this behalf.

6. Perused the material on record of the complaint case, registered as M.J.C. No.35 of 2010 and the copy of merged intimation attached mentions that an information has been received in the intervening night of 8th and 9th March, 2009 informing P.S. Doundi that a dead-body has been found near village **Narra Tola** and a motorcycle is also found on the spot of incident in damaged condition. Later on, FIR No.22 of 2009 was recorded on the same day at 8:05 am and offence was registered under Section 304A of the IPC against unknown driver of unknown vehicle.

7. The injuries found on the body of the deceased in the copy of the postmortem report are as follows:

1. Lacerated wound on the forehead.
2. Lacerated wound on the left side of temporoparietal region.
3. Lacerated wound on the right temporoparietal region of the head.
4. Lacerated wound over the left mastoid region below the back of the ear.
5. Abrasions were found on left elbow, forearm, left knee, below the left knee, anterior medial part of the left leg and over medial aspect of the left side of the knee.
6. The injury on head was coupled with fracture of frontoparietal bone and temporoparietal bone.

On opening the head, extradural hematoma was present before the fracture of bone alongwith subdural haemorrhage over right cranial fossa. It was opined by the doctor that the mode of death is coma due to head injury. No opinion was given as to death was whether accidental or homicidal. The witnesses were examined by the petitioner/ complainant in the complaint case.

8. Petitioner – Madhav Singh Chandrakar (PW-1) does not appear to be a witness of the incident and he has stated that he reached on the spot at about 12:30 in the night and saw the dead-body of his brother/ deceased lying on the side of the road. Thereafter, he saw respondents No.1 to 4 who were present on the spot throwing the dead body of the deceased. Later on, Punam Chand Jain (PW-2) stated that he was informed that the deceased

died in an accident and he has not stated anything in support of the complaint. Arun Kumar Tripathi (PW-3) has stated that he was in company of the petitioner. After reaching the spot, he saw that four persons were throwing the dead-body and the motorcycle, however he could not see and identify clearly the persons present on the spot. Shesh Kumar Chandrakar (PW-4) stated that he was informed by Madhav Singh Chandrakar that respondents No.1 to 4 were throwing the dead-body of the deceased. Statements of the witnesses recorded in additional enquiry as per the order of Revisional Court do not disclose anything else.

9. Even if it is assumed that respondents No.1 to 4 were the persons who were seen throwing away the dead-body of the deceased and his motorcycle to the side of the road, this by itself is not a ground to assume or presume that respondents No.1 to 4 had assaulted and caused fatal injuries to the deceased. The doctor who conducted the postmortem examination has not given any opinion that the death was homicidal or accidental and it cannot be regarded as suspicious. Injuries caused to the deceased were lacerated wounds and abrasions. In case of accidental death due to impact from some vehicle or due to falling on ground or on colliding with some object, there is a possibility that this kind of injuries may be caused to the person who suffered the impact or fall on the ground. Hence, on the basis of the evidence before the court nothing can be attributed against respondents No.1 to 4 and even *prima facie* there is nothing against these respondents so that they could be held responsible for the death of deceased Virendra Kumar Chandrakar. On due consideration, no error is found in the orders passed by the courts below and no reason is found for this court to exercise

its inherent jurisdiction under Section 482 of the Cr.P.C. Hence, this petition is devoid of merits and it is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi