

**CRR 796 of 2020**

**Hatem Ali Mondal & Ors.  
Vs.  
The State of W. B.**

**Mr. Asimes Goswami  
Ms. Paulomi Banerjee  
.....For the Petitioners  
Mr. S. G. Mukherjee, Ld. P. P.  
Mr. Arijit Ganguly  
....For the State**

Mr. Goswami, learned advocate for the petitioners challenged the order dated 28.01.2020 wherein the learned court was pleased to refuse the prayer advanced by the accused petitioners for examination of Dr. R. N. Pal, attached to Kalna Sub-divisional Hospital and who was cited by the prosecution as chargesheeted witness no.25. The contentions of the learned advocate for the petitioners are expressed in the revisional application in paragraph 9 which is set out as follows:

***“9. The petitioners state that first autopsy surgeon (CSW No.25) opined the cause of death of both cases as suicidal in nature. Whereas the second autopsy that was conducted after 70 days is of the opinion that one death is suicidal in nature and the other one is homicidal.”***

In view of the sessions trial pending for the last fifteen years, I directed Mr. Mukherjee, learned Public Prosecutor to appear in this matter.

Mr. Mukherjee was handed over with photostat copies of the two post mortem reports which was conducted by CSW No.

25 and CSW No. 26.

On a cumulative appreciation of the issue involved this court is of the opinion that in view of the settled position of law it is prerogative of the Public Prosecutor to rely upon a set of witnesses and a court of law cannot compel which witnesses are to be examined by the prosecution. To that extent the conclusion arrived at by the learned trial court cannot be disputed. However, having regard to the prejudice caused to the petitioners in view of diverse medical opinion, liberty is granted to the defence to call for P. W. 25 as a witness. In case such if prayer is advanced by the accused persons at the appropriate stage, the learned court would ensure the appearance of Dr. R. N. Pal, chargesheeted witnesses no.25 who at the relevant point of time was attached to the Kalna Sub-divisional Hospital and conducted the initial post mortem examination.

This court has been informed that the next date is fixed on 28-01-2021. In case the examination under Section 313 of the Code of Criminal Procedure of the accused persons are over, the learned trial court would afford a reasonable opportunity to the defence for adducing evidence and thereafter take all attempts to complete the trial by June, 2021.

With the aforesaid observations CRR 796 of 2020 is disposed of.

**(Tirthankar Ghosh, J.)**