

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R. 290 of 1989

Kartick Dey & Anr.

-Vs-

State of West Bengal & Anr.

For the Petitioners :

Mr. Jayanta Narayan Chatterjee, Adv.

Mrs. Moumita Pandit, Adv.

Ms. Nandini Chatterjee, Adv.

Mr. Nazir Ahmed, Adv.

Ms. Jayashree Patra, Adv.

Ms. Ritushree Banerjee, Adv.

Ms. Pritha Sinha, Adv.

Ms. Sarda Sah, Adv.

For the State :

Mr. Anand Keshri, Adv.,

Heard on :

10.02.2022.

Judgment on:

07.03.2022.

Ananda Kumar Mukherjee, J. :-

1. The petitioners who are accused person in Indas Police Station Case No. 1 dated 08.12.1987 have preferred this application under section 482 of the Code of Criminal Procedure praying for quashing of the charge sheet submitted against them under section 143/306/397/34 of the Indian Penal

Code, giving rise to G.R Case No. 375 of 1987 of the Court of Sub-Divisional Judicial Magistrate, Bishnupur, District- Bankura.

2. After service of notice upon the Opposite Party No. 1, the State is represented by the state advocate. No one appeared for respondent no. 2.

3. It is a distressing scenario to find that after submission of charge sheet on 30.10.1988, the case could not reach its legal and logical conclusion. It appears from the record that the revisional application filed on 20.02.1989 was dismissed for default on 21.03.2002 and restored on 05.07.2002. It was again dismissed 27.09.2021 for default and subsequently restored on 21.11.2021. The case has come to a grinding halt, without any progress for the last 33 years as further proceedings of the case was stayed.

4. The facts of the case giving rise to this revisional application is that on 17.11.1987 one Goutam Nandi, resident of village Jotebehar, under Indas, Police Station District- Bankura had been called to a Salish at village Jotebehar at Monoshatala at about 9:00 P.M on the allegation that he committed theft of a Branch of Babla tree which belonged to Shyamsundar Dey. The village meeting was attended by Tarapada Dey, Joydev Majhi, Biswanath Dalui, Banshi Dalui, Durga Dey, Shyamsundar Dey, Minoti Nandi the mother of Gautam Nandi and Gour Dey, Netai Dey and many others. On that night people holding Salish imposed a fine of Rs. 501/- against Goutam and asked him to pay, the fine amount, immediately. Goutam refused to pay. At this the accused persons threatened him that they would tie him up and hand him over to police for alleged theft and also declared that they would impose social

boycott against Goutam and his family members. After the meeting ended without any decision the accused persons out of grudge threatened to kill Goutam and tying him with a rope on his waist disappeared in the darkness. His mother and other family members searched for him for some time but failed to find him. On the following day, on 18.11.1987 at 7:00 A.M. Goutam Nandi was found hanging from the branch of a Babla tree at Harbandhidanga at village Jotebehar with his 'Chador'. Shyamsundar, the elder brother of Goutam submitted a written information to Indas Police Station on the basis of which an Unnatural Death case no. 10 to 1987 was started. The body was brought down and post mortem examination held at the Sub-Divisional Hospital, Bishnupur, Bankura.

5. Since police did not start any specific case, Shyamsundar, the elder brother of the deceased filed a petitioner of complaint under section 156 (3) of Cr. P.C before the Learned S.D.J.M, Bishnupur on 03.12.1987. On the basis of the complaint Indas P.S Case No. 1 (12) of 1987 was registered under section 143/364/302/34/387 of IPC against the Kartick Dey, Biswanath Dalui, Banshi Dalui, Tarapada Dey, Durga Dey, Joydev Dey, Shyamsundar Dey and Paresh Nandi. It was alleged in the application under section 156 (3) of Cr. P.C. that on that night the accused person had threatened Goutam Nandi in the Salish held by them and when Goutam did not accede to pay the penalty imposed by the accused person, they had kidnapped him and caused death to him and thereafter hanged him from the Babul tree with the help of a 'Chador' he was wearing.

6. The petitioners have preferred this revisional application under section 482 of the code of Criminal Procedure, praying for quashing of the charge sheet against them on the grounds inter alia, that the charge sheet against the petitioners is baseless and unfounded and that the officer-in-charge of Indas police station acted illegally in submitting the charge sheet against the petitioners. It is further contended that there is no incriminating material against the petitioner and no material transpired against them in course of investigation of U.D. case no. 10 of 1987. Besides, the Doctor had found it to be a case of suicide. The written complaint filed subsequently against the petitioners is an after thought, arising out of village rivalry, as such the charge sheet submitted against the petitioners should be quashed.

7. Mr. Jayanta Narayan Chatterjee, learned Advocate argued the case on behalf of the petitioner principally on two scores. On one hand it is argued that the prosecution case is full of contradictions and discrepancies arising from the statements of witnesses which strike at the root of the prosecution case and secondly, the two petitioners, have been falsely implicated on mistaken identity, as their names do not transpire in course of investigation.

8. It is argued that the alleged occurrence took place on the night between 17.11.1987 and 18.11.1987 but Shyamsundar Dey, the brother of the deceased lodged the complaint under section 156(3) of the code of Criminal Procedure only on 03.12.1987, that is sixteen days after the occurrence. It is contended that there was no such disclosure by the family members of the deceased to police at the time of investigation of Indas Police Station Unnatural

Death case No 10 of 1987 and the story of kidnapping of Goutam Nandi after the meeting at Monoshatola that night, and his homicidal death is an afterthought. It is further argued on behalf of the petitioners that a specific case at Indas police station was registered on 08.12.1987 on the basis of the complaint lodged by Shyamsundar Nandi under section 156 (3) of Cr. P.C. In course of investigation Minoti Nandi alias Niyati Nandi, the mother of the deceased was examined and she has given out a different story, digressing from the story of kidnapping and murder of Goutam as disclosed in the FIR. Minoti has clearly stated that on the date before the incident, at about 2:00 to 2:30 P.M. her son Goutam had brought a cut down branch of Babla tree to their house. Shyamsundar Dey on receiving such information took away the Babla tree branch from their house and called a meeting on the following day at Monoshatala of their village at 9:00 P.M. Goutam was called to the meeting, which was attended by several other persons including Biswanath Dolui, Banshi Dalui, Joydev Majhi, Kartick Jalal, Shyamsundar Dey, Naba Dey, Gour Dey. Tarapada Dey, the brother-in-law of the deceased asked Goutam in the meeting to admit his guilt. Minoti Nandi, further stated that Goutam admitted that he had brought the Babla branch to his house which was lying there. At this Shyamsundar Dey, Durga Dey, Banshi Dalui, Biswanath Dalui, Joydev Majhi and others become furious and imposed a fine of Rs. 501/- against Goutam and asked him to pay immediately. Goutam refused to pay on the plea that he did not commit any wrong. Minoti Nandi further stated that the person

holding meeting threatened to impose a social sanction against their family and also threatened to hand over Goutam to police, tying him with rope.

9. Learned Advocate for the petitioners drew court's attention to the statement of the mother of the deceased, where she disclosed that after the meeting ended amidst such altercation, Goutam left Monoshatala and went away alone. Minoti called her son but he did not return. Minoti then came home with her elder son Shyamsundar. Later at night when Goutam did not return, she asked Shyamsundar to inform Santiram and Shyam Doripa and also searched for Goutam. She stated that Kartick Jalal, Panchayet member on being asked replied who would search at night. On the next morning at 7:00 A.M Goutam was found hanging from a Babla tree at 'Harbandir danga' at village Jotebehar, with a 'Chador' (wrapper) tied to his neck.

10. Learned advocate for the petitioners contended that there are discrepancies between the content of FIR and the statements of witnesses. While in the FIR the defacto complainant alleged that Goutam was kidnapped after the meeting and was murdered and later hanged by his neck with chadar, the witnesses did not support the story and a charge sheet has been submitted in this case under sections 143/306/387/34 of the Indian Penal Code. Furthermore, it is stated in the charge sheet that the autopsy surgeon was requested to clarify his post-mortem and as per his opinion the death was suicidal. Accordingly, the charge sheet under section 306 of IPC was submitted instead of a charge under section 302 of IPC which has been motivatedly alleged.

11. The second facet of argument advanced on behalf of the petitioners is that the charge sheet have been erroneously submitted against the petitioners Kartick Dey and Joydev Dey who were not even present in the meeting and are different persons, as such it is urged that the proceeding as well as the charge sheet submitted in this case against the petitioners should be quashed.

12. Mr. Anand Kesari, learned Advocate for the State strongly assailed the arguments advanced on behalf of the petitioners. It is submitted that the names of petitioners are mentioned in the FIR and after investigation police has submitted charge sheet against them in connection with a serious offence, where a young boy of 18 years who was called to a village meeting by the accused persons, imposed fine and threatened of social boycott, ultimately went missing and found dead hanging from a Babla tree. It is submitted that in case of a suicide the ligature mark appear to be discontinuous but in a case of homicidal death due to asphyxia by strangulation, the ligature mark appears to be continuous as is found in the present case. Learned advocate for the State further argued that the petitioners have been specifically named in the FIR by the elder brother of the deceased who had accompanied his mother and brother to the meeting. Therefore, the question of mistaken identity of the petitioners cannot be raised at this stage when charge sheet has been submitted against them. It is contended that it has to be seen if the witnesses identify the petitioners in course of trial as persons who were involved. According to learned advocate for the State this dispute of facts cannot be decided in course of considering an application under section 482 of the Cr.

P.C. It is urged that the present application has no merit and is liable to be dismissed.

13. I have perused the revisional application filed by the petitioners along with annexure 'A' relating to U.D Case No. 10 of 1987, the First Information Report in G.R Case No. 375 of 1987 and contents of the Case Diary which include the statements of witnesses, inquest report and the post-mortem report of the deceased.

14. This is a tragic case by which a 'Khaf Panchayet' has been instrumental in leading to death of a young man for a frivolous cause. The post-mortem report indicates that there was a continuous ligature mark on the neck of the deceased, which is unusual in case of suicidal death. Be that as it may, the offence committed cannot be taken lightly while considering the prayer for quashing of the case.

15. Regarding the question of mistaken identity of the two petitioners as argued by Mr. Chatterjee, I am of the considered view that it is a dispute of fact and can only be decided in course of a trial.

16. The petitioners have been named as accused person in the FIR disclosing their involvement. While witnesses like Minoti Nandi, Netai Dey, and Gaur Dey have stated the names of the petitioners they have not stated their surnames. In such a case the question of identification of the accused persons would arise in course of trial. I have given thoughtful consideration to the rival submissions advanced before me. So far as the question of identity of a petitioner is concerned there is ample scope to decide such issue by the trial court.

Statements made by witnesses to the investigating officer, referring to the accused persons by the wrong surname per se do not demolish the case against them. The de facto complainant is also a witness in this case and his evidence before the trial court has to be assessed before arriving at any conclusion regarding involvement of the petitioners who are FIR named and have been charge sheeted. Furthermore, the question raised by learned advocate for the petitioners as to the difference of identity between these petitioners and those referred by the witnesses before the investigating officer are all matters regarding disputes of facts and are in the realm of appreciation of evidence which this court shall refrain to do while considering a petitioner under section 482 of the Cr. P.C.

17. In view of my above discussion I find a hold that the plea taken by the petitioners for the purpose of quashing the FIR proceeding and charge sheet against them in this case is not tenable and the same is dismissed on contest. The revisional application stands dismissed on contest. Interim order of stay of proceedings stands vacated. Connected applications if any also stands disposed of. Copy of case diary be returned to the learned advocate for the State.

18. Let a copy of this judgment be sent to the learned court of A.C.J.M Bishnupur, Bankura for information with a direction to commit the case to the Sessions Court within a fortnight. The jurisdictional court shall thereafter expedite the proceeding and after framing of charge conclude the trial,

preferably within a period of six months from the date of commitment. The trial court shall not be influenced by any of the observations made herein above.

19. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)