

**CALCUTTA HIGH COURT**  
**IN THE CIRCUIT BENCH AT JALPAIGURI**  
**CRIMINAL REVISIONAL JURISDICTION**

**PRESENT:**

**THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**CRR 150 of 2019**

**Susanta Roy**

**Versus**

**State of West Bengal & Others.**

**For the petitioner: Mr Arnab Saha, Advocate.**

**Mr Sudhindra Das, Advocate.**

**For the State: Mr Aditishankar Chakraborty, Additional Public Prosecutor.**

**Mr Arun Kumar Sarkar, Advocate.**

**Heard on: 05.08.2022, 08.08.2022, 12.08.2022**

**Judgment on: 11.11.2022.**

**BIVAS PATTANAYAK, J. : –**

1.The present revisional application has been filed by the petitioner under Article 227 of the Constitution of India read with Sections 401/397 and 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Code') for setting aside order dated 12 January 2019 passed by learned Chief judicial Magistrate, Jalpaiguri in GR Case no. 3985 of 2018 (arising out of Moynaguri Police Station case no. 416 of 2018 under Sections 302/201/34 of the Indian

Penal Code) pending before the said court and consequently for further investigation of the case.

**2.** The brief fact of the case is as follows.

(i) The daughter of the petitioner namely Tapasi Roy, aged about 18 years 8 months a student of class VIII in Sipaibari Madhyamik Sikhya Kendra, abruptly went missing on 5 October 2018 at about 7 PM.

(ii) The petitioner lodged a missing diary at Moynaguri Police Station on 6 October 2018 vide G.D Entry no. 264 of 2018.

(iii) On 9 October 2018 the police recovered the dead body of the victim, by digging, from an abandoned place in a jungle 9/10 km away from the house of the petitioner and on being informed the petitioner rushed to the said place and identified the dead body of his daughter.

(iv) Thereafter the petitioner lodged written complaint on the said date (i.e 9 October 2018) and on such basis Moynaguri Police Station Case no. 416 of 2018 dated 09.10.2018 under Sections 302/201/34 of the Indian Penal Code was a registered against opposite party nos. 2, 3 and 5.

(v) An investigation was undertaken in order to investigate the offence.

(vi) During the course of investigation post-mortem was held on the dead body of the victim, which was found in a decomposed condition after four

days due to which reason autopsy could not be done accurately and the autopsy surgeon in the post-mortem report being no. 1859 of 2018 dated 10.10.2018 opined that the cause of death cannot be ascertained from the available body parts.

(vii) Upon conclusion of investigation the police authority submitted charge sheet vide C.S no. 04 of 2019 dated 11.01.2019 before the learned Chief Judicial Magistrate, Jalpaiguri on 12 January 2019 against opposite party nos. 2 to 5.

(vi) The learned Chief Judicial Magistrate, Jalpaiguri took cognizance of the alleged offence against the accused persons on 12 January 2019 in a mechanical manner without considering the aspect that the chargesheet does not disclose any tangible and live link of the accused persons with the cause and manner of death of the victim.

**3.** Being aggrieved by and dissatisfied with the impugned order dated 12 January 2019 the petitioner being the father of the deceased victim has filed the present revision for setting aside the impugned order of taking cognizance of offence and for further investigation of the case.

**4.** Mr Arnab Saha, learned advocate for the petitioner submitted that the investigating officer of the present case has substantially failed to collect clinching evidence in order to connect the accused persons with the cause of

such brutal murder of the daughter of the petitioner and thereby submitted a sham report in the form of chargesheet.

He further submitted that one of the crucial aspects is that the autopsy surgeon in the post-mortem report has opined that since no ante-mortem injuries are detected, the cause of death cannot be ascertained from the available body parts. Be that as it may, the said doctor on query of the investigating officer further opined that the possibility of strangulation could not be ruled out as muscles, soft tissues, hyoid bone, thyroid and cricoid cartilages, upper tracheal rings, great vessels and nerves absent over the neck region due to post-mortem gnawing. In spite of such opinion the investigating officer did not explore any other options to ascertain the cause of the death of the deceased by the resorting to further expert opinion.

Furthermore it is submitted that the noting in the post-mortem report indicates evidence of traumatic amputation of entire left upper limb, the blackening and singeing of different parts of the body are evidence of ante-mortem chemical burn injuries, torn condition of wearing apparels are evidence of possible physical and sexual assault on the deceased. Moreover the skull has been skeletonised due to chemical burn injuries which have not been detected by the autopsy surgeon. The deep burn injuries over different parts of the body have been declared to be decomposition which is palpably an incorrect finding. The amputation of left-arm and forearm has not been

mentioned in the post-mortem report. There are no evidence of gnawing and clawing of animal teeth and bite marks over abdomen, thorax and neck. The ante-mortem injuries over head, neck, face as well as missing of entire left upper limb were sufficient to cause death of the deceased in ordinary course of nature. Accordingly the finding of the autopsy surgeon that the cause of death could not be ascertained from the available body parts is incorrect. Further where it is found that there is self-contradiction in the finding of the autopsy surgeon, the opinion arrived at by the autopsy surgeon can be discarded and in support of his contention he relied on the decision of Hon'ble Supreme Court passed in ***Mohd. Zahid versus State Of Tamil Nadu*** reported in ***AIR 1999 SC 2416***.

He further submitted that Call Data Records (CDR) of opposite party no.2-accused and the deceased has not been collected which could have been a tangible evidence of the role played by opposite party no.2-accused in commission of the murder of the deceased.

Relying on the decision of this court passed in ***Nepal Krishna Roy versus State of West Bengal*** reported in ***MANU/WB/0642/2014***, it is submitted that steps for recording the judicial statements of the best eyewitnesses namely the mother of the deceased Lalita Roy (CSW no.5), neighbour of the deceased Monindranath Roy (CSW no.8), and maternal uncle of the deceased Nitai Roy (CSW no.9) ought to have been taken during the course of

investigation by the investigating officer and such remissness in investigation would ultimately enure to the benefit of the accused persons in trial.

Furthermore relying on the decision of Hon'ble Supreme Court passed in **CBI versus State of Gujarat** reported in **(2007) 6 SCC 156** it is submitted on behalf of the petitioner that further investigation can be directed to be undertaken if it is found that the investigating agency is not doing proper investigation or that there is reason to believe that there is laxity in the investigation.

Moreover it is submitted that where the investigation *ex facie* is unfair, tainted, *mala fide* and smacks of foul play the superior courts in exercise of its power under section 482 of the Code should set aside such investigation and direct for fresh investigation or *denovo* investigation if necessary even by another independent investigating agency and in support of his contention he relied on the decision of Hon'ble Supreme Court passed in **Vinay Tyagi versus Irshad Ali and Ors** reported in **(2013) 5 SCC 762**.

He further submitted that until charges are framed the court has ample power to direct further investigation and in support of his contention he relied on the decision of Hon'ble Supreme Court passed in **Vinubhai Haribhai Malaviya and Ors. versus State of Gujarat and Ors.** reported in **AIR 2019 SC 5233**.

In view of his aforesaid submissions he prayed for setting aside the impugned order of taking cognizance of the offence by the court and direct for further investigation in the matter.

**5.** Mr Aditishankar Chakraborty, Additional Public Prosecutor alongwith Mr Arun Kumar Sarkar, learned advocate appearing on behalf of the State, in reply to the aforesaid contentions of the petitioner, submitted that immediately after the recovery of the decomposed dead body of the victim on 9 October 2018 the investigating agency on the subsequent date i.e on 10 October 2018 arranged for holding the post-mortem on the dead body of the deceased. The doctor conducting the post-mortem of the deceased could not indicate the cause of the death from the available body parts. The investigating officer during the course of investigation thereafter sought for further query from the autopsy surgeon regarding the cause of death. In reply to such query the autopsy surgeon opined that the possibility of strangulation could not be ruled out as muscles, soft tissues, hyoid bone, thyroid and cricoid cartilages, upper tracheal rings, great vessels and nerves absent over the neck region due to post-mortem gnawing. Thus the investigating officer in all promptitude tried to find out the actual cause of death of the deceased and there was no such laches or slackness on the part of investigating agency in this regard. Moreover the opinion of doctor may vary from one to the other. In

the absence of attending circumstances such opinion of a doctor cannot be doubted of it being tainted or biased unless it is shown to be otherwise.

Furthermore he submitted that the statement of the eyewitnesses, who has last seen the victim along with the accused, has been recorded immediately on the date of the recovery of the dead body of the deceased on 9 October 2018.

Moreover the investigating agency has also recorded the statement of the accused persons and leading to the statement of one of the accused namely Bhabesh Roy motor-cycle used for bringing the victim girl, Nokia mobile phone set and golden chain was recovered during the course of investigation.

It is further submitted that the investigating agency has also collected the Call Data Records (CDR) during the course of investigation.

In light of his aforesaid submissions he submitted that there was no such unfairness or remissness in conducting the investigation by the authority. Hence he prayed for dismissal of the instant application.

**6.** In spite of due service of notice none appeared on behalf of opposite party nos. 2 to 5.

**7.** Having heard the rival contentions raised by the parties it appears that the petitioner has prayed for further investigation precisely on following three grounds. *Firstly*, the opinion of the autopsy surgeon that cause of death

cannot be ascertained from the available body parts is incorrect and further expert opinion on the post-mortem noting is accordingly required. *Secondly*, no steps have been taken by the investigating officer for recording the judicial statements of eyewitnesses namely CSW no.5, 8 and 9. *Thirdly*, the Call Data Records (CDR) of the deceased and accused Jitu Roy (opposite party no.2) on the material date and time has not been collected.

**7.1.** The opinion of the autopsy surgeon made in the post mortem report has been challenged on the following grounds as is appearing in paragraph no.14 of the revisional application, which is reproduced for convenience of discussion.

(i) The skull had not skeletonised due to colliquative decomposition but due to chemical burn injuries which the autopsy surgeon could not detect.

(ii) The autopsy surgeon missed the dermoepidermal and deep burn injuries on entire neck, face, upper part of chest, lower part of chest and upper part of abdomen and entire right limb due to gross burn injuries and autopsy surgeon declared those to be evidences of decomposition.

(iii) The left-arm and forearm were traumatically amputated but not mentioned in the post-mortem report.

(iv) There were no evidence of gnawing and clawing of animal teeth and bite marks over abdomen, thorax, and neck. Abdomen was absolutely normal so far as skin was concerned. Underlying muscles were intact. Skins over neck, face, chest area were deeply burnt which is evidence of ante-mortem deep burn injuries with blocking, singeing and reddening of skin.

(v) Ante-mortem injuries were there over head, neck, face as well as missing (traumatic) of left entire limb (upper) which were sufficient to cause death of deceased in ordinary course of nature.

(vi) The autopsy surgeon could not recognize deeper structure of neck due to gross burn injuries.

(vii) There was no evidence of gnawing in any part of soft abdominal parts of body.

It is pertinent to note that the grounds as above showing certain injuries are not appearing in the post-mortem report. The post-mortem report being no.1859 of 2018 dated 10 October 2018 shows following injuries.

“ Post-mortem gnawing with impression of small teeth bite marks over neck, chest & abdominal wall, with muscles, soft tissues, hyoid bone, thyroid & cricoid cartilages, upper tracheal rings, great vessels and nerves absent over the neck region, whole of left shoulder and upper limb absent from the left auxiliary region.”

The post-mortem report reveals that whole of left shoulder and upper limb absent. However it does not indicate of traumatic amputation. One cannot be oblivious to the fact that the dead body was recovered in decomposed condition. Although it is asserted in the grounds that the victim sustained deep chemical burn injuries yet nothing is reflecting from the post-mortem report in this regard. In the four corners of the petition there is no disclosure of materials on which such findings/grounds appearing in paragraph no.14 are based upon. From the case diary it is revealed that soon after the recovery of the dead body of the deceased 9 October 2018 the dead body was sent for post-mortem examination on the subsequent date i.e 10<sup>th</sup> October 2018. The inquest report shows that the body was found in decomposed condition. The investigating agency sent a letter to the autopsy surgeon on 11 October 2018 as to whether the deceased victim received acid injury or not. Thereafter on 18 December 2018 the investigating officer examined the autopsy surgeon verbally and submitted requisition with the following queries (i) What are the cause of death? (ii) Can it be strangulation? And any other points. On 18 December 2018, in reply to such queries, the autopsy surgeon stated that as there is no ante-mortem injury detected, Cause of death cannot be ascertained from the available body parts. She has further stated that possibility of strangulation could not be ruled out as muscles, soft tissues, hyoid bone, thyroid cricoid cartilages, upper tracheal rings, great vessels and nerves absent over the neck region due to post-mortem gnawing. It is found

that the autopsy surgeon in the reply as well has also not mentioned of any chemical burn injuries in the available body parts. Undisputedly the dead body of the deceased had already been cremated. The petitioner-*de facto* complainant did not make any endeavour to challenge the finding of the autopsy surgeon at the earliest point of time before the dead body of the deceased had been cremated. The aforesaid grounds of challenge were also not raised thereafter before any court of law and after a lapse of more than one year this application has been filed on the ground of incorrect findings of the autopsy surgeon. Nothing is shown or found that the autopsy surgeon had unwarranted nexus with the accused persons or she acted under undue influence or coercion of the accused persons in preparing the post-mortem report. There is no reason whatsoever as to why the autopsy surgeon would make incorrect findings in the post-mortem report. Fact remains with the cremation of the deceased the body upon which a second autopsy could have been undertaken no more exists. Accordingly further investigation on such ground will be a futile exercise and only lead to delay in the trial. The Hon'ble Supreme Court in its decision passed in **Mohd. Zahid (supra)** observed as follows.

*“We are aware of the fact that sufficient weightage should be given to the evidence of the doctor who has conducted the post-mortem, as compared to the statements found in the text books, but giving weightage does*

*not ipso facto mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory.....”*

Thus weightage and acceptability of such findings of the autopsy surgeon can be adjudged in trial on the basis of other evidence on record. Further the trial court has widest discretionary power under Section 311 of the Code to summon and examine any witness which appears to the court to be essential for just decision of the case and such power may, if required, be resorted to adjudicate the issue.

**7.2.** It has been strenuously argued on behalf of the petitioner that non-recording of the judicial statements of the mother, maternal uncle and neighbour of the deceased has resulted in irregular and unfair investigation. The investigating agency during the course of investigation has in fact did not record the statement of the aforesaid witnesses under Section 164 of the Code. However, it is pertinent to note that the investigating officer on the very date of recovery of the dead body of the deceased on 9 October 2018 has examined the aforesaid witnesses namely mother of the deceased Lalita Roy (CSW no.5), neighbour of the deceased Monindranath Roy (CSW no.8), and maternal uncle of the deceased Nitai Roy (CSW no.9) and recorded their statement under Section 161 of the Code. It is a fundamental rule of criminal jurisprudence that statements of a witness recorded under Section 161 as

well as Section 164 of the Code cannot be used as substantive evidence and can be used only for the purpose of contradicting or corroborating him. Therefore non-recording of the judicial statements under Section 164 of the Code during investigation cannot be termed to be mislaying of any substantive evidence by the investigating agency and thus cannot be said to be irregular or unfair or tainted investigation. In the decision of this court passed in ***Nepal Krishna Roy (supra)*** cited on behalf of the petitioner, it is found that the daughter-in-law and widow of the deceased made specific complaint before the Superintendent of Police that the second officer of the police station forcibly obtained signatures on the blank sheets of paper and reproduced into complaint in which the names of four persons were mentioned, who in fact were not involved in the crime, with an intent to save the real culprit who appeared to be a highly influential persons in the locality and having political background. Bearing in mind the irregularities in investigation the court directed for formation of a Special Investigation Team (SIT). In the case at hand, however, there are no such allegations that the statements of CSW no. 5, 8 and 9 have been obtained and recorded by the investigating officer by undue influence or inducement or by coercive means. Thus the decision of this court cited as above is distinguishable in facts.

**7.3.** As far as the ground of collecting Call Data Records (CDR) of opposite party no.2-accused namely Jitu Roy @ Jeetu Roy and the deceased is

concerned it is found from the case diary that the investigating officer during the course of investigation has collected the Call Data Records (CDR). Thus such ground does not stand to reason.

**8.** Relying on the decision of Hon'ble Supreme Court passed in **CBI (supra) and Vinay Tyagi (supra)** it has been for vociferously argued by learned advocate for the petitioner that where the investigation *ex facie* is unfair, tainted, *mala fide* and smacks of foul play the superior courts in exercise of its power under Section 482 of the Code should set aside such investigation and direct for fresh investigation or *denovo* investigation if necessary even by another independent investigating agency. Be that as it may, although such is the proposition for grant of further investigation yet in the case at hand no such material revealing unfair, tainted or *mala fide* action on the part of investigating agency could be shown. Thus the decision of Hon'ble court cited as above is distinguishable in facts.

In **Vinay Tyagi (supra)** the Hon'ble Supreme Court has observed while dealing with the aspect of fresh investigation or reinvestigation as hereunder.

*“As already noticed, this is a power of wide plenitude and therefore has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court the court should be reluctant*

*to interfere in such matters to the extent of quashing an investigation and directing a fresh investigation.”*

So keeping in mind the aforesaid observation of the Hon'ble court as it is found that there is no unfairness shown in conducting the investigation by the investigating agency, hence the argument advanced on behalf of the petitioner for further investigation by an independent agency falls short of merit.

**9.** Learned advocate for the petitioner placing reliance on the decision of Hon'ble Supreme Court passed in ***Vinubhai Haribhai Malaviya (supra)*** argued that as charges has not been framed in the case the court has ample power to direct for further investigation. Although charges are yet to be framed in the case at hand but in the absence of unfairness or *mala fide* in the action of the investigating agency such proposition cannot be applied to the case at hand.

**10.** Accordingly, in the light of above discussion the instant Criminal Revision being **CRR no. 150 of 2019** stands dismissed on contest.

**11.** All connected applications if any stands disposed of.

**12.** Interim orders, if any, stand vacated.

**13.** Let a copy of this judgment be sent to the trial court for information.

**14.** Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

**(Bivas Pattanayak, J.)**