

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-38469-2019 (O&M)

Date of Decision: 05.12.2022

Chattarpal

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Gautam Dutt, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

Mr. A.P.S Deol, Senior Advocate with
Mr. H.S. Deol, Advocate for respondent No.5.

* * * * *

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking issuance of a direction to respondents for conduct of fair and impartial investigation in case FIR No. 595 dated 23.7.2019 under Sections 302, 323, 377, 148, 149/120-B IPC, Police Station Sadar Bhiwani, District Bhiwani.
2. The matter pertains to un-natural death of Renu, sister of petitioner. On 23.7.2019, pursuant to receipt of a telephonic intimation as regards death by hanging of Renu wife of Pardeep resident of Kalinga, ASI Ranbir Singh, Incharge Police Post, Kharak Kalan, accompanied by other police officials proceeded to the spot, where the dead body of Renu was found lying on floor. It came to be known that the dead-body had been taken down from

where it was hung and had been taken to Bhiwani and had been brought back. The police officials waited for arrival of relatives of the deceased. Upon arrival of deceased's brother namely Chattarpal from Tosham, the FIR was lodged on the basis of a written application submitted by him.

3. The complainant/petitioner Chhatarpal, alleged in the FIR that marriage of his sister Renu was solemnized in the year 2011 with Pardeep. However, his sister was continuously tortured physically and mentally and harassed by Pardeep and other members of his family. Demands of dowry were allegedly raised and she was given beatings and thrown out of matrimonial home and on account of which one FIR for offence under Sections 498-A IPC etc. was lodged and another complaint under provisions of Domestic Violence Act, 2005 was also instituted. However, later the matter was later compromised and Renu was sent back to her matrimonial home in Kalinga. It is further alleged therein that Renu had disclosed that her husband even forced her to have unnatural sex with him. The complainant further alleged that when deceased had joined her husband Pardeep at his place of posting in ITBP, he had given beatings to her and entered house of Commandant in naked condition resultantly the Commandant had deputed four ITBP officials to escort Renu (deceased) back to Bhiwani. It is alleged that her husband Pardeep had illicit relations with one Dimple who had played a pivotal role in the entire incident. The complainant alleged that his sister had been given merciless beatings and blood had oozed out and she had been hanged.
4. Based on aforesaid allegations, the FIR was lodged for various offences including offence under Section 302 IPC. Post-mortem was got conducted on the same day by a Board of Doctors at General Hospital, Bhiwani. However,

cause of death was not declared immediately in Post Mortem Report (Annexure R-1) for want of viscera report. A team of Mobile Forensic Science Unit (MFSU) was also called at the spot, which examined the spot on 23.7.2019 itself and recorded its "Crime Scene Visit Report" (Annexure R-2). Upon request of the complainant, the investigation was handed over to CIA Staff, Bhiwani. Subsequently, upon receipt of viscera report, report of FSL and Histopathological Report, the Board of Doctors vide its report dated 20.9.2019 (Annexure R-3) declared the cause of death to be Asphyxia due to hanging. Upon conclusion of investigation, a challan has been presented against accused Pardeep Kumar on 23.9.2019 for various offences under Sections 306, 377, 323 IPC, while offence under Section 302 IPC has been deleted. Charges for the said offences are also stated to have been framed against accused Pardeep by trial Court on 14.11.2019.

5. The learned counsel for the petitioner/complainant has submitted that it is a case where the police has been trying to help the accused right from day one and has not conducted the investigation in a fair and impartial manner and that although it is a clear case of murder but the investigating agency has given it a twist so as to substitute offence under Section 302 IPC with a lesser offence under Section 306 IPC by giving a colour of suicide to the offence of murder. The learned counsel has submitted that although the investigating agency relies upon opinion of the Medical Board has opined that it is a case of death by hanging but medical evidence is in the nature of corroborative evidence and that the Courts are not bound by any opinion given by any Doctor or Medical Board in case the same is found to be in contradiction with the factual position and that the medical opinion cannot be given precedence when there is other convincing evidence to the contrary.

The learned counsel has submitted that since the dead-body was also found to be bearing injuries, as is specifically recorded in Post-Mortem Report (Annexure R-1) and also in Crime Scene Visit Report (Annexure R-2), the same was a clear pointer to murder. It has further been submitted that as a matter of fact, two knives were also recovered from the spot. It has, thus, been submitted that the matter needs to be investigated fairly and impartially and offence under Section 302 IPC is required to be added though the police has dropped the said offence at the time of presentation of challan.

6. The learned State counsel, assisted by counsel representing the accused i.e. respondent No. 5 Pardeep, however, opposed the petition and submitted that the matter was investigated in an unbiased manner and all that was needful was done promptly and diligently. It has been submitted that the present case is a case based on circumstantial evidence, there being no witness to occurrence. The learned counsel submitted that upon request of the complainant the investigation had also been handed over to CIA Staff Bhiwani and upon conclusion of investigation, offence under Section 302 IPC was dropped as there was no evidence to support the same and rather medical evidence was to the contrary.
7. The learned State counsel submitted that in the present case since no definite information had been expressed in the post-mortem report as regards cause of death, an application had been moved to the Medical Officer, Govt. Hospital, Bhiwani on 5.9.2019 to furnish opinion regarding the cause of death, specifically as to whether the deceased had died on account of hanging or not and that the Medical Board comprising of three doctors, vide minutes dated 9.9.2019, recorded that the final opinion regarding cause of death can

be furnished only after receipt of chemical analysis report and HPE report from RFSL, Sunaria. The learned State counsel submitted that pursuant to receipt of the aforesaid reports, the Board gave its opinion on 20.9.2019 to the following effect :-

“On perusal of above mentioned reports, the cause of death in this case is declared Asphyxia due to hanging and all the finding mentioned in the above mentioned PMR are ante mortem in nature and are sufficient to cause death in ordinary course of nature.”

8. The learned counsel representing the complainant has added that it is a case where, upon post-mortem examination of the deceased, the Hyoid bone of the deceased was found to be intact which is a strong pointer towards the fact that it is a case of hanging not strangulation, as is also opined in '*Modi's Medical Jurisprudence*'. The learned counsel has further submitted that infact in the present case the police had acted swiftly and the place of occurrence was got inspected by team of Forensic Science Laboratory, Madhuban, Haryana and as per "Crime Scene Visit Report" (Annexure R-2), no traces of any violence were found in the room where incident had taken place. The learned counsel has further submitted that though in the FIR, allegations have also been levelled to the effect that the petitioner forced the deceased to have unnatural sex, but as per the report of FSL, semen were detected from only the vaginal swab and not from anal swab, which would belie such allegations. The learned counsel has lastly submitted that as of now there is no occasion for any further investigation since challan already stands presented.

9. This Court has considered rival submissions addressed before this Court.

10. The question to be examined is as to whether the police indeed conducted a biased investigation and as to whether the police dropped offence under Section 302 IPC just to favour the accused. Admittedly, there is no eye-witness to the occurrence. As per the allegations levelled in the FIR by the complainant, his sister namely Renu had been given merciless beatings by the accused and had thereafter been hanged on the night intervening 22.7.2019/23.7.2019.

11. The complainant himself asserts in FIR that it is a case of hanging and not strangulation despite the fact that nobody had seen the incident. In the cases based on circumstantial evidence, the medical evidence would play an important role to decipher the manner and cause of death. Some of the observation as recorded in Post-mortem report (Annexure R-1) and in Crime Scene Visit Report (Annexure R-2) are reproduced herein-under:

Extract from Post-Mortem Report - (Annexure R-1) :

“Ligature Mark : A reddish brown colour ligature mark with abraded margins of size 2 cm width injury placed over neck. Ligature mark is directed obliquely upward, anterior to posterior, encircling it completely except right mastoid area. Skin at ligature mark site is parchmented. On dissection white glistening base present. On further dissection ecchymosed tissue present at border of ligature site and soft tissue ecchymosis present. Dribbling of saliva present at left angle of mouth and left side of chin.

Neck : x x x

Hyoid Bone : Healthy.

x x x ”

Extract from Crime Scene Visit Report (Annexure R-2) :

“ 6. EXAMINATION OF DEAD BODY :

- (I) Deceased was examined in mortuary G.H. Bhiwani at approx. 11.15 AM on dated 23.07.19.
- (II) Deceased was wearing reddish embroidered kameej-salwar, cream colour bra, thread was present in left wrist, a red colour 'bindi' on forehead. Eyes & mouth partially opened. Red fancy bangles in both wrists:
- (III) Ligature mark was visible on neck going upwards towards backside near both ears. Dried saliva was observed on left side of mouth & chin region.
- (IV) A small wound on left wrist and abrasions on both forearms were observed.

7. EXAMINATION OF CRIME SPOT :

- (I) The affected house was situated in thickly populated area of village kalinga. The house having main entry door, drawing room, bed room, kitchen, open courtyard and the affected room.
- (II) The hanging point as stated by I/O was white colour ceiling fan, a cot was found present under the fan, ht. of cot was about 20", ht. from fan to cot was about 69", ht. of the deceased was about 5'6". Dust removal was observed from the upper part of the fan.
- (III) A red colour *chunni* was shown was shown by the I/O used as ligature, chunni was observed torn at places.
- (IV) A red handle knife having reddish fibers on the blade was recovered from the spot and handed to I/O. Another knife was recovered from the bed under the mattress in bed room.

No other any physical and incriminating evidence could be observed on the spot at the time of visit.”

12. The Medical Board comprising of three doctors has furnished a definite opinion to the effect that death was result of Asphyxia due to hanging. The said opinion is in consonance with some material characteristics of hanging as described in the renowned text i.e. *Modi's Medical Jurisprudence And Toxicology*. While dealing with characteristics, it is stated therein that in case of death by hanging, the Ligature mark would be placed obliquely, and

would be non-continuous placed high-up in the neck between the chin and larynx, the base of groove or furrow being hard, yellow and parchment-like. It is further stated that while in case of death by strangulation, Hyoid bone is often found broken, the same is not the case in death by hanging. In the present case, both as per Post-mortem report (Annexure R-1) and Crime Scene Visit Report (Annexure R-2), the ligature mark is reported to be obliquely placed going upwards encircling the neck completely except for a small portion near right ear. As per post-mortem report, the Hyoid bone was found “healthy”. The presence of these characteristics is in tune with the opinion of Medical Board to the effect that death is by hanging.

13. The assertion of complainant that it is a case of forcible hanging as some injuries were found on the dead-body and two knives were also recovered from the room can also not be accepted this stage for the following reasons:

- (i) no evidence of any violence or use of force was found from the room where the dead body was allegedly found hanging. It is not an easy job to hang a person from a fan. There is bound to be some resistance even from a weak person which would leave things scattered and even the fins of fan could be bent but no such sign was found by the police party or by FSL team which had conducted “Crime Scene Visit”. Had the deceased been brutally given beating or had forcibly been hanged, the room would have been in a mess and signs of violence would have been visible but nothing to this effect was reported. Even the “*bindi*” on forehead of deceased was not found smudged. The only observation recorded in Crime Scene Visit Report (Annexure R-2) is that some dust was found to be removed from fan which, in any case, is bound to be there even in case of suicide;
- (ii) as per Crime Scene Visit Report (Annexure R-2), the house where the incident took place is situated in a thickly populated area of village

Kalinga. In case of use of force or violence, the attention of somebody in neighbourhood would have easily been attracted, which somehow is not there in the present case;

(iii) the presence of knife at the spot would be well explained inasmuch as the dead-body had already been brought down when the police reached at the spot and apparently the same had been brought down by cutting the ligature i.e the red coloured '*chunni*'. As per Crime Scene Visit Report (Annexure R-2), the red coloured "*chunni*" used as ligature was found torn at places and the recovered knife was found having reddish fibres on its blade which shows that the knife was used for cutting ligature and not for causing injury. One small incised wound and two superficial abrasions, in every likelihood, could have been caused while bringing down the dead body.

14. As noticed above, the matter was initially investigated by the jurisdictional police but shortly thereafter, upon request of complainant, the investigation was handed over to CIA Staff. The FSL team which had conducted examination of the spot and also dead-body on the very first day is not under the local police. There is nothing to suggest that they had not conducted investigation impartially. Though the complainant is mainly aggrieved by dropping of charges for offence under Section 302 IPC by the police but the circumstances on record as discussed above point more towards a case of suicidal death instead of homicidal death. At this stage, this Court does not find any reason to differ with the said findings as regards substitution of offence under Section 302 IPC with Section 306 IPC. The investigation is not found wanting in this regard.
15. However, this Court upon perusal of report under Section 173 Cr.P.C. (Annexure P-8) finds that no inquiries seem to have been made from ITBP authorities, where the husband of deceased was working despite the fact that

in the FIR, there is a specific mention of an incident having taken place when deceased had joined her husband Pardeep at his place of posting in ITBP and Pardeep allegedly had given beatings to her and entered house of Commandant in naked condition and resultantly the Commandant had deputed four ITBP officials to escort Renu (deceased) to Bhiwani. Such like act is a conduct constituting harassment to the deceased at the hands of accused Pardeep. Since the case in hand pertains to abetment to commit suicide, the investigating officer ought to have conducted investigation in this regard also.

16. As a sequel to discussion made above, this Court does not find any serious flaw in investigation excepting for the omission on part of investigation officer to make inquiries from ITBP authorities where the accused was working as regards his conduct with reference to his matrimonial relationship particularly as regards the incident mentioned in FIR wherein deceased is stated to have been provided with four ITBP officials by Commandant ITBP to escort her back to Bhiwani. Respondent no.3 is, thus, directed to get the said inquiry conducted at the earliest preferably within 3 weeks from today. In case any evidence is collected as regards said conduct of accused Pardeep, the prosecution shall take all necessary steps and move appropriate application for placing such evidence on record of the trial Court. The entire exercise be completed expeditiously.
17. It is, however, clarified that none of the observations made above shall be construed to be an expression on merits of the main case, particularly since the witnesses including the doctors are yet to be examined on material aspects.

18. Needless to mention, in case any convincing evidence surfaces during the course of recording evidence during trial indicating it to be a case of murder, it shall always be open to the trial Court to alter charges accordingly.
19. The petition stands accepted to the limited extent as indicated above.

05.12.2022

kamal

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No