

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

WPA 7997 of 2023

Subhash Chakraborty

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Kingsuk Mondal

For the State : Mr. Sk. Md. Galib
Ms. Sujata Mukherjee

Heard on : 27.07.2023

Judgment on : 27.07.2023

Jay Sengupta, J.:

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to record statements of eyewitnesses under Section 161 of the Code of Criminal Procedure and conduct a fair and impartial investigation in accordance with law.

Supplementary affidavit filed on behalf of the petitioner is taken on record.

Copy of the same is handed over to the learned counsel for the State.

Learned counsel appearing on behalf of the petitioner submits as follows. The defacto-complainant alleged that the accused had an altercation with the victim. They had assaulted the victim with bamboo sticks and kicked on his chest. The victim was hurt in the chest and finally succumbed to such injuries. Such injuries may not be evident from the post-mortem report. However, it had to be seen whether a case of Section 302 or even Section 304 of the Penal Code was made out or not. However, no statements of the witnesses were recorded under Section 164 of the Code. What is even more surprising is that during the pendency of this writ petition, a report in a final form was submitted seeking discharge of the accused. Reliance is also placed on affidavit of the eyewitnesses, appended to the supplementary affidavit, who say that they were not examined by the police.

Learned counsel appearing on behalf of the State relies on the case diary and submits as follows. As would be evident from the inquest report and the post-mortem report, there are no other injuries found on the dead body. All the witnesses were examined and their statements including the FIR was considered after which the final report was prepared. Since permission for filing such report was

obtained from the superior authority before filing of the writ petition, the Investigating Officer went ahead with the same during pendency of the writ petition.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition and the case diary produced by the State.

It is true that no other injuries could be found on the dead body in the inquest or during the post mortem examination. However, the allegations made in the FIR are not of such nature that such injuries would necessarily be found during such examination.

What is important is to fully examine all the witnesses and explore all the possibilities, which have not been done in the present case. It has to be seen whether there was actually any assault by way of a kick on the chest of the victim and whether this resulted in the unfortunate outcome.

It is also quite uncanny that the statements of the related witnesses who would naturally be supporting the prosecution case, as allegedly recorded by the Investigating Officer, are milder and contrary to the stand taken in the First Information Report. This makes it necessary that their statements be recorded under Section 164 of the Code.

Furthermore, it was absolutely improper for the Investigating Officer to have filed the final report seeking discharge of the accused when a writ petition was pending over the same issue. This Court fails to appreciate the undue haste shown by the Investigating Officer in this regard.

In view of the above and in the interest of justice, I set aside the FRMF No. 822 of 2023 dated 28.06.2023 and direct the Investigating Officer to conduct further investigation and to examine the said purported eyewitnesses under Section 164 of the Code and thereafter, file a report in final form.

Let the further investigation be concluded impartially, expeditiously and in accordance with law.

The Investigating Officer shall have a free hand in conducting the investigation and shall take into account all the facts and circumstances in coming to a conclusion.

With these observations, the writ petition is disposed of.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta,J.)