

10.04.2023

Sl.No. 11

Ct. 236

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 4198 of 2009

With

CRAN 1 of 2021

Nanda Dulal Chakraborty

Vs.

State of West Bengal and anr.

In Re: An application under Section 401 read with Section
482 of the Code of Criminal Procedure, 1973.

Mr. Subhasish Roy

...for the petitioner

Mr. Amajit De

...for the CBI, ld. Special PP

Ms. Puja Goswami

As amicus curiae

Mr. Bidyut Kumar Roy

Ms. Sima Biswas

...for the State

This criminal revisional application is a manifestation of the displeasure of Sri Nanda Dulal Chakraborty who set the criminal administration of justice into motion by informing the police about the unnatural death of his son Raj Kumar Chakraborty. Accordingly, Ranaghat P.S. Case No. 450/93, was registered under Sections 341/325/304/ 34/ 201 of the Indian Penal Code. On 27.12.1993 the police took up the investigation and submitted chargesheet but the said report could not satisfy the defacto-complainant, who happens to be the poor father who lost his son. The Central Bureau of Investigation (CBI) was entrusted with the investigation of the case by the order of Hon'ble Apex Court.

Accordingly, the CBI registered RC Case No. 4(S)/99 S.C.B.-1 New Delhi and RC Case No. 4(S)/99 S.C.B.-/DLI RC Case No. 3(S)/99 S.C.B.-1/DLI and took up investigation which culminated into submission of chargesheet against Tarak Nath Chatterjee and Sashti Gopal Paul for committing offence under Sections 304/34 of the IPC and final report was filed in respect to the other case without sending any one for trial.

Accordingly, the learned Additional Sessions Judge, 4th Court, Nadia at Krishnanagar was entrusted with the trial of the case. The accused persons stood the trial by pleading their innocence. However, during the trial the co-accused person Sashti Gopal Paul expired and Tarak Nath Chatterjee alone stood the trial.

To bring home charges prosecution examined as many as 25 witnesses. The learned trial court after considering the testimony of prosecution witnesses found that there was failure on the part of the prosecution to prove the charges beyond doubt and an order of acquittal was recorded. This petition impeaches the said order of acquittal.

Heard Mr. Subhasish Roy, learned counsel for the petitioner, Ms. Puja Goswami, learned advocate as amicus curiae, Mr. Amajit De, learned advocate for the CBI and Mr. Bidyut Kumar Roy, learned advocate for the State.

My attention is drawn to the testimony of PW 12 Dulal Das as well as PW 23 Dr. Dola Sengupta. According to PW 12, at about 4 A.M. while he and Ranada Saha after discharging their duties as night guard were going to their

houses, at the end of Sidheswaritala, Ranaghat by the side of Brajabala Girls' High School, they found one boy moving suspiciously and having found PW 12 and his associate he tried to conceal himself. However, they caught hold of the boy and decided to take him to one Biswanath Pramanick. The boy introduced himself as Raj Kumar Chakraborty. On their way PW 12 and his associate met one Santanu Bagchi who wanted to know about the boy and Santanu told them to take the boy to the Ranaghat out post. Accordingly, the boy was taken to that out post. But the in-charge of the out post told them to take the boy to Ranaghat police station. They reached Ranaghat police station with the boy around 6 – 6.30 A.M. They narrated the incident to the duty officer who also interrogated the boy. According to PW 12, the boy was absolutely fine when he was intercepted by PW 12, he walked down the entire road with no complaint whatsoever, and then the boy was handed over to the duty officer of Ranaghat police station while he was in good physical condition. The testimony of PW 23 Dr. Dola Sengupta discloses the fact that on 26th December, 1993 as medical officer attached to Ranaghat Sub-Divisional Hospital she attended one boy named Raj Kumar Chakraborty who was forwarded under the cover of a letter admitted as Ext. 17. The Ext. 17 is a sheet of paper issued from the Ranaghat police station recommending medical examination of Raj Kumar Chakraborty. PW 23 attended the said boy and found swelling on both legs, she did not find any abnormality in the chest, abdomen of the

said boy. Prognosis was not unfavourable at that point of time and according to Dr. Dola Sengupta, he sustained injury being assaulted by blunt substance. The injury report was admitted as Ext. 18.

My attention is drawn to GD 1316 recorded by ASI, S.G. Pal at about 9.20 A.M. In the said G.D. Entry a new episode was introduced by the police that the boy was intercepted by the fish vendors and was assaulted by them. The boy was arrested under Sections 41/109 of the Criminal Procedure Code as he failed to justify his presence at the witching of our night. However, the oral testimony of PW 23 read with Ext. 18, testimony of PW 12 and G.D. Entry no. 1316 unerringly suggests that the boy sustained some injuries simple in nature and he was arrested by the police. Subsequently, within a couple of hours at about 11 A.M. he was declared dead. In the meantime, Ranaghat police station sent the boy to be produced before the learned Judicial Magistrate and GRO, PW 7 refused to accept the boy because of the injuries he had on his person and the boy was not in a position to move properly. Subsequently, around 11 A.M. of 26th December, 1993 the boy was found to have succumbed to the injuries. The postmortem report reveals the following:

1. left leg multiple echymosis present,
2. swelling of left knee joint,
3. fracture of left pattela (malai chaki),
4. multiple echymosis all over right leg,
5. multiple echymosis of left fore-arm,

6. blood clot present in both the nostrils and mouth cavity,
7. dislocation of left knee joint,
8. thorax: left side of anterior chest wall was swollen and bruises present all over the chest, pleura was ruptured,
9. Abdomen: walls-NAD, peritoneum intact, mouth pharynx and esophagus-congested, stomach and its contents empty, small intestine and its contents NAD. Large intestine-NAD; Liver – Congested & intact, Spleen-Intact, Kidneys-NAD, Bladder –empty, Organs of generation, external and internal-NAD.
10. Muscles Bones & joints: swollen left knee joint-fracture left patella dislocation-left knee joint.

Therefore, there is every reason to presume that the aforesaid injuries were sustained by the boy while he was in the custody of police. Section 106 of the Evidence Act, therefore, demands an explanation from the police as to how the boy sustained severe injuries, as detected by the autopsy surgeon and recorded in his report Ext. 31.

The learned trial court, however, got swayed by extraneous circumstances and thus, recorded an order of acquittal which in my view, should not be allowed to remain in force and should be set aside which I, accordingly, do.

In my humble opinion, this is a fit case to invoke the provision of Section 386 of the Criminal Procedure Code and

to remand the case to the learned trial court with a direction to write the judgment afresh in the light of the discussion made hereinabove after giving opportunity to the prosecution as well as the accused person to argue their case and, if necessary, the learned trial court may allow the parties to adduce evidence as well.

Liberty is given to the petitioner to approach the learned trial court for leave to file written argument. It will be the prerogative to the learned court below to consider the prayer and to take an appropriate decision.

Thus, the criminal revisional application (CRR 4198 of 2009) and the connected application (CRAN 1 of 2021) are disposed of.

Let a copy of this order be sent down to the learned trial court for information and necessary action.

Before parting with the case, I record my sincere appreciation for the able assistance of Ms. Goswami as *amicus curiae*.

All parties are to act on the server copies of this order duly downloaded from the official website of this court.

(Siddhartha Roy Chowdhury, J.)