

CRR 4125 of 2012

In the matter of : Debashree Jana (Parh) @ Lovely Parh @
Lovely Barh

Mr. P. K. Mitra
Ms. Subhanwita Ghosh
Ms. A. Sahab ... for the petitioner.

Mr. N.P. Agarwala
Mr. P. Bose ... for the State

This proceeding challenges the charge sheet no. 191/2010 dated 31.7.2010 submitted in Mahisadal P.S. Case No. 157/09 under Sections 302/201/34 of the Indian Penal Code corresponding to G.R. Case No. 827/09 submitted before the learned Additional Chief Judicial Magistrate, Haldia, Purba Midnapore.

Briefly stated that Sk. Abdul Faruq depicting himself as the brother of Sk. Najrul (Bulu) informed the OIC of Mahisadal P.S. in writing that for last twenty years his brother Najrul had been living with one Uttarah Barh as man and wife together with son and daughter-in-law of the said Uttarah. On 03.10.2009 in the early morning Najrul was found with injury on his head and hands and other parts of body. He was lying dead in a deserted house by the side of Reba Bastralaya at Mahishadal Bazar. The informant implicated Uttarah Barh, her son and daughter-in-law who according to informant committed murder of Najrul to misappropriate his money. The information since disclosed offence

cognizable in nature, Mahisadal P.S. Case No. 157/09 was registered on 03.10.2009 .

Mr. Mitra, learned counsel appearing representing the petitioner submits that after investigation police submitted charge sheet against the petitioners for committing offence under Section 302/201/34 of Indian Penal Code, and the post mortem report does not speak of cause of death.

Drawing my attention to the post mortem report, Mr. Mitra says that there was no fracture injury over the skull of the victim. His brain was intact and two abrasions were found over the hematoma on the right side of the occipital region and there was no other injury. Stomach contained sixty ml. blackish material and food particles. The autopsy surgeon sent the stomach and its contents, part of both kidneys, liver and lungs together with blood from heart chamber for chemical examination. Since report was not received, the autopsy surgeon could not give opinion as to the cause of death without seeing the chemical examination report. Therefore, prima facie there is no reason to implicate the petitioners for committing offence under Section 302 of the Indian Penal Code. It goes without saying that in order to maintain a proceeding under Section 302 of the Indian Penal Code, the fundamental requirement is to show that the person died a homicidal death. In absence of such fundamental evidence, the proceeding would result into an order of acquittal.

Under such circumstances, the charge sheet submitted in G.R. Case No. 827/09 arising out of Mahisadal P.S. Case No.

157/09 being C.S. No. 191/2010 should be quashed to avert an abuse of process of law which I accordingly do.

With this observation, the revisional application is disposed of along with application if any.

The Lower Court Record and a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)