

April 18, 2024
AD 28
Ct. No.14
SG

WPA 175 of 2021

Smt. Anita Mondal (Maiti)
vs.
The State of West Bengal and others

Mr. Indrajit Chatterjee
Mr. Syed Ali Afzal
... for the petitioner.

Mr. Ashim Kumar Ganguly
Ms. Jyotsna Roy Mukherjee
... for the State

Mr. Sabyasachi Bhattacharjee
Mr. Zeeshan Ahamed
Ms. Indrani Das
... for the respondent Nos.8-12

This is an application alleging police inaction in investigating the case of death of the minor child of the petitioner.

Further report filed on behalf of the State is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The investigation done into the alleged offences was bad from the very inception. Although a clear allegation was made under Section 302 of the Code in the petitioner's application under Section 156(3) of the Code and a direction was passed by the learned Magistrate, the police unilaterally decided to start a case under Section 304 of the Penal Code instead of Section 302 of the Penal Code. Even though the original complaint of the petitioner made before the concerned

Superintendent of Police spoke about an extra-judicial confession, the same was never explored by the investigating officer. The relatives of the petitioner were not examined. No statement of the petitioner was recorded under Section 164 of the Code. In the case of a fall, some corresponding injuries would have been there on the skin of the victim. De novo investigation should be done by the CID.

Learned counsel for the private respondents denies the allegations and submits that the death has caused immense sadness to them as well. It is denied that any of the private respondents or their family members could be involved in the death of the minor victim.

Learned counsel for the State relies on the case diary and submits as follows. Upon instructions, it is submitted that it was upon the direction of the concerned officer-in-charge that the case was registered only under Section 304 of the Penal Code. However, during investigation all possible steps were taken to unearth truth. The petitioner's complaint is very much there. That is why no need was felt to have her examined under Section 164 of the Code. The other relatives of the petitioner stay elsewhere and as such, would not have known anything about the incident. The post-mortem report did not indicate anything that there could be any foul play in the unfortunate death of the minor. Investigation revealed that on 17.02.2019 at about 1.15 hrs when the complainant was cooking in the kitchen,

her minor son was playing in the courtyard. At that time her in-laws were also present in the courtyard. Accidentally her minor child went to the pond's edge without knowledge of anyone and drowned. Subsequently, the floating body was found. In fact, there is no boundary between the house and the pond. A charge-sheet has been submitted against the accused under Section 304 of the Penal Code. After obtaining the viscera report a supplementary charge-sheet was filed.

This practice of registering FIRs in the case of orders passed under Section 156(3) of the Code by imputing lesser sections is strongly deprecated. It was absolutely illegal on the part of the police authorities to have started the investigation by registering a case only under Section 304 of the Penal Code when the imputation made in the application under Section 156(3) of the Code was clearly under Section 302 of the Penal Code.

However, it appears from a careful perusal of the case diary that the investigating officer did take steps while conducting investigation. Inquest was done. Statements were recorded. The post-mortem report and viscera report were obtained. As is more important in the instant case, a rough sketch map was prepared and even photographs of the place of occurrence were taken.

It is clear from the photographs and the sketch map that there was no boundary between the pond and the house of the victim.

Since the petitioner has already made a complaint in details, non-examination of the petitioner under Section 164 of the Code should not be treated as fatal.

It is also true that the relatives of the petitioner staying elsewhere could have only given a supporting voice to the petitioner, but they were not the witnesses to the incident.

Whether the minor child had fallen accidentally into the water or had been pushed into the water, it would hardly make much difference in the injuries that he might suffer. The opinion of the doctor is important that it was a case of death because of drowning as also the fact that there were no other injuries present on the dead body.

The death of the minor boy is indeed very very unfortunate. But, in order to direct further investigation, one would require certain grounds or some apparent flaws in the investigation of the case.

Apart from the initial non-registration of the FIR under Section 302 of the Penal Code despite direction, this Court is unable to find out any glaring fault in the manner in which the investigation was done.

Therefore, I do not find any merit in this application.

Accordingly, the writ petition is dismissed, however, without any order as to costs.

The private parties shall be at liberty to agitate their grievances before the trial court at the appropriate stage.

Extra-judicial confession already finds a place in the complaint, which may be dealt with properly by the trial court.

Presence of the investigating officer is noted and is dispensed with.

Parties shall act on server copy downloaded from the official website of this Court.

[Jay Sengupta, J.]