

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 1238 of 2024

Nilanjan Mitra

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Jayanta Narayan Chatterjee,
Mr. Supreem Naskar,
Ms. Jayashree Patra.

.....Advocates

For the State : Mr. Ashim Kumar Ganguly,
Mr. Sambuddha Dutta,
Sk. Md. Masud.

.....Advocates

Heard lastly on : 31.01.2024

Judgment on : 31.01.2024

Jay Sengupta, J:

This is an application seeking addition of appropriate penal provision in the array of allegations, transfer of investigation and departmental action against the errant police/officers.

Report filed on behalf of the State is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the de facto complainant and the uncle of the victim deceased. Although, the death of the victim took place beyond seven years of marriage, yet only Section 304B along with Section 498A of the Penal Code were imputed in the FIR registered. No charge under Section 302 was added. This is a case of gruesome murder where the assailant husband showed on video call to a relative of the deceased how the victim was burning. This is clearly a case of murder. Neither was the mobile phone seized nor were relevant witnesses examined. Even the wearing apparels were not seized. The broken door was also not seized. The investigation done was absolutely perfunctory. The accused was also arrested only after the anticipatory bail prayer was rejected by this Court.

Learned counsel appearing on behalf of the State relies on the case diary and submits as follows. Statements of witnesses have been recorded. The phone in question could not be seized because, as the accused had explained, he could not remember where he had kept the same. Upon instruction from the Investigating Officer present in Court, it is strongly submitted that there is no material to add Section 302 of the Penal Code.

I have heard the learned counsels for the parties and have perused the case diary.

First, it is quite apparent that Section 304 B of the Penal Code has no manner of application in this case as the incident happened after 7 years of marriage. The recording officer wrongly added this provision to the FIR and the Investigating Officer, blissfully ignorant of the provisions of law, carried on investigation under such provision.

From the statement of the said relative to whom the video call was allegedly made namely, Sukla Chowdhury, it appears that during the call, the said cousin sister pleaded with the accused to save the victim instead of making the video call. It appears that the call went on for at least one minute. If a person catches fire and her husband is in a position to save her, but chooses not to do so and do something else, it has to be explored whether this amounts to contributing to the death of the victim. At least, this circumstance should have inspired the Investigating Officer to find out whether the fire could have also been caused by the husband. These aspects have been given a total go-bye by the Investigating Officer. In fact, the statement of such a vital witness as the said Sukla Chowdhury should have been recorded under Section 164 of the Code of Criminal Procedure.

Non-seizure of relevant articles is another issue that cannot be satisfactorily explained by the Investigating Officer. In fact, he relies on the statement of the accused to provide an explanation.

The investigations appears to have been totally misdirected.

In view of the above referred grave flaws in investigation, let the investigation be transferred to the CID forthwith.

The CID shall conclude the investigation expeditiously and in accordance with law.

With these observations, the writ petition is disposed of.

A copy of this order be sent to the Director General of Police for information and/or necessary action.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

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

(Jay Sengupta, J.)