
Before Binod Kumar Roy, C.J., & Surya Kant, J

MANJEET SINGH,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 17439 of 2003

10th August, 2004

Constitution of India, 1950—Art. 226—Ghastly crime of alleged rape and murder of a young, unmarried 24 years old Computer teacher—Confession by an employee of Computer Centre to the commission of crime—Petitioner’s suspicion on the owner of Computer Centre and his sons—On thorough investigation police finding nothing incriminating against the suspects—Release of the suspects—Petitioner seeking fair and impartial investigation by an independent agency—Whether the ends of justice would be met by directing fresh investigation of the complaint of crime—Power of the High Court to direct C.B.I. to investigate an offence—Only if an offence is prima facie found to have been committed or a person’s involvement is prima facie established—The manner in which the girl appears to have been murdered, prima facie, involvement of more than one person in commission of the crime cannot be ruled out—To achieve the ends of administration of criminal justice and to remove all sorts of doubts from the minds of each and every one that daughter of petitioner was allegedly raped and murdered by more than one person, the matter requires to be investigated afresh by the C.B.I.—Petition allowed.

Held, that it appears beyond comprehension that a single person can commit/attempt to commit rape and then murder the deceased victim, who was an able-bodied, young and tall girl of about 24 years of age. The manner in which she appears to have been murdered, *prima facie*, involvement of more than one person in commission of the crime cannot be ruled out. Even in relation to the allegation of committal of rape of the deceased before she was brutally murdered, we are not fully convinced with the conclusions drawn by the State Police.

(Para 14)

Furhter held, that there can be no doubt that the duty of the Investigating Agency is not merely to bolster up a prosecution case with as much evidence as may enable the Court to record a conviction but also to bring out the real unvarnished truth as well. An honest, sincere and dispassionate investigation has to be made to make sure that the person suspected of the crime was responsible for committing the same. The Investigating Agency, therefore, has to act with great care and circumspection so that the public confidence reposed in it remains intact and underterred. Keeping in view the peculiar facts and circumstances of this case, we are satisfied that with a view to achieve the ends of administration of criminal justice and to remove all sorts of doubts from the minds of each and every one that the daughter of the petitioner was allegedly raped and murdered by more than one persons, the matter requires to be investigated afresh by the C.B.I.

(Para 15)

Rajan Lakhanpal, Advocate, *for the petitioner.*

Charu Tuli, Senior Deputy Advocate General, Punjab, *for respondent Nos. 1 to 4.*

S.D. Sharma, Senior Advocate with Neeraj Sharma, Advocate, *for respondent Nos. 5 to 8.*

ORDER

SURYA KANT, J.

(1) The gruesome murder of his young unmarried daughter, aged about 24 years, and the subsequent move by the prosecution to release some of the accused persons, allegedly found to be innocent during the course of investigation and a strong suspicion against those very persons being guilty of committal of rape and murder of his daughter, are the compelling circumstances which have prompted the petitioner to knock at the doors of this Court to command the official respondents, namely, the State of Punjab and its Police authorities to hold an independent probe preferably by the Central Bureau of Investigation (for short, the C.B.I.) in F.I.R. No. 94 dated 22nd June, 2003 under Sections 302, 376, 379, 411, 201 and 34, IPC, P.S. Mahilpur, District Hoshiarpur.

(2) As per the averments made in the writ petition, the daughter of the petitioner, namely, Ram Tirath Kaur, aged about 24 years had done a computer course after graduation and had been working as a Teacher with Brilliant Computer Centre, Mahilpur for the last over 18 months; on 21st June, 2003, she, as usual, left her house in the morning for the centre; she used to come back home at about lunch time but did not return on the above mentioned date; the petitioner and other family members waited for Ram Tirath Kaur but when she failed to return for a pretty long time, they rang up the owner of the Brilliant Computer Centre, Mahilpur to enquire about their daughter and were told by Bal Kishan Sharma that she had gone to her Nanka's place (maternal grandfather's place); the petitioner then checked up with his in-laws but was told that she had not visited them; the petitioner and other family members searched every nook and corner to find out the whereabouts of his daughter but in vain; they went to Brilliant Computer Centre; Mahilpur on the next day early in the morning; some more persons had gathered over there and when they went inside the house situated in front of the Computer Centre, they found half naked and blood-smeared body of his daughter; Ram Tirath Kaur had been brutally raped and murdered; FIR No. 94 dated 21st June, 2003 (Annexure P-4) was got registered (in the supplementary statement made by the petitioner, he suspected the involvement of Bal Kishan Sharma, owner of the Brilliant Computer Centre and his sons, namely, Rakesh Kumar, Navdeep and Amandeep in the ghastly crime); the petitioner went inside the Computer Centre and noticed blood stains in one of its rooms; apparently the body of Ram Tirath Kaur was brought from the Computer Centre and was placed in the building which was under construction and was situated right across the premises of the Computer Centre; it seems that Ram Tirath Kaur was raped and murdered in the Computer Centre itself and then her body was brought to the building under construction situated in front thereof; that Bal Kishan Sharma and other had tremendous influence in the area and soon after the registration of the case, the police presented an application for discharge of the accused and instead named one Sanjay Singh son of Tugal Singh, as an accused; challan has been presented only against the said Sanjay Singh who is a labourer (Bhaiyya); the petitioner moved an application on 1st October, 2003 (Annexure P-5) in the Court below that the investigation of the case be handed over to the C.B.I.; that

the real culprits have been let off and a "Bhaiyya" has been implicated in the rape and murder of petitioner's daughter who was 5'-8" tall and healthy, whereas the "Bhaiyya" who has been implicated in the case is about 5' tall and possesses a very weak physique; apparently the rape and murder of Ram Tirath Kaur is handi-work of a number of persons but in order to save Bal Kishan Sharma and his sons, they were left off; that people of the area were very much agitated regarding the manner in which the police is investigating the case and even a committee has been formed to pursue the case; representations were given to the different authorities and the matter has also been reported in the Press (Reference Annexure P-6); that grave injustice has been done to the petitioner by discharging the real culprits by the State Police; that it would, therefore, be just and fair if an independent probe is ordered into the matter and the investigation of the case is handed over to the C.B.I.

(3) When the matter came up for motion hearing, prayer was made on behalf of the petitioner to implead :—

- (i) Shri Bal Kishan Sharma son of Shri Badri Nath, resident of Bank Colony, Mahilpur, District Hoshiarpur;
 - (ii) Shri Ramesh Kumar;
 - (iii) Shri Navdeep; and
 - (iv) Shri Amandeep
- sons of Shri Bal Kishan Sharma, residents of Bank Colony,
Mahilpur, District Hoshiarpur (Punjab).

The petitioner was permitted to implead them as Respondents Nos. 5 to 8 and a direction was also issued to the Senior Deputy Advocate-General, Punjab to seek instructions in the matter.

(4) Before adverting to the stand taken up by the official and private respondents, particularly in relation to the manner in which the investigation of the shocking incident has been carried out by the Police Authorities, we mention that the private Respondents Nos. 5 to 8, namely, Bal Kishan Sharma and his alleged three sons were arrested by the Police and after their thorough interrogation the prosecution moved in application before the Ilaqa Magistrate for their discharge/release from the custody on the plea that after having

investigated the matter from all possible angles and taking the investigation to a logical end, it has reached to the conclusion that Respondent Nos. 5 to 8 were innocent and the offence was allegedly committed by one Sanjay Singh. After notice to the complainant, the Judicial Magistrate Ist Class, Hoshiarpur,—*vide* order dated 20th September, 2003 (Annexure R-2 to the reply of private respondents) ordered the release of Respondents Nos. 5 to 8 from custody but dismissed the same *qua* the relief of discharge and gave liberty to the prosecution to move an application for their discharge before the learned Sessions Judge, that being the competent Court to try the offence. It seems that passing of the aforesaid order led the petitioner to move the present petition which was filed in the first week of November, 2003 though no relief was sought by him for quashing/setting aside the same.

(5) Be that as it may, coming to the reply filed by Opinderjit Singh Ghuman, Superintendent of Police (Detective), Hoshiarpur, it has been, *inter-alia*, stated that the FIR in question was registered on the statement of the petitioner; since it was a case of blind murder, the investigation was started by collecting important evidence from the scene of crime which includes moulds of right foot of the suspect; one spade suspected to be used for digging earth in an attempt to bury the dead body; blood stain earth; that during post-mortem examination of the dead body, slides of vaginal swabs, pubic hair and clothes of the deceased were taken and sealed; the post-mortem was got conducted from a team of specialists; in order to trace out the murder, all the persons working in the Computer Centre, were joined in the investigation; that from their investigation, Sanjay Singh emerged to be the prime suspect who was questioned by the Police on 27th June, 2003 and was arrested because he confessed to the commission of crime; subsequently on 8th July, 2003 the petitioner got recorded supplementary statements where in Bal Kishan son of Badri Nath and his sons, namely, Respondent Nos. 5 to 8 were also suspected to be involved; that on the basis of supplementary statement of the petitioner, these 4 suspects were also arrested; their blood samples, the moulds of right foot and mould of teeth of all the accused were taken for the purpose of D.N.A. test and comparison; on receipt of result of D.N.A. test from the CDFD (Centre for D.N.A. Finger-Printing and Diagnostics, Hyderabad) and the report of Forensic Science Laboratory, Chandigarh, nothing incriminating was found against Respondent Nos. 5 to 8; therefore, a request was made before the Ilaqa Magistrate to release

them from the judicial custody; however, mould of accused Sanjay Singh tallied with the mould taken from the spot and blood found on the trouser of accused Sanjay Singh matched with the blood of the deceased; as per forensic/DNA report, no semen was found in the slides of the vaginal swabs and on the pubic hair which ruled out committal of rape; that as per investigation, Sanjay Singh administered sleeping pills in tea to Ram Tirath Kaur to enable him to rape her and while she was under the influence of sleeping pills, Sanjay Singh removed her clothes in order to rape her but could not penetrate his sexual organ because of prior ejaculation; meanwhile Ram Tirath Kaur regained a little consciousness; Sanjay Singh got scared and committed murder to silence her; that the challan has, therefore, been presented against Sanjay Singh, accused under Section 302, 376, 511, 404 IPC. These averments are sought to be substantiated on the strength of photo copy of D.N.A. report (Annexure R-1); photo copy of mould of right foot (Annexure R-II), photo copy of blood stain report (Annexure R-III) and photo copy of post-mortem report (Annexure R-IV); that Sanjay Singh made disclosure statement on 30th June, 2003 before the DSP (Detective) who recovered one hand-bag containing chuni and under-wear of the deceased from the possession of Sanjay Singh and one blood stained trouser, the blood on which matched with the blood of the deceased; that again on 4th July, 2003, one wrist watch and a gold-chain belonging to the deceased was also recovered from his native village Basuma in Uttar Pradesh in the presence of Charan Dass, son of Karma and Sukhdev Singh son of Dass Ram, who belong to the village of the deceased; the chain and the wrist watch was verified by the sister (Amandeep Kaur) and mother (Parminder Kaur) of the deceased; on 6th July, 2003, Saindal (shoes) of the deceased and the wrapper of sleeping pills were also recovered from the accused (Sanjay Singh) on the basis of disclosure statement and that there is thus over-whelming evidence against Sanjay Singh, the accused, whereas nothing incriminating has come on record against Respondent Nos. 5 to 8; that the accused Sanjay Singh made a disclosure statement before Sanjiv Kumar son of Sohan Lal, resident of Mahilpur that he had killed Ram Tirath Kaur; he also made statement to this effect before the Magistrate under Section 164, Cr.P.C., further evidence reveals that on 20th June, 2003, accused Sanjay Singh purchased three tablets of Zeepose (Sleeping Pills) from Chawla Medical Store, Mahilpur; that as per the inquest report, the height of Ram Tirath Kaur was 5'-4" whereas the height of Sanjay Singh accused is 5'-7"; the police has conducted investigation fairly and impartially

without any *malafide*. Controverting some of the factual averments made in the writ petition, it has been pointed out that on 21st June, 2003, the petitioner after waiting for his daughter Ram Tirath Kaur, started enquiring about her on telephone and as per his statement in the F.I.R., he rang up Rakesh Kumar son of Bal Kishan, Respondent No. 6; the investigation reveals that Rakesh Kumar further enquired from Sanjay Singh and then told the petitioner that Ram Tirath Kaur had left the Computer Centre at noon as she had planned to visit her maternal uncle; this information was given to Rakesh Kumar by Sanjay Singh.

(6) The private Respondent Nos. 5 to 8, in their counter, have pleaded total innocence. Relying upon the post-mortem report, it is averred by them that the post-mortem was conducted by a Board consisting of four doctors, who opined that the death was caused due to strangulation by a handkerchief. Regarding the occurrence which took place on 21st June, 2003, they stated that the Computer Centre is owned by Rakesh Kumar (Respondent No. 6) who received a call from the petitioner enquiring about his daughter; after receiving the call, Respondent No. 6 went to the Computer Centre and asked Sanjay Singh, who was working as a peon-cum-Chowkidar, about Ram Tirath Kaur; Sanjay Singh told respondent No. 6 that she had left at about 1.30 P.M. and was saying that she may go to her maternal uncle's home; denying their involvement, respondent Nos. 5 to 8 have come up with a plea that none of them was present at the Computer Centre on 21st June, 2003, namely, the date of occurrence as they had gone to different places, the details of which find mention in their reply. It has also been clarified that Amandeep (Respondent No 8) has been described as son of Bal Kishan Sharma (Respondent No. 5); however, the fact is that he is son of one Rajinder Kumar Joshi; that the private respondents were kept in custody for about two and half months during which period, the police, despite thorough investigation, could not find out any incriminating material against them; that they belong to an ordinary middle class family who are either employed or running small business as the source of their livelihood and are hardly in a position to exert any pressure on the Police Authorities; the investigation was personally supervised by the Senior Superintendent of Police, Hoshiarpur, who earned a lot of praise from the Press for his upright stand; that they have already been humiliated and harassed by the Police in the course of the investigation of the case and any fresh re-investigation would cause them unexplainable hurt and insult and as such have denied any legal necessity of further probe in the matter.

(7) San of Swaying ourselves by emotions which a crying father could arouse in us, but at the same time, being conscious of not over-looking his fundamental right of a fair and impartial investigation into the most condemnable and ghastly crime of alleged rape and murder of his daughter, we are required to consider as to whether the ends of justice would be met by directing fresh investigation of the complained crime by the C.B.I. ?

(8) While recognising the powers of the High Court to direct CBI to investigate an offence, their Lordships of the Supreme Court in **Common Cause A Registered Society versus Union of India**, (1) also explained the existence of certain circumstances warranting exercise of such powers by the High Court, as can be seen from the following paragraph :—

“174. The other direction, namely, the direction to CBI to investigate ‘any other offence’ is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, *prima facie*, found to have been committed or a person’s involvement is *prima facie* established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of ‘LIFE; and ‘LIBERTY’ guaranteed to a person under Article 21 of the constitution. This direction is in complete negation of various decisions of this Court in which the concept of ‘LIFE’ has been explained in a manner which has infused ‘LIFE’ into the letters of Article 21.” (emphasis applied)

(9) These parameters were reiterated by the Apex Court in the case of **Secretary, Minor Irrigation and Rural Engineering Services, U.P. and other versus Sahngoo Ram Arya and another**, (2) when their Lordships observed—

“While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a *prima facie* conclusion that there is a need for such inquiry.. xxx xxx xxx”

(1) (1999) 6 S.C.C. 667

(2) (2000) 5 S.C.C: 521

In relation to appointment of a 'Special Officer' to investigate the commission of an offence, the Hon'ble Supreme Court has been cautious to remind that such an appointment needs to be made only when there has not been a proper investigation inasmuch as if a new channel of inquiry is created, it is likely to cast stigma on the regular police hierarchy.

(10) In **State of West Bengal versus Sampat Lal**, (3) the Apex Court held that—

“The appointment of a Special Officer with a direction to inquire into the commission of an offence can only be on the basis that there has not been a proper investigation. There is a well defined hierarchical administrative set up of the Police in the State of West Bengal as in all other States and to have created a **new channel of inquiry or investigation is likely to create an impression that everything is not well with the statutory agency and it is likely to cast a stigma on the regular Police hierarchy.**” (emphasis applied)

(11) Explaining the legitimate expectations from an Investigating Agency, particularly in a clueless crime, the Hon'ble Supreme Court in **Subhash Chand versus State of Rajasthan**, (4) held that—

“There are clueless crimes committed. The factum of a cognizable crime having been committed is known but neither the identity of the accused is disclosed nor is there any indication available of the witnesses who would be able to furnish useful and relevant evidence. Such offences put to test the wits of an Investigating Officer. A Vigilant Investigating Officer, well versed with the techniques of the job, is in a position to collect the threads of evidence finding out the path which leads to the culprit. The ends, which the administration of criminal justice serves, are not achieved merely by catching hold of the culprit. The accusation has to be proved to the hilt in a Court of law. The evidence of the Investigating Officer given in the Court should have a rhythm explaining step by step how the investigation proceeded leading to detection of the offender and collection of evidence against him. This is necessary to exclude the likelihood of any innocent having been

(3) AIR 1985 S.C. 195

(4) (2002) 1 S.C.C. 702

picked up and branded as a culprit and then the gravity of the offence arousing human sympathy persuading the mind to be carried away by doubtful or dubious circumstances treating them as of 'beyond doubt' evidentiary value."

(12) In **Ram Bihari Yadav versus State of Bihar and others**, (5) their Lordships of the Supreme Court said that if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law enforcing agency but also in the administration of justice in the hands of courts.

Similarly in **Paras Yadav and Others versus State of Bihar**, (6) the Hon'ble Supreme Court strongly deprecated the lapses or omissions committed by the Investigating Agency.

(13) Laying emphasis on the fact that the object of fair and impartial investigation is to find out the truth and bring to book those who are responsible for the crime, the Hon'ble Apex Court in the case of **Zahira Habibulla H. Sheikh and another versus State of Gujarat and others**, (7) held as under :—

“If one even cursorily glances through the records of the case, one gets a feeling that the justice delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial without any definite object of finding out the truth and bringing to book those who were responsible for the crime. XX XX XX”

(14) Guided by the above principles laid down by the Hon'ble Court, and with no intention to express ourselves directly or indirectly on the merits of this case, it appears beyond comprehension that a single person can commit/attempt to commit rape and then murder the deceased victim, who was an able-bodied, young and tall girl of about 24 years of age. The manner in which she appears to have been murdered, as reflected from the photographs on record (Annexures P-2 and P-3), *prima facie*, involvement of more than one person in commission of the crime cannot be ruled out. Even in relation to the allegation of committal of rape of the deceased before she was brutally murdered, we are not fully convinced with the conclusions drawn by the State Police.

(5) 1998 (4) S.C.C. 517

(6) 1999 (2) S.C.C. 126

(7) JT 2004 (Supp. 1) S.C. 94

(15) There can be no doubt that the duty of the Investigating Agency is not merely to bolster up a prosecution case with as much evidence as may enable the Court to record a conviction but also to bring out the real unvarnished truth as well. An honest, sincere and dispassionate investigation has to be made to make sure that the person suspected of the crime was responsible for committing the same. The Investigating Agency, therefore, has to act with great care and circumspection so that the public confidence reposed in it remains intact and undeterred. Keeping in view the peculiar facts and circumstances of this case, we are satisfied that with a view to achieve the ends of administration of criminal justice and to remove all sorts of doubts from the minds of each and every one that the daughter of the petitioner was allegedly raped and murdered by more than one persons, the matter requires to be investigated afresh by the C.B.I.

(16) We may, however, clarify that while holding that the matter needs to be re-investigated by the C.B.I., we do not intend to cast aspersion on the State Police as there is nothing on record to conclude at this stage that the investigation held by the State Police has been actuated by extraneous considerations or the Investigating Officer mis-directed the same by indulging in free fabrication of records or the State Police, in deference to its legal and social obligations, exhibited callousness and/or attempted to veil the truth.

(17) For the reasons afore-mentioned, this Writ Petition is allowed with a direction to Respondent Nos. 1 to 4 to hand over the entire records in relation to F.I.R. No. 94 dated 22nd June, 2003 under Sections 302, 376, 379, 411, 201 and 34, I.P.C., Police Station Mahilpur, District Hoshiarpur, to the Central Bureau of Investigation, who in turn, will investigate the matter afresh expeditiously preferably within a period of six months from the date of receipt of a copy of this order.

(18) Since it appears from the reply filed on behalf of the official respondents that charge-sheet has already been filed by the Local Police in the Court of competent jurisdiction, we, in the interest of justice, direct that till the matter is re-investigated by the C.B.I., further proceedings before the Court shall remain stayed.

(19) Let a copy of this order be handed over to Shri Rajan Gupta, the Standing Counsel of the C.B.I. for its intimation.

(20) No costs.

R.N.R.