Neetu Kumar Nagaich Vs State Of Rajasthan And Others

Court: Supreme Court Of India

Date of Decision: Sept. 16, 2020

Acts Referred: Constitution Of India, 1950 â€" Article 20, 21
Indian Penal Code, 1860 â€" Section 302
Code Of Criminal Procedure, 1973 â€" Section 173(2), 173(8), 174

Citation: AIR 2020 SC 5267 : (2020) 9 JT 339 : (2020) 11 Scale 185 : (2020) 4 Crimes 6

Hon'ble Judges: R.F. Nariman, J; Navin Sinha, J; Indira Banerjee, J

Bench: Full Bench

Advocate: Sunil Fernandes, Astha Sharma, Prastut Dalvi, Mantika Haryani, Dr. Manish Singhvi, Sandeep Kumar Jha

Final Decision: Allowed

Judgement

Navin Sinha, J

1. The deceased aged 21 years, a 3rd year student at the National Law University Jodhpur, was the only son of the petitioner. She seeks justice to

unravel the mystery of her sonÃ¢â‚¬â„¢s homicidal death, dissatisfied with the investigation carried out by the State Police. The investigation has reached

a dead end without identification of the offenders. The prayer in the writ petition is therefore for a mandamus to transfer the investigation in FIR

No.155 of 2018 dated 29.06.2018 registered under Section 302 of the Indian Penal Code at the Mandore Police Station, Jodhpur City, Rajasthan to the

Central Bureau of Investigation.

2. Shri Sunil Fernandes, learned counsel for the petitioner, submits that in the evening of 13.08.2017 the deceased had gone out of the hostel to a

restaurant situated around 300 meters from the University campus, along with his friends at the University. His dead body was found at 09.00 A.M.

the next morning on the railway tracks behind the restaurant. Relying on frivolous stories floated of the deceased having committed suicide due to

depression, the University authorities did not register a first information report (hereinafter referred to as Ã¢â‚¬Ëœthe FIRÃ¢â‚¬â„¢). The FIR was registered

nearly ten months later, on 29. 06.2018, after much persuasion by the petitioner and her husband. The casualness and callousness of the police is

reflected from the fact that neither was the crime scene sealed nor necessary investigation done with promptitude by proper examination of relevant

witnesses including CCTV footage, and digital footprints, mobile locations etc. and WhatsApp chats during the relevant period of time on the day of

occurrence. It is difficult to accept that the service providers did not provide mobile dump datas of towers in the location of the incident or that they

were conveniently found by the police to be Ã¢â‚¬Å“dark zonesÃ¢â‚¬â€‹.

3. The railway authorities had confirmed, Annexure P-2, that during the intervening night approximately five trains had crossed the track and no

engine driver had reported any untoward incident till the body was suddenly found on the railway track at 09.00 A.M. next morning. Prior to that a

witness who had gone to answer the call of nature at 06.30 A.M. had stated that he did not see any dead body on the railway track. The nature and

number of injuries found on the body of the deceased make it evident that it was a homicidal death and not accidental or suicidal in nature. The

caretaker of the warehouse near the place of occurrence has not been examined on the frivolous pretext that he was deaf and therefore unreliable.

The excuse that the caretaker could not be relied upon, because he was deaf, is preposterous.

4. The deceased was not alone but in company of his friends. Strangely, yet there is no evidence how and under what circumstances and by whom he

was murderously assaulted. The deceased is stated to have returned back to the hostel. The entry register bore his initials signifying his return to the

campus, yet it has been wished away by a simplistic explanation of one of his friends that he had made the entry by mistake. Surely this was a matter

for further investigation. If the deceased subsequently left the hostel premises again alone at 10:30 P.M. there had to be visuals in the CCTV footage

at the gate. No investigation of mobile locations available in the vicinity at the time of occurrence has even been attempted by the police.

5. The husband of the petitioner had moved the High Court in S.B. Criminal Miscellaneous Petition No.1411 of 2019 dissatisfied with the manner in

which the police was dragging its feet in failing to make proper investigation, raising serious doubts that efforts were being made to protect someone.

The High Court on 24.02.2020 disposed of the petition directing the Investigating Officer to file the result of the investigation in the court concerned,

reserving liberty to the petitioner to challenge the same. When nothing transpired again and there was no progress in the investigation, the petitioner

preferred the instant writ petition on 20th May, 2020. This Court on 8.07.2020 directed that the investigation must be completed within a period of two

months and the final report be filed in this Court. The investigating officer thereafter in hot haste has filed a closure report which is thoroughly

unsatisfactory and raises more questions with regard to the nature of investigation done by him, than it seeks to answer. Shri Fernandes sought to

persuade us not to allow the closure report, but to set it aside and order fresh investigation for resolution of the crime and the offender. Pursuant to the

order of this Court, the petitioner through her lawyer wrote to the Director General of Police (Crime) on 10.07.2020 and 11.08.2020 inviting attention

to several deficiencies in the investigation which yet remained to be inquired and has not been taken into consideration at all before submitting the

closure report.

6. Dr. Manish Singhvi, learned senior counsel appearing for the respondent State, submitted that inquest proceedings under Section 174 of the Code of

Criminal Procedure, 1973 (in short, Ã¢â‚¬Å“the CodeÃ¢â‚¬) were commenced promptly. A large number of witnesses have been examined by the Special

Investigation Team constituted pursuant to the order of the High Court.

There has been no deficiency in the investigation. All possibilities have been investigated and the necessary evidence collected and analysed. Despite

the best efforts the offenders could not be traced or found. There was no occasion for this Court to either direct further or fresh investigation. The

closure report may be allowed to be filed before the court concerned and the law may take its course.

7. We have considered the submissions on behalf of the parties and have very carefully gone through the closure report also dated 03.09.2020 filed

pursuant to our order dated 8. 07.2020. The closure report accepts it as a homicidal death but concludes that there is no clue who the offenders were.

8. The deceased is stated to have left the University premises along with several friends in the evening of 13. 08.2017 at about 07.40 P.M. His dead

body was seen the next morning at about 9:00 A.M. on the railway track passing behind Laxmi Guest House. The body was lying on the track curved

at a right angle. The deceased had nine very serious injuries on his person which were found to be ante mortem in nature. There was no blood at the

place of occurrence, but there was blood on his clothes. Only one slipper of the deceased was found at the place of occurrence. The respondents had

contended before the High Court and also in the counter affidavit filed before us on 03.07.2020 that the death was accidental in nature. The

conclusion in the closure report dated 03.09.2020 then does a volte face to acknowledge a homicidal death with no clue, ruling out an accidental death

by collision with a train. It does not leave much to the imagination that the deceased was not assaulted at the railway track but elsewhere. Since a

closure report has been submitted which we are being persuaded not to accept, we shall purposefully refrain for a detailed analysis of the inherent

contradictions and the inconclusive nature of the investigation as revealed in the closure report, except to the extent necessary for purposes of the

present order. We find substance in the submissions made on behalf of the petitioner with regard to the deficient nature and manner of investigation

carried out by the police leading to the closure report.

9. Normally when an investigation has been concluded and police report submitted under Section 173(2) of the Code, it is only further investigation that

can be ordered under Section 173(8) of the Code. But where the constitutional court is satisfied that the investigation has not been conducted in a

proper and objective manner, as observed in Kashmeri Devi vs. Delhi Administration, (1988) Suppl. SCC 482, fresh investigation with the help of an

independent agency can be considered to secure the ends of justice so that the truth is revealed. The power may also be exercised if the court comes

to the conclusion that the investigation has been done in a manner to help someone escape the clutches of the law. In such exceptional circumstances

the court may, in order to prevent miscarriage of criminal justice direct de novo investigation as observed in Babubhai vs. State of Gujarat, (2010) 12

SCC 254. A fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which

the trial will naturally not be fair. The observations in this context in Babubhai (supra) are considered relevant at paragraph 45 as follows:

Ã¢â‚¬Å“45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India.

Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be

permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice,

the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh

investigation.Ã¢â‚¬â€‹

10. In Bharati Tamang vs. Union of India, (2013) 15 SCC 578, relief was sought in a writ petition to quash the charge sheet and the supplementary

charge sheet coupled with a mandamus for a de novo investigation by a Special Investigation Team of competent persons having impeccable

credentials to unravel the conspiracy. This Court relied on the following extract from Zahira Habibulla H. Sheikh vs. State of Gujarat, (2004) 4 SCC

158, as follows:

Ã¢â‚¬Å“33. Ã¢â‚¬Â¦Ã¢â‚¬Å“Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves

or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and

society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the

obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the

prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.Ã¢â‚¬â€¹

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Ã¢â‚¬Å“37. In the decision of Babubhai v. State of Gujarat, in para 40, this Court held that the scheme of investigation particularly Section 173(8) CrPC

provides for further investigation and not of reinvestigation but held in para 42 as under: (SCC p. 272)

Ã¢â‚¬Å“42. Thus, it is evident that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary,

may direct for investigation de novo wherein the case presents exceptional circumstances.Ã¢â‚¬â€¹

38. Therefore, at times of need where this Court finds that an extraordinary or exceptional circumstance arise and the necessity for reinvestigation

would be imperative in such extraordinary cases even de novo investigation can be ordered.

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41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious

deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.

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41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special

Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to

such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

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41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be

handed over to CBI or to any other independent agency in order to do complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation

de novo.Ã¢â‚¬â€¹

11. The power of the constitutional court may extend to directing reinvestigation was again noticed in Pooja Pal vs. Union of India, (2016) 3 SCC 135,

as follows:

Ã¢â‚¬Å“87. Any criminal offence is one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human

rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law-abiding citizenry for any lapse.

The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial

review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the

plenitude and content thereof can neither be enervated nor moderated by any legislation.

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90. That the victim cannot be afforded to be treated as an alien or total stranger to the criminal trial was reiterated by this Court in Rattiram v. State of

M.P., (2012) 4 SCC 516, It was postulated that the criminal jurisprudence with the passage of time has laid emphasis on victimology, which

fundamentally is the perception of a trial from the viewpoint of criminal as well as the victim when judged in the social context.

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96. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been

candidly synopsised in the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation Ã¢â‚¬" Basic

Perspectives by Paul B. Weston and Renneth M. Wells:

Ã¢â‚¬Å“Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the

mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be

discovered in any post-factum inquiry.

Successful investigations are based on fidelity, accuracy and sincerity in lawfully searching for the true facts of an event under investigation and on an

equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are

absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully

recognising that even a minor contradiction or error may destroy confidence in their investigation.

The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in

investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical

evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through

the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of

witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An

increasing certainty in solving crimes is possible and will contribute to the major deterrent of crimeÃ¢â‚¬"the certainty that a criminal will be discovered,

arrested and convicted.Ã¢â‚¬â€‹

12. In Dharam Pal vs. State of Haryana, (2016) 4 SCC 160, it was noticed that the power of the constitutional court to order fresh or de novo

investigation could also be exercised after commencement of the trial and the examination of some witnesses could not be an impediment, observing

as follows:

Ã¢â‚¬Å“25. Ã¢â‚¬Â¦.The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and

examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just

investigation. Ã¢â‚¬Â¦Ã¢â‚¬Â¦ It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal

investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind

that impartial and truthful investigation is imperative. Ã¢â‚¬Â¦Ã¢â‚¬â€‹

13. Reverting to the facts of the present case, we find that the occurrence took place in the intervening night of 13.08.2017 and 14.08.2017. The

inquest proceedings under Section 174 Cr.P.C. were registered on 14.08.2017 but remained inconclusive, and now in view of the closure report

deserves to be consigned. The death of the deceased was initially sought to be passed off as accidental by collision with a train or suicidal due to

depression. The F.I.R. under Section 302, IPC was registered very much belatedly on 29.06.2018, albeit reluctantly, only at the persistence of the

petitioner and her husband after they repeatedly approached the higher authorities. Even thereafter the investigation remained at a standstill till the

filing of the counter affidavit before this Court as recent as 03.07.2020 with the respondents insisting that the death was accidental and that the nature

of injuries could not attribute a homicidal death. Earlier the husband of the petitioner had also petitioned the High Court where till 20.07.2019 the

respondents insisted that the death was accidental in nature. Unfortunately, the High Court despite noticing the long pendency of the investigation took

a misguided approach that the petitioner had not expressed suspicion against any one and neither had he alleged biased against the Investigating

Officer, to pass an open ended order to investigate the case and file a report. In this manner, the investigation remained inconclusive for nearly three

long years with the investigating agency sanguine of passing it off as an accidental death without coming to a firm conclusion avoiding to complete the

investigation. It is only when we ordered on 08.07.2020 that the investigation be concluded within a period of two months and the final report be

placed before us, that suddenly a very lengthy investigation closure report has been filed before us taking a stand that though the death was homicidal

there was no clue. The closure report is therefore, to our mind, a clear hasty action leaving much to be desired regarding the nature of investigation,

because if a detailed investigation had already been done as is sought to be now suggested, there is no reason why a final report could not have been

filed by the investigating agency in the normal course of events and needed an order to do so from this Court. The entire investigation and the closure

report therefore lack bonafide. The interest of justice therefore requires a de novo investigation to be done, to sustain the confidence of the society in

the rule of law irrespective of who the actors may be.

14. We, therefore, set aside the closure report and direct a de novo investigation by a fresh team of investigators to be headed by a senior police

officer of the State consisting of efficient personnel well conversant with use of modern investigation technology also. No officer who was part of the

investigating team leading to the closure report shall be part of the team conducting de novo investigation. Much time has passed and there is

undoubtedly an urgency in the matter now. We therefore direct that such fresh investigation must be concluded within a maximum period of two

months from today and the police report be filed before the court concerned whereafter the matter shall proceed in accordance with law.

15. The writ petition is allowed.