

**(1934) 09 CAL CK 0008**

**Calcutta High Court**

**Case No:** Cr. Rev. (Mis.) No. 110 of 1934

Surendra Nath De

APPELLANT

Vs

Krishna Dhan De and Others

RESPONDENT

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**Date of Decision:** Sept. 26, 1934

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### **Judgement**

Patterson, J.

This Rule is for the transfer of certain criminal proceedings from the file of the Sub-Divisional Magistrate of Howrah, and has been issued on the ground that the Sub-Divisional Magistrate had himself been cited as a witness in the case. The District Magistrate states in his explanation that it is not a fact that the Sub-Divisional Magistrate was cited as a witness, but in this he appears to be mistaken. While the matter was pending before Mr. B. C. Sen, Deputy Magistrate, for enquiry, an application was filed before that officer, by the Petitioner, on the 24th February, 1930, in which it was prayed that certain persons of whom a list was given, should be summoned as Court witnesses, and in this list I find the name of the Sub-Divisional Magistrate of Howrah. It is moreover clear that the Sub-Divisional Magistrate's evidence ought to be taken in this case, inasmuch as he was present at the inquest and inasmuch as he viewed the dead body and heard what the witnesses examined at the inquest had to say. In these circumstances I am of opinion that the Rule should be made absolute, and that the case should be transferred to the file of some other Magistrate. It will not, however, in my opinion, be sufficient merely to direct the transfer of the case to the file of some other Magistrate, for it appears on an examination of the record that the case has a long and painful history, and that up till now the Petitioner has not received the assistance to which he was entitled in having the matter of which he complained investigated. There has moreover been very great delay in dealing with the case, and it is most desirable that the matter should now be taken firmly on hand and promptly disposed of. The Petitioner is the father of one Ashutosh Dey who was arrested and taken to the Shibpur Police Station in connection with an abduction case, and who died in the thana lock up on the night of the 25th November, 1933,

that is to say, on the night following his arrest. According to the Petitioner. his death was due to a beating that he had received shortly before he was taken to the thana whereas according to the Police his death was due to suicide by hanging. The matter was at once brought to the notice of the District Magistrate by the Petitioner, but no serious attempt at investigation appears to have been made until the 5th January, 1934, when a formal complaint under sec. 304, I..P. C, and certain minor sections was filed before the Sub-Divisional Magistrate. The petition of complaint was sent to Mr. B. C. Sen, Deputy Magistrate, for enquiry and report but the report of that officer was not submitted till the 3rd March, 1934.

2. On the 5th March, 1934, the Sub-Divisional Magistrate agreeing with the Deputy Magistrate who held the enquiry, dismissed the complaint under sec. 203 and, curiously enough, ordered that the case should be entered in the Court Registers as one of " attempted suicide." The Sessions Judge was thereupon moved and on the 8th May, 1934, he recorded an order directing that the matter be further enquired into, and that the Civil Surgeon and certain other persons should be examined in the presence of the complainant, who should be given an adequate opportunity of putting questions to the witnesses. On receipt of this order the complainant was called upon to produce his witnesses, and his prayer that the Civil Surgeon and the other witnesses referred to in the order of the Sessions Judge, should be summoned as Court witnesses, was rejected, an order to this effect being recorded on the 26th May, 1934, and another order to the same effect being recorded on the 1st June, 1934. In these orders it was stated that if the complainant so desired, his witnesses would be summoned on payment of the necessary costs.

3. It seems to me that this is not all what the learned Sessions Judge intended, nor was it, in my opinion, the proper way of dealing with a matter of this kind in which the allegation had been made that an offence under sec. 304, I. P. C. had been committed by certain persons and that certain Police Officers had conspired with those persons and others with a view to the suppression of true facts. It seems to me to be obvious that when allegations of this kind are made, they should be promptly and thoroughly investigated, and that no question of payment or non-payment of costs should be allowed to stand in the way of the examination of all persons whose evidence might throw any light on the matter. As a result of the manner in which the case has been dealt with by the Magistrates concerned, some ten months have now elapsed since the occurrence took place, and nothing effective has as yet been done. Such delay as this is obviously opposed to the public interest, and it is also most unfair both to the Petitioner and to the persons accused by him. In making the Rule absolute I would accordingly direct that the District Magistrate should take the case on to his own file, and dispose of the matter with the least possible delay, after holding an enquiry on the lines indicated by the learned Sessions Judge, as amplified above.

4. In these terms the Rule is made absolute.

Cunliffe, J.

5. I am of the same opinion. It is often said, and I think said rightly, that in order that justice should be effective it should be administered shortly and swiftly. Here the process adopted by the lower Court was neither short nor swift. As my Lord in his brief resume of the case has pointed out, as far back as last November, a man named Ashutosh Dey was found dead in the Shibpur Police Station in a mysterious condition--his neck being tied with the one end of a loin cloth to a rod of a window, his body being in a squatting posture and the toes touching the floor. A little later in February, his father made a complaint before the Magistrate that certain persons who had beaten the dead man should be prosecuted for causing his death under sec. 304. From February till now nothing really has been done--I mean nothing effective has been done. What has been done has been done in a silly-sally way and the result of this is that the mystery of this man's death has not as yet been solved.

6. As my Lord has rightly pointed out, it is extremely unfair not only to the Petitioner, the father of the dead man, but also to the people who are accused of having beaten the dead man and to the police and other public servants. I think that the history of this case shows monstrous lack of determination to administer public justice. For that reason I agree with the order put forward for the transfer of the case to the District Magistrate.