
(2014) 12 CHH CK 0025
In the Chhattisgarh High Court
Case No : Writ Petition (Cr.) No. 6459 of 2011

Parmeshwar Kumar Rajput	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Arms Act, 1959 — Section 25, 27 — Constitution of India, 1950 - Article 21, 226 —
Penal Code, 1860 (IPC) - Section 290, 294, 302, 506

Citation : (2015) 4 CGLJ 169 : (2015) CriLJ 2496

Hon'ble Judges : Manindra Mohan Shrivastava, J.

Bench : Single Bench

Advocate : Sudha Bharadwaj, for the Appellant; Arun Sao, Dy. Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Manindra Mohan Shrivastava, J. Aggrieved by lacklustre attitude and alleging that no fair investigation is being carried out in the matter of cold blooded murder in broad day light of one Umesh Rajput, a journalist, working as Junior Sub-Editor, Editorial Department of the newspaper "Nai Duniya", this petition has been filed by his brother, knocking doors of justice with a prayer to direct expeditious fair and impartial investigation into the murder by an independent and high powered investigating agency. Material facts as adumbrated in the petition and necessary for decision of this petition are that the brother of the petitioner, namely Umesh Rajput, who has been murdered, was a member of C.G Working Journalist Union. On 1-9-11, he was appointed as the Junior Sub-Editor of daily newspaper "Nai Duniya". Umesh Rajput had been reporting in the newspaper regarding malfunctioning and negligence in the treatment of patients in Community Health Centre, Chhura, District-Gariyabad. It is said that on 18-12-10 allegedly due to ill-treatment and negligence, one tribal woman Smt. Runjibai Gond, w/o. Khamsingh Gond, who had come to the hospital for an eye operation, died. It is further alleged that the tribal woman was operated upon carelessly and negligently resulting in development of complications leading to

her death. The information was collected from the relatives of the deceased by Umesh Rajput and thereafter, news items were published in the newspaper reporting alleged negligence. A news item was published on 13-1-11 in Mahasamund, editor of the newspaper "Nai Duniya". It is further said that the issue gained momentum resulting in publication of the said news regarding alleged medical negligence leading to death of a tribal woman in other newspapers.

2. It is also said that on 14-1-11, deceased Umesh Rajput was called by respondent No. 6 over telephone to record the statement of the husband of the deceased tribal woman. However, it is said, when Umesh Rajput reached the hospital, respondent No. 6 threatened him of dire consequences as he got published news in the newspaper on 13-1-11. Faced with this threat, a complaint in writing was lodged by Umesh Rajput in the police station, filed as Annexure PAS. Having taken cognizance, police registered FIR under crime No. 08/11 that very day on the allegation of commission of offence under Sections 290, 506 of IPC.

Further case of the petitioner is that the incident of holding out threat to Umesh Rajput for his fearless journalism resulted in public outrage and various representations Annexures P/8, P/9, P/10 were made by representatives of people at the grassroot level and associations, claiming to be protectors of tribal, for transfer of the person responsible for the incident. Further case of the petitioner is that as respondent No. 6 wielded considerable high place connections, she prevailed upon the police not to take any action.

3. Barely nine days after lodging of report by Umesh Rajput, on 23-1-11, it is said, two motorcyclists arrived in his house in broad day light, called him out and fired gunshot at him. Umesh Rajput was taken to hospital where he was declared dead.

4. Media reported that death of Umesh Rajput was the price which he had to pay for revealing truth as a fearless journalist.

The police proceeded to register a criminal case under crime No. 12/11 on the allegation of commission of offence of murder of Umesh Rajput punishable under Section 302, IPC and Sections 25, 27 of the Arms Act against unknown persons. It is said that as the issue related to cold blooded murder of a journalist in broad day light in the back drop of his reporting incidents of medical negligence leading to death of a tribal woman, it was raised on the floor of the State Legislative Assembly leading to constitution of a team of police officers to investigate into the matter. However, the culprits were not brought to book and it has been alleged by the petitioner that the police is not carrying out fair investigation due to political influences working on it. A representation was also made to State Human Rights Commission on 6-4-11. Despite orders passed by the Judicial Magistrate 1st Class, Gariyaband granting permission of Narco test of six suspected persons followed by order dated 13-5-11 granting permission to the

police to carry out Brain Mapping test of eight suspects, no steps were taken by the investigating agency in that direction, making no efforts to carry out search in the premises of the suspects, for well over eight months of the date of incident, this petition came to be filed.

5. Learned counsel for the petitioner vehemently urged that murder of Umesh Rajput, a Journalist, was not only an offence against human body, but at the same time, a threat and attack to impartial, independent functioning of the press and media. But the administration and the police machinery did not pay attention and seriousness to the issue which it deserved in the circumstances. Learned counsel for the petitioner argued that the backdrop in which the incident had happened pointed prima facie involvement of number of persons but the investigating agency, did not take effective and prompt steps to collect incriminating evidence by apprehending those suspects. It is further contended that though the Magistrate had granted permission for Narco test and Brain Mapping on 7-5-11 and 13-5-11 respectively, no steps were taken towards expeditious investigation despite Court orders rendering doubtful, the fairness and independence of the investigating agency. It has been alleged that because of the instance of certain influential personalities named in the petition, including son of ex-MLA as prime suspect of murder, the investigating agency has developed cold feet and making no serious attempts to bring to book the culprits. This lacklustre and indifferent attitude of investigating agency has led the petitioner to seek a direction for a fair and independent investigation by a high power investigating agency like Central Bureau of Investigation (CBI). Learned counsel for the petitioner also highlighted that it was only at the cost of filing of this petition and issuance of notice that belated steps were taken for Narco and Brain Mapping test of the suspects. Even during the pendency of the petition, the investigating agency has not carried out investigation in the right direction to find out truth and the circumstances lead to an inference that the investigating agency is not conducting fairly. It is also contended that despite specific report and conclusion, it has been stated that there is no concrete evidence or clue gathered from the tests carried out on the direction of the Court. Instead of taking effective measures to collect incriminating evidence by searching residential/office premises and collecting call details, the investigating agency is beating around bush by repeating before this Court that all attempts are being made to arrest one of the suspect Raju Vishwakarma, who is still absconding.

6. Per contra, learned State counsel submitted that petitioner's apprehension is ill-founded. On the instructions of higher authorities, special investigating team has been constituted which is investigating the matter with all sincerity and promptitude, without there being influenced by any one and all efforts are being made by holding investigation in various directions. He further submits that till date, the prosecution has not come across any clinching evidence of incriminating nature so as to register the offence and arrest any of the suspects named in the petition. He further submits that number of status reports have been filed before this Court from time to time, seven in number, which reflect

serious approach and efforts of the investigating agency to solve the mystery of murder of late Umesh Rajput. He submits that the investigating agency may be allowed to continue with the investigation and no case is made out to necessitate handing over the investigation to any other investigating agency.

7. I have heard learned counsel for the parties, given my anxious considerations to their submission and perused the records.

8. Indeed, murder of a journalist, particularly, in the backdrop of a peculiar circumstance of the present case, cannot be treated as an ordinary case of murder. Undisputedly, Umesh Rajput was a working journalist and was also working as a Sub-Editor of a daily newspaper. The background in which Umesh Rajput was murdered, as stated in the petition, cannot, at this stage, be said to be a cock and bull story. Enough material have been placed on record by the petitioner to show that late Umesh Rajput had been reporting on the issue of malfunctioning and alleged criminal negligence in the matter of conducting eye operation of a tribal woman which led to her unfortunate death. The new paper reports which have been placed on record show that reports were published in the newspaper regarding death and the matter had drawn attention of public at large as also media.

There is another important material on record i.e. a written report lodged by late Umesh Rajput in the police station at Chhura on 14-1-11 wherein he reported that he was abused and threatened of dire consequences. In fact, the police registered a crime under crime No. 8/11 against respondent No. 6 for alleged commission of offence under Sections 294, 506, IPC.

9. Barely nine days thereafter, i.e. on 23-1-11, as is reported, two motor cyclists came to the house of Umesh Rajput and it is said that they fired gunshot on Umesh Rajput leading to his instant death. Present is not a case where without any events, a journalist suddenly died in suspicious circumstances. Present is a case where a journalist, who had been reporting a case of medical negligence and death of a tribal woman in the newspaper for which he was threatened and a written report was lodged, was murdered in broad day light by two shooters in his house and that too on the ninth day after lodging report in the police station. Prima facie, petitioner's allegation that the deceased had to lay his life for fearless journalism cannot be brushed aside as figment of imagination to falsely implicate someone. The background in which the journalist was murdered required the investigating agency to hold a prompt, effective and at the same time, a fair and independent investigation to find out the truth.

10. It appear that the investigating agency applied for grant of permission by the Magistrate for Narco analysis and Brain Mapping of certain suspects. It has been categorically averred and not denied by respondents that the Judicial Magistrate, 1st Class, Gariyaband granted permission for Narco test and Brain Mapping on eight suspects on 7-5-11 and 13-5-11 collectively placed on record as Annexure P/16. The respondents, however, have not come out with any explanation as to

why prompt steps were not taken by the investigating agency to get those suspects tested. This writ petition was filed on 18-10-11 and this Court directed issuance of notice on 1-11-11 in the presence of Deputy Advocate General for the State. No explanation has come forth as to what happened ever since the permission was granted by the Magistrate till the application was sent for the first time to the Directorate of Forensic Science, Gujarat State for Brain Mapping of suspects.

11. The State has come out that Brain Mapping of respondent No. 6 and some other persons was yet to be conducted. However, a report was submitted before this Court along with status report dated 4/7-5-12 as Annexure R/2. The petitioner also came out with a specific information in para 6 of the rejoinder that a letter was also found near the dead body of deceased Umesh Rajput which ought to have been sent for examination by handwriting expert and that even mobile call details were also not collected and no investigation has been carried out in that direction which may give important clue and also evidence of complicity of prime suspects of the case in the murder of the deceased.

12. Unfortunately, despite the case being listed before this Court time and again, granting more than one opportunities to the investigating agency to come out with serious efforts made in the proper direction to find out culprits, it was stated in a status report dated 4/7-5-12 that from the reports of the Brain Mapping Tests of the suspects, no concrete evidence or clue is available to the police which would be helpful in the investigation. Learned counsel for the petitioner rightly pointed out to this Court that on the face of the conclusion and finding recorded in the Brain Mapping test, this stand of the investigating agency that no clue at all was available, only point towards lacklustre attitude. In this regard, conclusion recorded in the Brain Mapping test is important and relevant so reproduced here in below--

"Conclusion:

The issues pertaining to planning and getting Umesh Rajput murdered by hiring resourceful persons, did not elicit contextual Experiential Knowledge across the scenarios of hypothetical probes in the BEOS profile of 1) Neelkanth Thakur, 2) Shivkumar Omkardas Vaishnav, 3) Saroj Mishra, and 4) Vimla Rajput. The evidence in the form of Experimental Knowledge of participation in the murder of Umesh Rajput is not elicited in the BEOS test of 1) Neelkanth Thakur, 2) Shivkumar Omkardas Vaishnav, 3) Saroj Mishra, and 4) Vimla Rajput.

Analysis of the elicited Experiential knowledge responses during BEOS profile of Ashok Dixit indicates that he was present in the meeting wherein it was conspired to kill Umesh Rajput and he knows that Raturaj and Shivraj had got Umesh murdered through their men.

Analysis of the elicited Experiential knowledge responses during BEOS profile of Raturaj Shah to the probes of 1) Taking the decision to kill Umesh Rajput by him and Shivraj 2) He understood that his men had killed Umesh and 3) His

involvement in killing Umesh Rajput are indicative of his participation in the murder of Umesh Rajput.

The BEOS Profile of Raju Pandey is containing 83% of Artifacts possibly resulted due to his physical condition. Hence, no opinion can be inferred in respect of Raju Pandey's BEOS Profiling.

Salient Findings:

As per the records, the information related to supari of Umesh Rajput was conveyed via-via amongst Saroj Mishra, Raju Pandey, Ashok Dixit and Raturaj Shah. In addition, through BEOS Profile of Saroj Mishra, Ashok Dixit and Raturaj Shah it is also signified that the conversation related to Umesh Rajput's supari had taken place. Hence, it is recommended to investigate thoroughly about the same."

13. At this stage, it is relevant to bear in my mind that ordinarily, the writ Courts would not substitute itself in the place of investigating agency to decide how and in what direction the investigation should proceed. Moreover, Brain Mapping test, by itself, cannot be said to be an incriminating evidence of clinching nature but at the same time, scientific analysis in the form of Brain Mapping is a pointer and a guide to the investigating agency and helpful to them so that investigation proceeds in the right direction. In any case, the submission on affidavit made in the status report that the aforesaid conclusion and report gave no clue, is only indicative of indifferent attitude on the part of the investigating agency. A bare reading of the conclusion and finding of the Brain Mapping test show that it was a clue to the investigating agency and helpful to them to decide in what direction the investigation should proceed and certainly cannot be said to be a waste piece of paper as has been taken by the investigating agency.

14. In the present case, though the background of incident, dispute of deceased-Umesh Rajput few days before his murder, reporting of various news in the newspaper brought some persons within the net of prime suspects of the crime but then the investigating agency neither carried out any search in their premises/offices nor collected call details made by the prime suspects of the case in respect of the period when the news reports were published, incidents happened in the Community Health Centre, news items were published, the deceased allegedly threatened by respondent No. 6, report lodged in the police station by Umesh Rajput on 14-1-11 and his murder on 23-1-11.

As the facts of this case reveal, that there is a high probability of Umesh being murdered in a well hatched conspiracy against him because Umesh was reporting certain incidents including that of death of a tribal woman during her eye operation and that in all probability, he was murdered by contract killer, much more was expected by the investigating agency to unearth conspiracy rather than doing empty formality of recording statements of those very suspects without carrying out any search in their premises soon after the incident. It is relevant to note that the case was listed before this Court time and again and

despite repeated queries made by this Court as to whether any search was carried out in the premises of prime suspects, the investigating officers, who remained present before this Court, could not come out with any satisfactory reply and there is nothing on record to show that any attempt was made to search the premises of the suspects.

15. Though the petitioner raised suspicion on the bona fides of the investigating agency by submitting that even mobile call details are not being collected, as late as in the month of July, 2014, the investigating agency seems to have woken up to start collecting mobile call details. To a specific averment made by the petitioner in the rejoinder that a letter was found near the dead body of Umesh Rajput which should have been sent for examination by a handwriting expert, no specific reply has been put forth before this Court. Learned counsel for the petitioner also pointed out that despite judicial intervention in the matter and continuous monitoring and appearance of the officer on more than one occasions, quite reluctantly, details of mobile calls are now being collected at this belated stage which ought to have been done at the very inception of the investigation. Thus, in the case of murder which occurred on 23-1-11, the investigating agency perhaps left with no option, has started collecting mobile call details in the year 2014.

16. In the status reports filed by the respondents before this Court one after the other, it has been stated that one of the prime suspects Raju Vishwakarma, who might be the contract killer, has remained absconded and attempts are being made to apprehend him. However, it is on record that some of the prime suspects of the case were not subjected to Brain Mapping test for a fairly long time on one pretext or the other on their statement that they are not fit for being subjected to Brain Mapping test. Some more suspects were subjected to Brain Mapping test on 16-9-13 which report is filed as Annexure R/6 along with status report dated 7-7-14. The conclusion therein is relevant and reproduced here in below--

"Conclusion:

Based on BEOS findings the following opinion is furnished--

? No evidence in the form of Experiential Knowledge responses were elicited in the Brain Electrical Oscillation Signature profile tests of Shivraj Shah across the scenarios of participating in killing Umesh Rajput or hiring someone to murder Umesh Rajput.

? BEOS profiling of Shivraj Shah indicates that he possesses knowledge that his brother Ruturaj Shah is involved in killing of Umesh Rajput."

It is relevant to note here that first Brain Mapping report dated 1-1-12 and the second Brain Mapping report dated 16-9-13 giving clear pointer to the investigating agency regarding the direction in which it has to proceed to find out involvement of some of the prime suspects of the case in the murder of Umesh

Rajput, it was only when this Court raised query regarding collecting mobile details that the respondents came out with letter dated 30-7-14 (Annexure R/9) annexed along with status report dated 2/4-8-14 that steps are being taken to collect mobile call details.

17. Overall picture which emerges from the facts and circumstances of the case leads to an inference that the investigating agency, right from the beginning, has not taken prompt and effective steps to solve the mystery of murder of late Umesh Rajput and many important steps towards investigation were taken up quite belatedly only at the cost of filing of this petition and monitoring of this case by this Court, repeated queries made time and again as to why investigation is not being held in proper direction, why mobile call details were not collected and why search was not carried out in the premises of the suspects immediately after Brain Mapping test reports were received.

18. Whenever a pen is stained with the blood of its writer, who happened to be a journalist, without anything more, the State machinery, in a constitutional democracy, owns a duty to bring to book, those offenders who are threat to impartial and fearless journalism and pose challenge to the very existence of the fourth pillar of democracy, the press and the media. The solemn duty to be performed by the police machinery, in such kind of cases, is not only to carry out fair, independent, effective and prompt investigation, completely opaque to any unwarranted outside interference and attempt to truncate and frustrate course of law but also in a fair and independent manner which instills confidence among people that such gruesome attempts will neither be tolerated nor spared and the law of this country shall punish the offender sending message across that the State, in its sovereignty, is fully committed to constitutional values and protect freedom of press by protecting those journalists who are committed to their job honestly, ethically performing their duty as whistle blowers. Unless that is ensured, the society may not the truth, unearthed through fair, independent, impartial and at the same time, fearless journalism. If a journalist who is involved in fair journalism carries an impression that the State agency will not be able to protect his life and limb for impartial, fair reporting, he may not be able to place, through its reports, the truth.

The murder of Umesh Rajput, a journalist, in the peculiar backdrop of the circumstances of the present case requires much more serious attention of the investigating agency and the police officials than what has been exhibited.

19. Ordinarily, the writ Courts, in exercise of jurisdiction under Article 226 of the Constitution of India, do not interfere with the progress of the investigation nor does investigation are directed to be taken up by any other investigating agency like CBI. In appropriate cases, if in the facts and circumstances of the case, it is found that in order to do complete justice in the matter and to instill confidence in the public, it is necessary to have investigation conducted through a specialized agency like the CBI, such directions can always be issued. The State has a duty to provide fair and impartial investigation.

The Supreme Court in the case of Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and Another, quoted Abraham Lincoln thus--

"If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem"

In the aforesaid decision, the Supreme Court highlighting sacred and cherished right guaranteed under Article 21 of the Constitution of India and proceeded to observe as below--

"36. As pithily stated in *Jennison v. Baker*, 1972 (1) All ER 1006, "The law should not be seen to sit limply, while those who defy it go free and, those who seek its protection lose hope". Courts have to ensure that accused persons are punished and if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the deficiencies, deal with the same appropriately within the framework of law. Justice has no favourite, except truth. 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."

In the case of *State of West Bengal and Others Vs. Sampat Lal and Others*, , the Supreme Court held as under--

"The Court can hand over the investigation to CBI only on being prima facie satisfied from the circumstances appearing from the record that the statutory agency has not worked in an effective way or the circumstances are such that it may reasonably be presumed or inferred that the statutory agency cannot be able to discharge its function of investigation fairly and impartially.

It is sufficient to indicate that there is residuary jurisdiction left in the Court to give direction to the investigating agency when it is satisfied that the requirements of law are not being complied with and the investigation is not being conducted properly or with a due haste and promptitude."

In yet another decision in the case of *Kashmeri Devi Vs. Delhi Administration and Another*, , it was held--

"Prima facie the police has acted in a partisan manner to shield the culprits and the investigation of the case has not been done in proper and objective manner. We are, therefore, of the opinion that in the interest of justice it is necessary to get a fresh investigation made through an independent authority so that truth may be known."

In the case of *Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others*, the Supreme Court reiterated the aforesaid principle in following words--

"In the facts and circumstances of the instant case to do complete justice in the matter and to instill confidence in the public, it is necessary to have a fresh investigation in this case through a specialized agency like the CBI. Therefore,

the CSI was directed to take up the investigation of the case."

In a landmark decision of the Supreme Court in the case of State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, it was held--

"68 (ii). Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the right of the victim. The State has a duty to enforce the human rights of the citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

68. (iii) to 68 (vii) xxxxxxxxxxxxxxxxxxxxxxx

69. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

70.....In so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights."

20. In the facts and circumstances of the present case, in the light of the observations which have been made, this Court is inclined, in the interest of justice to direct that the investigation be carried out by the Central Bureau of Investigation (CBI) in the matter of murder of late Umesh Rajput. Accordingly, the petition is allowed and it is directed as follows--

i) The CBI shall take up investigation of the case under crime No. 12/11 registered in police station -- Chhura against unknown persons in the matter of murder of Umesh Rajput at the earliest.

ii) The Superintendent of Police, District Raipur and Station House Officer, Police Station -- Chhura and the officer who was investigating the case relating to murder of Umesh Rajput shall render proper assistance, if any needed by the CBI in conducting and completing investigation.

iii) The CBI shall hold prompt, fair and impartial investigation into the offence of murder in connection with murder of Umesh Rajput, a journalist and sub-editor, Editorial Department of newspaper -- "Nai Duniya" and endeavour to complete

investigation as expeditiously as possible.

iv) The result of investigation by the CBI shall be informed immediately after completion of investigation to the Registry of this Court.

Before parting with the matter, it is made clear that whatever observations have been made are only to the extent of examining the progress of investigation and this Court has not recorded any finding or observations with regard to the merits of the case or with regard to any particular person/suspect as the accused in the murder of Umesh Rajput.

A cost of Rs. 10,000/- shall be paid by the State to the petitioner.