Prof. Rama Shankarnarayan Melkote And ... vs State Of A.P. Rep., By Its Principal ... on 19 January, 2018

Bench: Ramesh Ranganathan, J.Uma Devi

HONBLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN AND HONBLE MS. JUSTICE J.UMA DEVI

W.P.(PIL) No.186 of 2017 and batch

19-01-2018

Prof. Rama Shankarnarayan Melkote and three others..Petitioner

State of A.P. rep., by its Principal Secretary, Home Department, A.P. Secretariat Buildi

Counsel for Petitioners: Ms. Vasudha Nagaraj

Counsel for respondents: Government Pleader for Home

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?Citations:

1) (2014) 5 SCC 108
2) 2013 (1) ALD (Crl.) 519 (SC)
3) ILR (1973) 2 P&H 561 = 1974 Crl.L.J 970
4) (2008) 2 SCC 383 : (2008) 1 SCC (Cri) 427
5) (1979) 2 SCC 322
6) 1974 Crl.L.J. 970 = ILR (1973) 2 P&H 561
7) (1998) 5 SCC 223
8) (1992) 1 SCC 397
9) (2004) 4 SCC 158
10) (2016) 3 SCC 135 : (2016) 1 SCC (Cri) 743
11) (2010) 6 SCC 1
12) (2014) 5 SCC 154
13) (2003) 11 SCC 271
14) (2014) 2 SCC 532
15) (2011) 12 SCC 302 : (2012) 1 SCC (Cri) 559
16) (2008) 1 SCC 407 = AIR 2008 SC 180
17) (2011) 5 SCC 79

HONBLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HONBLE MS. JUSTICE J. UMA DEVI

W.P.(PIL) No.186 of 2017 and W.P.No.25434 of 2017

COMMON ORDER:

(per Honble the Acting Chief Justice Ramesh Ranganathan) The investigating officials and the prosecutors involved in presenting this case have miserably failed in discharging their duties. They have been instrumental in denying to serve the cause of justice. The misery of the family of the victim has remained unredressed. The perpetrators of a horrendous crime, involving extremely ruthless and savage treatment to the victim, have remained unpunished. A heartless and merciless criminal, who has committed an extremely heinous crime, has gone scot-free. He must be walking around, in some city/town in India, with his head held high. A criminal on the move. Fearless and fearsome. Fearless now, because he could not be administered the punishment he ought to have suffered. And fearsome, on account of his having remained unaffected by the brutal crime committed by him. His actions now know of no barriers. He could be expected to act in an unfathomable savage manner, uncomprehendable to a sane mind.

These words, though not ours but are those of the Supreme Court in State of Gujarat v. Kishanbhai , squarely apply to the case on hand.

The body of the deceased-Miss. Ayesha Meera, according to the police, was found naked, in the bathroom of a ladies hostel at Vijayawada on 27.12.2007, lying in a pool of blood around her head, with blood oozing from both her nostrils and ears. Her right leg was found tied with a towel to a water tap, and her left leg was found bent. The English letter H in capital, and the words Prema Chirutha in Telugu were found written on her bare chest and right thigh. There was a huge swelling behind the head of the deceased with two injury marks on the left side of her upper and lower lips with corresponding incisions inside. What is even more nauseating is that the murderer is said to have had sexual intercourse with the dead body only to mislead the investigating agency into believing that the victim was first raped and then killed to satiate the lust of the killer.

Less than three years after the murder of Miss. Ayesha Meera on 27.12.2007, Sri Satyam Babu was sentenced to life imprisonment on 29.09.2010 for the offences of rape and murder. He suffered incarceration for more than six and half years thereafter, till he was acquitted and let free by the Division Bench of this Court by its judgment in Criminal Appeal No.1518 of 2010 dated 31.03.2017. All that Shri Satyam Babu, who was falsely accused of having committed this ghastly and heinous crime, has so far been compensated, for the illegal deprivation of his liberty for the past several years, is Rs.1.00 Lakh which the Division Bench had directed the State to pay him.

The gruesome murder of a young girl, then aged 17 years, shocked people all over the State, and was newspaper headlines for several days. The murderer is still on the loose for the past more than a decade. A botched investigation resulted in an innocent young man being convicted of rape and murder, and made to suffer imprisonment for several years. The agonised parents of the deceased want to know who killed their elder daughter and why?, and thereby seek closure to the trauma they are undergoing ever since her violent death. This, in short, is the case before us.

W.P. (PIL) No.186 of 2017 is filed by three public spirited citizens - a Retired Professor of Osmania University, a Journalist and a social activist, and W.P. No.25434 of 2017 is filed by the parents of the deceased. In both the Writ Petitions, the relief sought for is to direct the respondents to forthwith initiate re- investigation of the circumstances leading to the murder of Miss. Ayesha Meera by a Special Investigation Team consisting of police officials with a known track record of integrity and impartiality, and for such investigation to be monitored by this Court in order to ensure a fair and impartial investigation to expose and punish the actual offenders responsible for the gruesome murder. The parents of the deceased seek a further direction for action to be taken against the investigation/ prosecuting officials, and other officers hitherto involved in the illegal investigation of the murder of Miss. Ayesha Meera.

The petitioners in W.P. No.25434 of 2017 are the parents of Miss. Ayesha Meera, a student of B. Pharmacy, who was, during the relevant period, staying in Sree Durga Ladies Hostel, Ibrahimpatnam, Vijayawada. She was dropped at the said hostel on 26.12.2017 by her mother and, on the intervening night of 26/27.12.2017, suffered a gruesome and a bloody death. According to the prosecution, this young girl aged 17 years was murdered and raped on 27.12.2017 at about 2.00 A.M. The Inspector of Police (P.W-30) who initially took up investigation, inspected the scene of offence and got an observation report drafted. He prepared a rough sketch of the scene of the offence and the entire building, and seized certain material objects. In the inquest held at 12.00 noon on 27.12.2017, P.Ws-1, 2, 4, 7, 13 and another, in their Section 161 CrPC statements, stated that the deceased was raped and murdered on being hit on her head with a blunt and heavy object. The body of the deceased was sent to the Government Hospital, Vijayawada for post-mortem examination. The doctors, who conducted the autopsy, sent the viscera, the viginal swabs and smears, and the pubic hair of the deceased for chemical analysis. Based on the chemical examination report received on 31.01.2008, the medical officers opined that there was recent sexual intercourse, and the death was caused due to head injury.

During the course of investigation P.W-32 got the polygraph and DNA tests conducted on several suspects, and their hand writings and footprint impressions compared with the samples collected from the scene of the offence. He suspected the complicity of one dossier criminal of Patamata Police Station, namely, Guruvindar Singh Anand @ Laddu of Gurunanak Colony, Patamata, Vijayawada as he was supposed to have had a similar crime history in the past. As the DNA profile and the handwriting sample obtained from the said Guruvindar Singh Anand did not match with the DNA sample and the handwriting of the offender, P.W-32 continued investigation till his transfer on 13.08.2008.

The investigation was, thereafter, taken up by the Assistant Commissioner of Police, Central Zone (P.W-33) who claimed that he came to know that, on 17.08.2008 at 01.00 hours, Sri Satyam Babu was arrested by the Sub-Divisional Police Officer, Nandigama (P.W-31) (near Polytechnic College located on the bypass road, Nandigama) in connection with Crime No.241 of 2008 under Sections 450, 457 and 380 IPC of Nandigama police station and, during interrogation, he voluntarily confessed to have committed the murder and rape of the deceased, on the intervening night of 26/27.12.2007, at Durga Ladies hostel. P.W-33 obtained a Prisoner Transit Warrant on 18.08.2008 from the Court against Sri Satyam Babu, and took him into police custody on 29.08.2008. During

investigation, the accused was said to have voluntarily confessed to the rape and murder; and to have admitted to have killed the deceased with a chutney pounder which he had, allegedly, taken from the bushes in the front yard of the house of P.W-10 wherefrom the chutney pounder was recovered.

The alleged confessional statement of Sri Satyam Babu was that he had a strong sexual urge, as his wife has discarded him; he had fear of contacting AIDS, and having to spend money if he went to sex workers; he went to a second show cinema, and came to the bus stop thereafter with the intention of going to his house; when he was waiting for a bus or a lorry, he saw a lady under the light of the verandah on the second floor of the left side building of the hostel; as he had a sexual urge on seeing her, he jumped over the compound wall of the said building and reached the top of the bath room; from there he entered the first floor, and from there he went to the second floor; he pushed the door on the right side of the steps, but it did not open; from the window he saw ladies sleeping, and the door situated on the left side of the steps open; he entered the hall and found many cots, and on one of the cots a lady was sleeping facing the wall; her head faced the window, and her legs towards the door; nobody was found on the remaining cots; he saw two ladies sleeping in the kitchen; on seeing the lady sleeping in the hall, he had a sexual desire; he thought that, if he indulged in a sexual act at that place, the lady may cry and the remaining ladies may wake up; he decided to fulfil his sexual desire after beating her; as he could not find a weapon, he went inside the compound of the adjacent building, and found a chutney pounder; then he took the chutney pounder and went to the second floor, and reached the cot of the deceased where she was sleeping as she earlier was; he bet her with the chutney pounder on the left side of her head; and after making a sound kui she kept quiet; he then dragged her to the bathroom where he raped her and satisfied his sexual desire.

On a charge sheet being filed, the Trial Court framed charges against the accused on 12.07.2009. P.Ws-1 to 34 were examined on behalf of the prosecution, Exs.P-1 to P-51 were marked and Mos-1 to 14 were produced. Exs.X-1 to X-5 were marked through witnesses. While no oral evidence was let in on behalf of the defence, Exs.D-1 to D-5 and the relevant portions of the Section 161 Cr.P.C statements, of certain prosecution witnesses, were marked. The Trial Court disposed of the Sessions Case by its judgment dated 29.09.2010 holding the accused guilty of the offence of rape and murder, and sentenced him to life imprisonment and to pay a fine of Rs.1,000/- and, in default of payment of fine, to suffer simple imprisonment for six months for the offence under Section 302 IPC, and to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,000/- and, in default of payment of fine, to suffer simple imprisonment for six months for the offence under Section 376 IPC. Aggrieved thereby, the accused filed Criminal Appeal No.1518 of 2010 before this Court. The Division Bench, while acquitting Sri Satyam Babu by its judgment in Crl.A. No.1518 of 2010 dated 31.03.2017, observed that the real culprits were required to be identified and punished, and failure to do so would amount to miscarriage of justice. Consequent thereto, our jurisdiction under Article 226 of the Constitution of India has been invoked seeking re-investigation into the circumstances leading to the murder of Miss. Ayesha Meera.

We had, by our order dated 01.08.2017, directed the Principal Secretary (Home), who is also the Chairman of the Apex Committee, to submit a report to this Court regarding the action, if any, taken by the Committee till date pursuant to the judgment of the Division bench in Criminal Appeal

No.1518 of 2010 dated 31.03.2017. In her report, the Principal Secretary (Home) stated that it was proposed to order re-investigation of the case by constituting a Special Investigation Team headed by an officer of the rank of Deputy Inspector General of Police, with lady police officers and supervised by the Commissioner of Police, Vijayawada; the Director General of Police had submitted a proposal on 01.08.2017, pursuant to which G.O.Ms. No.132 dated 04.08.2017 was issued permitting constitution of a Special Investigation Team to re-investigate Crime No.477 of 2007 under Sections 302 and 376 IPC of Ibrahimpatnam police station; and the Apex Committee, constituted vide G.O.Ms. No.20 dated 14.02.2017, had met on 03.08.2017 and had taken a decision in the matter.

When the matter was listed before us on 10.08.2017, a copy of the proceedings issued by the Director General of Police on 08.08.2017, constituting a Special Investigating Team for re-investigation of the murder of Miss.Ayesha Meera, in Cr. No.477 of 2007 under Sections 302 and 376 IPC of Ibrahimpatnam police station, Vijayawada, was placed before us. The said proceedings refers to the Special Investigation Team to consist of (1) Sri Ch. Srikanth, IPS, Deputy Inspector General of Police, Visakhapatnam Range, Visakhapatnam; (2) Ms. D. Hymavathi, Deputy Superintendent of Police; (3) Ms. Sreelakshmi, Deputy Superintendent of Police; and (4) Md. Saherunnisa Begum, Inspector of Police, Nunna, Krishna District; and that the Special Investigation Team should take up re-investigation of the case immediately under the supervision of the Commissioner of Police, Vijayawada. On 31.08.2017, the Learned Government Pleader for Home placed before us a copy of the order passed by the IV Additional Chief Metropollitan Magistrate, Vijayawada, in C.F. No.4848 of 2017 dated 19.08.2017, rejecting the application filed by the Special Investigation Team to conduct re-investigation in Crime No.477 of 2017 under Section 173(8) Cr.P.C.

In her counter-affidavit dated 04.09.2017, the Principal Secretary (Home) stated that the IV Additional Metropolitan Magistrate, Vijayawada had, by order in C.F. No.4848 of 2017 dated 09.08.2017, rejected the petition filed by the investigating officer, under Section 173(8) Cr.P.C, holding that he had no power to direct further investigation; and, on presentation of a report under Section 173(2) Cr.P.C, he lacked power to direct a fresh investigation to be caused. Placing reliance on the judgment of the Supreme Court in Vinay Tyagi v. Irshad Ali @ Depak , the Principal Secretary (Home) submitted that it is only on the orders of Higher Courts can such investigation be conducted, in which event the Higher Courts should pass specific orders with regard to the fate of the investigation already conducted and the report filed; and this Court may pass appropriate orders.

Before examining the question whether fresh investigation should be directed to be caused, it is necessary to understand the distinction between further investigation and fresh investigation. While Section 173(8) CrPC permits the former, it does not provide for the latter. Investigation can be ordered by the Court in varied forms, and at different stages. Right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of Section 156(1), in the exercise of its powers under Section 156(3) Cr.P.C. Investigation can be of the following kinds (i) Initial Investigation;

(ii) Further Investigation; (iii) Fresh or de novo or re-investigation. (Vinay Tyagi1). There is no provision in the CrPC which, expressly or by necessary implication, bars the right of the police to further investigate, after cognizance of the case has been taken by the Magistrate. Practice, convenience and preponderance of authority, permits repeated investigation on discovery of fresh facts. (State v. Mehar Singh). Notwithstanding that a Magistrate has taken cognizance of the offence upon a police report submitted under Section 173 Cr.P.C, the right of the police to further investigate is not exhausted. The police can exercise such right as often as necessary when fresh information comes to light. Where they desire to make further investigation, the police can seek the formal permission of the Court to make further investigation. (State of A.P. v. A.S. Peter ; Ram Lal Narang v. State (Delhi Admn.) ; State v. Mehar Singh). It is in the interests of both the prosecution and the defence that the police should have the power to make further investigation and submit a supplemental report. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. (Mehar Singh6).

As further investigation is a continuation of the earlier investigation, which culminates in a further police report under Section 173(8), it necessarily means that any further investigation should be made only by the investigation agency which was earlier entrusted with investigation by the State Government. (A.S. Peter4; K. Chandrasekhar v. State of Kerala). The right of the police is to cause a further investigation under Section 173(8) Cr.PC, and not a fresh investigation or reinvestigation. The dictionary meaning of further (when used as an adjective) is additional; more; supplemental. Further investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. Section 173(8) envisages that, on completion of further investigation, the investigating agency has to forward to the Magistrate a further report or reportsand not a fresh report or reportsregarding the further evidence obtained during such investigation. (A.S. Peter4; K. Chandrasekhar7). In the light of the judgment of the Division Bench, in Criminal Appeal No.1518 of 2010 dated 31.03.2017, absolving the accused of the charge, the question of the earlier investigating agency causing a further investigation under Section 173(8) Cr.PC does not arise. What necessitates examination, in these writ proceedings, is whether a fresh or a denovo investigation should be caused?

Before examining this question, it is necessary to consider the power of the High Court, in proceedings under Article 226 of the Constitution of India, to direct re-investigation/fresh investigation, and the circumstances in which such power should be exercised. In a given situation, to do justice between the parties and to instil confidence in public mind, it may become necessary to pass orders entrusting investigation to a specialized agency. (Gudalure M.J. Cherian v. Union of India ; Vinay Tyagi2). In the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the Court. The order should, unambiguously, state whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Superior courts have the jurisdiction, under Section 482 CrPC or under Article 226 of the Constitution of India, to direct 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo', and 'reinvestigation' are synonymous expressions, and their result in law would be the same. The Superior Courts are also vested with the power of transferring investigation from one agency to another, provided ends of justice so demand. This power should, however, be exercised by the Superior Courts very sparingly and with great circumspection. (Vinay Tyagi2).

Unlike a further investigation, in the case of fresh investigation, reinvestigation or de novo investigation, there has to be a definite order of the Court. The order of the Court should, unambiguously, state whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation', as that would be opposed to the scheme of the Criminal Procedure Code. It is only upon the orders of the Higher Courts, empowered to pass such orders, that a fresh investigation can be conducted. (Vinay Tyagi2). Cases, where an order of 'fresh'/'de novo' investigation, can be passed by the higher judiciary are few and far between. (Vinay Tyagi2). Where the investigation is ex-facie unfair, tainted, mala fide and smacks of foul play, the Courts would direct a fresh or de novo investigation; and, if necessary, even by another independent investigating agency. This is a power of wide plenitude and should, therefore, be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks its judicial conscience, the Court should be reluctant to interfere in such matters. (Vinay Tyagi2).

As a fresh investigation can only be directed in the rarest of rare cases, that too when the unfairness of the investigation pricks its judicial conscience, it is necessary to examine the case of the prosecution, and the observations of the Division Bench in its judgment in Criminal Appeal No.1518 of 2010 dated 31.03.2017, albeit in brief. The case of the prosecution was that P.W-34, who joined as the ACP, West Zone, took up investigation on 29.09.2008 and had a sexual potency test conducted on the accused (Shri Satyam Babu) on 25.10.2008. The prosecution concluded that, on 27.12.2007 at about 2.00 A.M, the accused had intruded into the Sri Durga Ladies Hostel with a sexual urge, and had jumped the compound wall of the building; he reached the roof top of the bathroom located in the front yard of the building, climbed upto the first floor of the hostel building, reached the second floor through the stair case, entered into the room located in the 6th floor, found the deceased sleeping alone on the cot and the remaining inmates sleeping in the adjacent rooms; with an intention to commit the offence of rape on her, and escape from a possible attack by any inmate, the accused went down and brought the chutney pounder from the neighbouring house of P.W- 10 and, with the intention to rape and murder her, he forcibly hit the deceased with a chutney pounder causing grievous head injury. He then lifted her from the cot, brought her to the verandah, dragged her into the bath room located at the south eastern corner of the same floor, removed her clothes, tied her right leg to the water tap with a towel, bent her left leg and raped her; later he came back to her room, pulled out the bag of the deceased, took out two other suitcases and ransacked the articles; he took Rs.500/-, some change, two pens and a pencil from the bag of the deceased, and went back to the bath room; he wrote the English letter H in capital, and the letters Prema Chirutha in Telugu, on the chest of the deceased; he returned and collected the photocopy of a non-judicial stamp paper and a pen from the bag of the deceased, and wrote a letter on the reverse of the stamp paper, addressing the inmates of the ladies hostel in Telugu, requesting them to forgive him for the murder and rape of the accused; he then wrote on the other side of the same paper, on the typed matter, the words Chirutha, Cheran Teja, 143 and love symbols; leaving the document there, he left the scene of the offence with the chutney pounder, got down the same way in which he entered the building, reached the place where he collected the chutney pounder, threw it in the bushes located in the front yard of the house of P.W10; and, thereafter, he went to Ibrahimpatnam Ring Centre, and spent considerable time at the Sealand Tea Stall.

This case of the prosecution was shred to bits by the Division Bench in its judgment in Criminal Appeal No.1518 of 2010 dated 31.03.2017. The Division Bench held that it was not the case of the prosecution that the accused had any previous acquaintance with the deceased, or the hostel in which she was staying; there were serious contradictions between Exs.P.6 and P.17; while the contents of Ex.P.6 suggested that the accused had a previous acquaintance with the deceased, Ex.P.17 showed that he went into the hostel to satisfy his lust, and he accidentally chose the deceased who was found sleeping alone in the hall, while the other girls were sleeping in the kitchen next to the hall where the deceased was sleeping; the motive theory, set up by the prosecution, was not only self-contradictory, but was also too artificial to be accepted; in her evidence, PW-1 (mother of the deceased) deposed that, initially, the police suspected the cook of the hostel-Siva Anjaneyulu, the maternal uncle of the deceased, Laddu and Upendra Singh; the accused had been implicated without conducting a narco-analysis test on the seven suspects despite the direction issued by the High Court; the scribe of Ex.P- 16 inquest report was the best person to speak about its preparation, and the presence or otherwise of the parents of the deceased at that time; for reasons best known to the Police, the scribe was not examined; the parents of the deceased had deposed that they did not see the dead body of the deceased till 3.30 P.M, and Ex.P-16-inquest report was prepared after the dead body of their daughter was handed over to them in the evening.

The Division Bench observed that there was any amount of suspicion regarding the version of the prosecution that the inquest report was prepared in the presence of the parents of the deceased; the submission of the Learned Counsel for the accused was that, before the parents of the deceased were permitted to see the dead body, the police had reconstructed the scene of the offence in order to shield the real culprits; from the evidence of PW.6, it was evident that there were 55 students in the hostel consisting of two portions on the second floor, and a single portion on the third floor with a room above it and a water tank by its side; the distance between the room of the deceased, and the bedroom in which she and others were staying, was about seven or eight feet; the entire corridor on the ground floor, i.e., open space between the two buildings (blocks) was secured by a grill with a door on it; all the blocks were secured to prevent outsiders from entering the building and the entire block; the distance (gap) between the main building, and the toilet on the ground floor, was eight feet; for a person to reach the first floor, he was not only required to reach the top of the toilet, but also latch on to the top of the parapet wall of the first floor of the main building flying across a height of six feet and five inches, covering the horizontal distance of eight feet between the toilet and the main building; and the accused had allegedly performed this feat not once but twice, and the second time with a chutney pounder in his hand.

The Division Bench opined that, in Ex.P.15scene of offence observation report, it was recorded that, adjacent to the cot of the deceased where she was sleeping, there was an one wall-almirah with two parallel racks in which the deceased kept her articles; there was a blood stain of about 2.00 cms in size on the edge of the first rack; in between the two racks, there was a cement plank placed parallel to the head place of the cot; there were blood stains on the floor on the western side of the cot of the deceased; there were blood stains towards the eastern door way of the 6th block, indicating that the body was brought from the cot (upto the door), it was dragged from there to the verandah towards the 5th block on the eastern side, from there towards the north east side, and from there the body was further dragged to the southern side upto the bath room which was used by the hostel ladies;

the prosecution wanted the Court to believe that the accused had not only gained access to the second floor, but had also sneaked into the hall, hit the deceased with a chutney pounder, single handedly lifted her upto the main door of the 6th block, and had dragged her for a distance of about 60 feet; the 5th block also contained a hall and two bed rooms which were allotted to, and were occupied by, several hostel students; the accused is alleged to have dragged the deceased on the verandah running from East to West in front of one bed room, and the hall of the 5th block, for some distance, and then from North to South for some more distance; that all the while, till he accomplished this task and left the building, not even a single inmate had noticed the offender committing a series of these alleged acts; even in a surprise attack, the victim would raise alarm if she was attacked, and the deceased had allegedly made only a feeble sound kue and nothing more; and it was impossible for anyone to believe that the accused had gone about his violent acts, of murder and alleged rape, in a silent and serene manner without attracting anyones attention even if it had taken place during the dead of the night.

The Division Bench further held that yet another doubtful circumstance was the non-bolting of the door opening into the hall where the deceased was sleeping; the theory of the prosecution, that the hall door was kept unbolted paving the way for the offender to straight away enter the hall without the aid and assistance of insiders, was difficult to accept; the accused was alleged not only to have killed the deceased, but to have raped her not knowing whether she was fully dead or not; he had allegedly brought two suitcases belonging to the deceased to the eastern side corridor from the hall near the scene of the offence, and had thrown the clothes and papers from the suit cases in a pelmel; he had picked up ball point pens and a writing pencil, and had allegedly written certain letters, and made marks on the right thigh and chest of the dead body; it was not even the case of the prosecution that the accused had prior acquaintance with the deceased, and had made any proposal in the past that she love him or have a relationship with him; it was highly incredulous that he would commit all the aforementioned acts, after allegedly committing murder and rape; in the absence of past acquaintance with the deceased, it was difficult to believe that the accused had picked up pens and pencil, leisurely written letters on the chest of the deceased, apart from addressing a letter to the hostel-mates about the purpose of his entering the hostel building, his killing and raping the deceased, and apologizing for what he had done; all these acts would have taken a substantial amount of time for the accused; it defied natural human conduct for a stranger to do such acts, once he satisfied his sexual urge; and at least when he noticed that the deceased stopped breathing, and suspected that she had died, the accused would have been in a hurry to leave the hostel building as early as possible, due to fear of being noticed or caught, especially as around 55 persons were present around him in close proximity.

The Division Bench further observed that, if the accused had committed all those acts, his clothes would have been drenched with blood, oozing from the body of the deceased due to the head injury, as the bloodstains and drag marks noticed in the hall, verandah and bathroom would indicate; similarly, the body of the deceased would have been full of blood; Ex.P.16 inquest report indicated that there was a pool of blood near the head, and blood was oozing from both the nostrils and both the ears of the deceased; huge swelling was found behind the head; no blood was noticed on any part of the body; P.W.11, the tea stall owner, had deposed that, at around 5.30 a.m. on 27.12.2007, the accused had come to his shop and was in the shop till 11.00 a.m. watching TV; he was moving in the

tea stall, and also in its surroundings, purchasing tea and cigarettes; usually a person coming to his shop would stay for 5 or 10 minutes, but the accused was near his shop approximately for 5 hours; and with blood all over his clothes, the accused could not have put up a normal appearance.

The Division Bench further opined that the scene of the offence was surrounded by hostel inmates with the certain possibility of even a small noise catching the attention of one or the other inmates; the very attack on the deceased, without drawing attention of the inmates, was wholly impossible; even if the accused had resorted to such daredevilry, and was lucky to escape, it was not possible to believe that any person, in whatever state of mind, would ransack the baggage of the deceased, leisurely write on her body, and address a letter without panicking after committing the ghastly acts of murder and rape.

The Division Bench also held that the chance of the accused finding the chutney pounder in the middle of the night, in the neighbouring premises itself, was very remote; the accused carrying M.O.7 of 63 cms in length and 16.5 cms in circumference, climbing the building and jumping to the first floor with the chutney pounder, also seemed impossible; even if he could do so, his carefully carrying the chutney pounder while climbing down the building, and putting it at the same place from where he had picked it up, also defied logic; if the accused had placed the chutney pounder in the same place to cause disappearance of evidence, it defied ones comprehension as to why he had left many things, such as the colour pens, pencil, and Ex.P.4 paper allegedly used by him, at the scene of offence.

The Division bench noted that PW.10 the owner of the house, located adjacent to the hostel from where MO.7 was allegedly seized, had identified MO.7; and from the admission of PW.10, that his son was under the police scanner apart from the fact that his blood samples were taken for FSL examination and he was also subjected to Polygraph test, it was reasonable to presume that this witness was under pressure to save his son, and he had every reason to oblige the Police to depose in support of the case of the prosecution.

On the probability of rape, the Division Bench, after referring to the material evidence in this regard, observed that absence of any struggle marks over the body, or injuries to the private parts, lead them to believe that there was no possibility of committing rape on the deceased even once, leave alone twice, without causing injuries to her private parts; de-hors rape, the motive for the accused to attack the deceased was non-existent; and these circumstances clearly suggested that the theory of rape was evidently floated by the investigating agency to divert attention of the Court from the real culprits and to hide the truth.

The botched investigation came in for severe criticism by the Division Bench which found it impossible to believe that no fingerprints were found on the body of the deceased which was dragged, and on which words were written; it was impossible for the accused to erase all those prints; there should have been a number of footprints when the accused was handling the deceased right from the hall where the attack had taken place upto the bathroom; the prosecution had failed to explain the two injuries on the left side of the upper lip and the lower lip of the deceased with corresponding incisions inside; it was contended, on behalf of the accused, that, when the deceased

was pushed against the wall, her head hit the wall leading to the breaking of the base of her skull causing bleeding from her nose and mouth and, fearing that she may shout, the assailant had smothered her, and throttled her throat probably by pressing her face down against the pillow, and she must have died of asphyxia; they had relied upon the post- mortem report showing that there was sub-conjunctival petechial haemorrhage on both eyes, indicative of throttling the throat or asphyxia; they had also pointed out the presence of rigor mortis all over the body and post-mortem ant-bites present here and there, indicative of the body being left lying for a long time so as to attract ants to feed on the body; the defence had relied on Ex.P.15 scene of the offence observation report wherein the presence of a blood mark of 2 x 2 cms, on the cement wall almyrah next to the bed of the deceased, was noted; Ex.P.38 photographs clearly showed the pillow drenched in a pool of blood; and the medical report showed injuries on the left side of her skull and left lips.

The Division Bench agreed with the submission of the Counsel for the accused that the investigating agency had failed to take the investigation to its logical end, regarding the blood marks on the corner of the built-in wall almirah, the possibility of death due to throttling, and presence of a large amount of blood on the pillow and the bed portion.

The Division Bench opined that such investigation was very much required for the reason that when the deceased was hit against the wall, with the left side of her head hitting the wall, there was a possibility of a contusion being caused on the left temporo parietal region; in the process there was also a possibility of injuries being caused on the left side of both the upper and lower lips; the possibility of injuries to both the left side upper and lower lips, with corresponding internal injuries being caused, when the face of the deceased was pressed down against the pillow, and her being throttled and suffocated, could not be ruled out; had the deceased been hit on the head with M.O.7, there may not be any possibility of existence of blood marks on the built-in almirah portion of the wall, and similarly it was highly improbable for the deceased to receive injuries on the upper and lower lips; the probability of the assailant hitting the head of the deceased against the wall and throttling her against the pillow, leading to profuse bleeding through the nose, could not be ruled out.

It is evident from the aforesaid observations of the Division Bench that the earlier investigation was extremely shoddy. In Zahira Habibulla H. Sheikh v. State of Gujarat , the Supreme Court held that, if one even cursorily glances through the records of the case, one got the 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 appeared 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; all this sadly reflected on the quality of determination exhibited by the State; Judicial criminal administration system must be kept clean and beyond the reach of whimsical political will or agenda, and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution.

Keeping in view the peculiar circumstances of the case, and the ample evidence on record glaringly demonstrating subversion of justice delivery system with no congenial and conducive atmosphere still prevailing, the Supreme Court, in Pooja Pal v. Union of India , directed that retrial should be

conducted.

That the earlier investigation was unfair and was more an attempt to make Sri Satyam Babu a scapegoat, than to bring the guilty to book, is evident from the failure of police officials to take the investigation to its logical conclusion. In this context, the Division Bench held that, in its earliest opinion, the Police had suspected a sole offender but, on further investigation, they suspected the involvement of more than one offender in the commission of offence, and that the death must have occurred either by smothering or by hitting the head of the deceased against the wall corner edge; as per the evidence of P.W.32, during investigation, more than 120 persons were suspected, and he had subjected them to different types of tests like polygraphy, handwriting, footprints etc; PW.32 admitted that the Police initially suspected P.W.6-the hostel warden, and P.W.7-her husband; he also admitted that he suspected the inmates of the hostel, as they may have known what exactly happened on that day; he also deposed that he was certain that Guruvindar Singh was involved in the offence, and had opposed his bail application as there was prima facie evidence against him; PW.30, the Inspector of Police, had deposed that, as per the instructions of P.W.32, he had collected blood samples of eight suspects through doctors, and their names were Ravi Maniraj, Abburi Ganesh, Ravi Dhiraj, Nellajarla Kishore, Mohammed Khaja, Jalaga Pavankumar, Inampudi Venkata Siva Ramakrishna and Peetha Siva Anjaneyulu (cook); and he admitted that PW.32 may have suspected these eight persons, and had therefore instructed him to send their blood samples.

The Division Bench concluded that the investigating agencies had not taken the investigation to its logical end regarding various suspects such as the cook-P.W.6, the hostel warden-P.W.7, her husband, the eight persons who were named by P.W.30 and from whom samples were taken, the 55 persons sent for DNA examination, and the 39 persons sent for polygraph and narco analysis tests; the Police could not also justify letting off Guruvindhar Singh @ Laddu, though P.W.32 admitted that he was certain that the said suspect was involved in the case, and there was prima facie evidence against him; the investigating agency had failed to subject P.Ws.2 and 3, other hostellers, and P.Ws.6 and 7 to Narco analysis test inspite of the order granted by the trial Court, which was confirmed by the High Court; the investigating agency, which was proceeding in one direction till the apprehension of the accused, had taken an abrupt U turn from then onwards; the whole concentration was focused only on the accused based on his alleged confessional statement; P.W.1, the mother of the accused, had stated, in her evidence, that the investigation was not carried out on proper lines; she had categorically stated that the cook Siva Anjaneyulu comes to the hostel at 4.00 A.M, one key was with him and one with the warden; the National Womens Commission had visited the scene of the offence, and had advised that the inmates of the hostel be referred for Narco analysis test; the footprints of Guruvindar Singh @ Laddu was matched with that found at the scene of offence; and the then Additional Director-General of Police, Mr. A.K. Khan had announced that one person, aged between 30 and 40 years, may have committed the offence; and another person, by name Upendra Singh, was also suspected to have been involved in the commission of the offence.

The Division bench further observed that, in her evidence, the victims mother had stated that the Police suspected Siva Anjayaneyulu (cook), and also the maternal uncle of the deceased; they had also suspected Guruvindar Singh (Laddu) and Upendra Singh, before pitching on to the accused; she stated that the investigation was not conducted on proper lines; top Police Officials had interrogated

her distant relative, and had brought pressure on him to admit his involvement; as he refused, he was finally handed over to their family; they had received a threatening call that their second daughter would also be killed, as they had killed the deceased; in that connection, she had met the Additional Director General of Police and the Commissioner of Police; on 29.12.2007 she received a phone call from Vijayawada informing her that the investigation in the case of their daughter was deliberately diverted; on 26.12.2007, a party was organized in the ground floor of the hostel; P.W.7, the husband of the hostel warden, K. Satish, K. Suresh, Ganesh, Chinta Pavan Kumar and Rajesh were present there; two of them went to the 2nd floor to meet their girl friends, in the same block in which the deceased was staying; on seeing them, the deceased had stated that she would reveal the facts to her parents, and vacate the hostel the next day morning; and due to that reason, the deceased was done away with.

The Division Bench opined that the callous and casual approach of the investigation agency, their failure to conduct proper investigation, and instead taking the easy way out by picking the accused and describing him as a hardcore criminal, shocked its judicial conscience; and this was a rare case where the victims mother had deposed in defence of the accused, and had indicted the Police for the alleged faulty and biased investigation.

A high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not, prima facie, be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above the law de hors his position and influence in the society. The maxim contra veritatem lex nunquam aliquid permittit applies to the exercise of powers by the Courts. (The law never suffers anything contrary to the truth). It is the responsibility of the Courts to ensure that the investigation is fair. (Vinay Tyagi2; Sidhartha Vashisht v. State (NCT of Delhi)).

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 Court to direct reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution, and while it should 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. (Pooja Pal10). The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. (Basappa v. State of Karnataka ; State of Punjab v. Karnail Singh).

The botched investigation, into the gruesome murder of Miss.Ayesha Meera, is a classic case of subversion of justice. As the gross indifference exhibited by the investigating agency earlier in ascertaining the truth, and in not bringing the perpetrators of this heinous crime to justice, shocks our conscience also, we are satisfied that this case would fall within the category of the rarest of rare cases justifying an order being passed directing de-novo investigation by a Special Investigating Team. As the Government has itself constituted such a team, and the integrity of the police officials forming part of the SIT has not been doubted before us, we are of the view that the SIT, constituted by the Director General of Police, A.P vide his proceedings dated 08.08.2017 pursuant to G.O.Ms.

No.132 dated 04.08.2017, be entrusted with the task of de-novo investigation of Crime No.477 of 2007 of Ibrahimpatnam Police Station.

The next question which necessitates examination is whether we should, in the facts and circumstances of the present case and as prayed for by the petitioners, also monitor the investigation. In its judgment in Criminal Appeal No.1518 of 2010 dated 31.03.2017, the Division Bench opined that, though it was pleaded that in order to save the real culprit belonging to an influential political family, the Police had falsely implicated the accused; the evidence on record was insufficient for them to express any opinion; and not punishing the real culprits was no less miscarriage of justice than conviction of an innocent (Basappa12). While expressing their inability to order re- investigation, while exercising appellate jurisdiction under Section 374(2) CrPC because of the absence of a statutory provision, the Division Bench opined that the truth, buried fathom deep under the debris of faulty investigation and distortions, needed to be extricated, and the real culprits identified and punished; and it was, however, for public citizens to carry the issue forward availing the appropriate legal remedies.

A fair, proper and full investigation by the investigation agency, into every accusation, would help in retaining public confidence in the conduct of inquiry/investigation. Court- monitoring would help in moving the machinery of inquiry/investigation at an appropriate pace, and its conclusion with utmost expedition without fear or favour. (Manohar Lal Sharma v. Union of India). The jurisdiction of the Superior Court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his judicial functions. (Jakia Nasim Ahesan v. State of Gujarat ; M.C. Mehta v. Union of India). Once the investigating agency complete their function of investigating into the offences, it is the Court in which the charge- sheet would be filed, which should deal with all matters relating to the trial of the accused. (Jakia Nasim Ahesan15; Narmada Bai v. State of Gujarat).

The expression Court-monitored has sometimes been interchangeably used with Court-supervised investigation. Once the court supervises an investigation, there is hardly anything left in the trial. However, investigation/inquiry monitored by the Court does not mean that the Court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. Under the Code, the investigating officer is only to form an opinion, and it is for the Court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a Superior Court supervises the investigation, and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) Cr.P.C, it will be difficult, if not impossible, for the trial court not to be influenced or bound by such opinion. Then the trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure. In rare and compelling circumstances, the Superior Courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference. (Manohar Lal Sharma14).

Constitutional Courts monitor investigation only in public interest. That is the leitmotif of a Constitutional Court-monitored investigation. No Constitutional Court desires to monitor an inquiry or an investigation (compendiously referred to hereinafter as an investigation) nor does it encourage the monitoring of any investigation by a police authority. Public interest is the sole consideration, and a Constitutional Court monitors investigation only when circumstances compel it to do so, such as (illustratively) a lack of enthusiasm by the investigating officer or agency (due to pressures on it) in conducting a proper investigation, or a lack of enthusiasm by the Government concerned in assisting the investigating authority to arrive at the truth, or a lack of interest by the investigating authority or the Government concerned to take investigation to its logical conclusion for whatever reason or, in extreme cases, to hinder the investigation. (Manohar Lal Sharma14; Committee for Protection of Democratic Rights).

Monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation, into every accusation, is made on a reasonable basis irrespective of the position and status of that person; and the inquiry/investigation is taken to the logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted, and to eliminate any impression of bias, lack of fairness and objectivity. (Manohar Lal Sharma14). The concern and interest of the Court in Court-directed or Court-monitored cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, people acquainted with the facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation, given that the Superior Courts are seized of the matter. (Manohar Lal Sharma14).

A cloud of suspicion hangs over, and grave and serious doubts are cast on, the impartiality and fairness of the earlier investigation. More than a decade has elapsed since Miss.Ayesha Meera was killed on 27.12.2007. As the parents of the deceased also allege that the real culprit belongs to an influential political family, it is necessary that the SIT is protected from any form of outside interference while undertaking de-novo investigation. This object can only be achieved, and public confidence in the impartiality of the re-investigation ensured, only if we monitor the progress of the re-investigation by the SIT, and ensure that the investigation is carried on with all earnest and with utmost expedition without any outside pressure or influence.

We, accordingly, direct the Special Investigation Team, constituted vide proceedings of the Director General of Police, Andhra Pradesh dated 08.08.2017, pursuant to G.O.Ms. No.132 dated 04.08.2017, to carry out denovo investigation into Crime No.477 of 2007 of Ibrahimpatnam Police Station with utmost expedition. With a view to ensure the fairness and impartiality of the investigative process, and to prevent any form of extraneous and outside influence on the SIT, we direct that none of the officers of the SIT shall be transferred, or relieved of their duties of re-investigating Crime No.477 of 2007, without the prior permission of this Court. The Government of Andhra Pradesh shall provide all such assistance as the SIT may seek while carrying out re-investigation into the murder of Miss.Ayesha Meera. The Deputy Inspector General of Police,

heading the SIT, shall submit periodical reports to this Court regarding the progress of investigation. The first of such reports of the SIT shall be filed on or before 20.04.2018. He shall forthwith report to this Court in case any outside influence is sought to bear upon the fair and impartial conduct of re-investigation into the Crime.

In Kishanbhai1, the Supreme Court observed:-

> ..Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.
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> On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We

also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.. (emphasis supplied).

Relying on the judgment of the Supreme Court in Kishanbhai1, the Division Bench, in its order in Criminal Appeal No.1518 of 2010 dated 31.03.2017, observed that the Government of A.P. had issued G.O.Ms.No.20 dated 14.02.2017 constituting an Apex Committee, with the Home Secretary as the Chairman, the Law Secretary, the Director General of Police and other functionaries as its Members, for identification of erring investigation/prosecuting officials/officers for their failure in prosecuting the case; and for taking departmental action against the officials/officers in accordance with law. The State was directed to refer the matter to the Apex Committee.

For the shoddy investigation, and as the possibility of the earlier investigation being deliberately derailed to avoid the powerful and the mighty being brought to justice for this heinous crime, the Apex Committee, of which the Principal Secretary (Home) is the Chairman, shall forthwith fix responsibility for the shoddy investigation, and take disciplinary action against the identified errant investigating officers in accordance with law. The Principal Secretary (Home) shall submit a report to this Court, regarding the action taken in this regard, by the next date of hearing i.e., 20.04.2018.

As the three public spirited citizens have achieved their object of invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, W.P. (PIL) No.186 of 2017 is disposed of accordingly. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

The periodical reports to be submitted by the SIT, regarding the progress of re-investigation, shall be filed in W.P. No. 25434 of 2017 which shall be listed for Orders on 20.04.2018. _____ RAMESH RANGANATHAN, ACJ _____ J. UMA DEVI, J.

date:19.01.2018.